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PROPOSAL ON POLICY RECOMMENDATIONS FOR THE AMENDMENT TO THE GENDER EQUALITY LAW REGARDING GENDER-BASED VIOLENCE AND HARMFUL PRACTICES



2023

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Abbreviations and acronyms

ADB	Asian Development Bank
ASEAN	Association of Southeast Asian Nations
CAT	Convention Against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Committee on the Rights of the Child
DOLISA	Department of Labour - Invalids and Social Affairs
DV	Domestic violence
DVPC	Law on Domestic violence Prevention and Control
GBV	Gender-based Violence
GBVAW	Gender-based Violence against Women
GBVAWG	Gender-based Violence against Women and Girls
GE	Gender equality
GBSS	Gender-biased sex selection
GOV	Government of Viet Nam
GR	General Recommendations
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRW	International Center for Research on Women
IDVC	Integrated Domestic Violence Courts
JNWC	Jordanian National Women's Commission
LISA	Labour - Invalids and Social Affairs
LGBT	Lesbian, gay, bisexual, transgender
LGBTI	Lesbian, gay, bisexual, transgender and intersex
LND	Legal Normative Documents
MOCST	Ministry of Culture, Sports and Tourism

MOJ	Ministry of Justice
MOLISA	Ministry of Labour - Invalids and Social Affairs
MPS	Ministry of Public Security
NA	National Assembly
OHCHR	Office of the High Commissioner for Human Rights
SDG	Sustainable Development Goals
SOGI	Sexual orientation and gender identity
SOGIE	Sexual orientation, gender identity and gender expression
SRB	Sex ratio at birth
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office of Drugs and Crime
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
USAID	United States Agency for International Development
VAWG	Violence against Women and Girls
WB	World Bank



1. Introduction

1.1 Background and rationale for the Policy Recommendations

In 2006, Viet Nam promulgated the Law on Gender Equality (GE), mandating Government bodies to fulfill GE responsibilities and address violations. Fifteen years after implementation, there are certain achievements in terms of promoting GE in Viet Nam together with a number of issues, and sectors of the GE Law that need to be considered to make it more comprehensive, more realistic with the current context of Vietnamese society, at the same time, more in line with international standards and practices in gender and GE. Amongst existing issues of gender inequality, gender-based violence (GBV) and harmful practices attract large attention because of their scope and degree.

The Government of Viet Nam (GOV) is considering amendments to the GE Law to ensure continuous improvement of GE, including its commitments to eliminate GBV and harmful practices towards its Sustainable Development Goals (SDG) targets. In

particular, since late 2021, the Ministry of Labour - Invalids and Social Affairs (MOLISA) has launched the process of amendment to the GE Law for approval by the National Assembly (NA) in 2025. Following key findings and recommendations of the related independent reviews, among many sectors inherently stipulated in the GE Law, the prevention of and response to GBV and harmful practices are proposed to be strengthened in the revised Law. It is important to note that GBV and harmful practices are based on gender stereotypes and gender-based discrimination and thus efforts to reduce violence are consistent with equality rights promoted in the GE Law. Various policy options have been generated, including one that broadens the scope of the GE Law to include discrimination based on gender as well as discrimination because someone is gay, lesbian or transgender. This paper examines GBV and harmful practices only within the framework of the GE Law and for the Law's amendment, and not the country's broader legal framework.

Given its mandate and expertise advantage in this field, UNFPA, the United Nations Population Fund, provides technical support for the revision of the GE Law from a GBV and harmful practices perspective. A proposal on policy recommendations on the amendment of the GE Law regarding GBV and harmful practices will be developed taking into account recommendations, international standards, and best practices, as well as technical input from MOLISA, other relevant stakeholders and UNFPA.

1.2 Specific objectives of the Policy Recommendations

The overall objective of the policy proposal is to provide policy options and recommendations to the State Management Agency, the MOLISA, responsible for the GE in relation to GBV and harmful practices that are perpetrated due to prejudice or bias.

The specific objectives of the research are:

I. To identify policy options that need to be taken into account in the revision of the GE Law in relation to GBV and harmful practices, using human rights standards (including treaties, declarations and soft law) and examples or good practices from other countries.²

II. To provide recommendations for the amendment of the GE Law's provisions on GBV and harmful practices, ensuring the recommendations are consistent with international norms and standards.

1. Soft law refers to recommendations of treaty bodies, such as the Committee on the Elimination of Discrimination Against Women, reports of special rapporteurs or independent experts, and other guidance or non-binding resolutions that help clarify how treaty standards are implemented in practical terms.

2. When looking for examples from other countries the international consultant first looked to Southeast Asian countries and then other regions of the world.

1.3 Users of the Policy Recommendations

The primary users of the proposal will be the GOV, in particular MOLISA, the NA and its committees, especially the Social Committee. These bodies will be directly involved in the amendment of the GE Law. As the UNFPA supports the GOV in its efforts to advance GE, this organisation 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 individual public policymakers and officials in the government, civil society organizations, researchers, donor agency representatives, United Nations (UN) agencies and other professionals who are expected to find the report useful in their work.



2. Context in Viet Nam and gaps identified

Section Two analyses the scope and degree of seriousness of GBV and harmful practices in Viet Nam, as well as gaps in the legislative framework of GBV and harmful practices. This context demonstrates the urgent need for the GE Law amendment

2.1 Gender-based violence

In Viet Nam and throughout the world, unequal power relations and individual and social attitudes that condone violence against women (VAW) within the private and public spheres drive GBV.³ 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, violence against women and girls (VAWG) is the significantly more prevalent form of GBV. The research by UNFPA in 2014 showed that GBV 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 GBV at home 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.⁴ This public shaming and social judgement, coupled with limited confidence that justice will be served, often results in victims being reluctant to come forward.

At the same time, 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.⁵ 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".

Scope and degree of GBV

GBV, especially VAW and children, occurs in various forms, including physical, sexual, emotional and economic violence, with prevalence in all regions across the country.^{6,7} Representatives of many local governments consider GBV, including trafficking in human and forced sex work as the most serious problem of gender inequality in their provinces.⁸ According to the findings of a survey conducted by MOLISA in May 2022,

3. UN Viet Nam, "From DV to Gender-Based Violence: Connecting the dots in Viet Nam, A UN Discussion Paper" (2014) at 21, online (pdf): UNFPA Viet Nam <vietnam.unfpa.org/sites/default/files/pub-pdf/UN%20Discussion%20Paper_ENG.pdf> [Connecting the Dots].

4. UNFPA, "Policy Brief: Ending GBV at Home in Viet Nam" (2016) at 3, online (pdf): UNFPA Viet Nam <vietnam.unfpa.org/sites/default/files/pub-pdf/Policy%20brief_GBV_FINAL_ENG.pdf> [GBV in Viet Nam].

5. Ibid.

6. Reports of the government agencies and local governments: MOLISA (2022). Findings of the Survey on the Implementation and Recommendation for the Amendment of the GE Law of 2006; MOLISA (2020). The Programme on the Prevention and Response to GBV in the Period of 2021-2025; Ministry of Culture, Sport, and Tourism, Report No. 208/BC-BVHTTDL dated 06/9/2021; Reports on 10 Year Implementation of the GE Law by provinces, Hanoi, 2018; Reports on 15 Year Implementation of the GE Law by provinces, Hanoi, 6/2022.

7. National Study on VAW 2019, p. 6-7.

8. MOLISA and UNFPA, "Review of 10 Years of implementing the Law on GE" (2020) at 52, online (pdf): UNFPA Viet Nam <vietnam.unfpa.org/sites/default/files/pub-pdf/ge_eng.pdf> [Review GE Law]

83% respondents recognise the seriousness of GBV.⁹ Specifically, this part will address the following forms of GBV:

VAW: The findings of the National Study in 2019 showed the pervasive complexity of VAWG.¹⁰ Nearly two in three (62.9%) women experienced physical, sexual, psychological (emotional and controlling behaviours) and/or economic violence by husband/partner at some point in their life, and 31.6% currently (in the last 12 months). Lifetime sexual violence increased to 13.3% in 2019 from 9.9% in 2010. Husband/partner violence was experienced by far more women than non-partner violence. Non-partner physical violence is mainly perpetrated by male family members and/or male or female friends/acquaintances whereas non-partner sexual violence is mainly perpetrated by recent male acquaintances, male friends/acquaintances or male strangers. Women with disabilities experience more violence by a husband/partner (physical, sexual, emotional, economic and controlling behaviours) than women without disabilities.

Yet despite its high prevalence, just like the 2010 study, half of the women who had experienced physical and/or sexual violence by a husband/partner had told no one about it, and most women (90.4%) experiencing husband/partner violence did not seek any help. Only one in ten (9.6%) women sought help from formal services or authorities, and only 4.8% from the police.¹¹

Trafficking in persons: Data on human trafficking is sparse with few large-scale studies and fragmented data from GoV sources. According to the Ministry of Public Security (MPS), there were more than 1,000 cases of trafficking with nearly 1,500 perpetrators and more than 2,600 victims were identified in the period from 2016 to 6/2019.¹² At a hearing conducted by the National Assembly's Judicial Committee in May 2023, MPS presented a report indicating that from January 1, 2018 to December 31, 2022, 394 cases of human trafficking were detected in the country, with 837 perpetrators identified, and in 386 criminal cases with 808 perpetrators were prosecuted.¹³ These statistics provide a picture of the prevalence of trafficking in Viet Nam, but only represent a minority of cases given the vast majority never identified by authorities. Women trafficked are vulnerable to violence because they are separated from family and other sources of support, potentially facing communication barriers to seeking help and with little or no economic independence.

9. MOLISA (2022). Findings of the Survey on the Implementation and Recommendation for the Amendment of the GE Law of 2006.

10. MOLISA, GSO and UNFPA "National Study on VAW in Viet Nam 2019" (2020) at x, online (pdf): UNFPA Asia and the Pacific <asiapacific.unfpa.org/sites/default/files/pub-pdf/0_vaw_study_main_report_final_13_aug_2020_0.pdf> [VAW Study Viet Nam].

11. Ibid at xxii-xxiii.

12. Supra Connecting the Dots at 19.

13. E-Portal of the National Assembly of Vietnam, Domestic human trafficking and trafficking of men are increasing, <https://quochoi.vn/tintuc/Pages/phiengiaitrinh.aspx?ItemID=75558>.

Forced/coerced sex work: Statistics on sex work in Viet Nam vary according to different sources. MOLISA referred to an official source which states that Viet Nam has approximately 15,000 sex workers; while ILO estimates that the number is around 100,000 sex workers, out of which 75,000 are female sex workers.¹⁴ However, according to another source, in 2010, there were approximately 300,000 female sex workers, out of which 80,000 are living and working in Ho Chi Minh City.¹⁵ Sex workers tend to be coerced given their lack of choices due to poverty, troubled family settings or sexual identity, and face a significant risk of violence, given the stigma, informal nature and illegality of the work. Some sex workers suffer from violence perpetrated by brothel owners, pimps, clients, and there have been cases of violence perpetrated by law enforcement officers.¹⁶

Sexual harassment: Sexual harassment can occur anywhere - in schools, workplaces, institutions, public spaces including transportation services, and online.¹⁷ A study conducted by Action Aid in Hanoi and Ho Chi Minh City in 2014 found that 87% women interviewed reported being sexually harassed in public locations, including bus stations and parks.¹⁸ According to other sources cited by a UN discussion paper, 15.6% of 314 pupils surveyed reported being sexually fondled by others, 4.3% were forced to fondle others and 4.3% were forced to have sex in the previous 12 months; 41% of respondents in a study of homosexual, bisexual and transgender youth in 2012 reported experiencing discrimination and violence, including sexual violence, in school or university.¹⁹ Both men and women are potential victims of sexual harassment in the workplace; however, gender inequalities result in women occupying a larger share of lower-level jobs than men, exposing them to sexual harassment from superiors.²⁰ Offensive sexual comments, gestures and unwanted touching in public spaces happen in Viet Nam, although no quantitative evidence exists to indicate the prevalence or nature of this form of sexual harassment.

GBV against children: According to UNICEF, in 2017 in Viet Nam, 68,4% children from 1-14 reported were being physically abused by parents or guardians at home; nearly 20% children of the age of 8 years old reported that have been physically punished at school. Each year, approximately 1,000 cases of child sexual abuse are reported in Viet Nam.²¹ This is likely a gross under-estimation of the problem, as in a 2006 Study almost

14. MOLISA, the Programme on the Prevention and Response to GBV in the Period of 2021-2025, Hanoi, 2020.

15. Supra Connecting the Dots at 19.

16. MOLISA, the Programme on the Prevention and Response to GBV in the Period of 2021-2025, Hanoi, 2020.

17. Ibid.

18. ActionAid Viet Nam "Safe City for Women and Girls" at 5, online (pdf): ActionAid <vietnam.actionaid.org/sites/vietnam/files/aav_safe_cities-en-24-11-2014_0.pdf>.

19. Supra Connecting the Dots at 20.

20. Ibid.

20% of participating children indicated having experience of child sexual abuse. Victims of known child sex abuse in Viet Nam range in age from 2-17 years, with 12-years-old the most common age to suffer childhood sexual abuse.²²

GBV against lesbian, gay, bisexual, transgender (LGBT): Surveys report relatively high levels of stigma and discrimination to LGBT community in family, society, employment, health care services. In a 2015 survey, one-third (31.6%) of the respondents reported that they felt discriminated for being LGBT for the last 12 months prior to the survey. Transgender people have the most discrimination experience (49.4% for trans men and 48.5% for trans women). On the frequency of the discrimination, half (49.9%) of the respondents who have felt discriminated against said that they have been discriminated from one to five times in the last 12 months. Notably, more than one-fourth (27.6%) of the respondents said that they have experienced discrimination for more than 10 times in the last 12 months; trans women experienced the most discrimination (41.7%), 50% greater than the average rate.²³

A survey of 1337 persons within the LGBTQIA+ community conducted by MOLISA in September 2022 indicated similar trends with 44,4% have been discriminated on the basis of sexual orientation or gender identity.²⁴ The most common forms of discrimination are: verbal humiliation (74,3% of surveyed persons said yes); verbal bullying, emotional pressure (76,4%); facing barriers in accessing opportunities, services, etc. (64%); denial of opportunities, services, etc. (40,2%); threats of violence/sexual assault (67,6%); violent attack (64,1%); sexual assault (62,7%); being under surveillance (58,6%). The most serious consequences of discrimination are stress (26%) and intention/effort to suicide (17%). It should be noted that more than 90% of victims did not seek any support from other people, organisations, agencies because of the lack of trust as the most common reason. According to another survey conducted by MOLISA in July 2022, 66,5% of people surveyed agreed that there exists above mentioned discrimination with 81,8% among them assessed that the discrimination had negative impacts on GE.²⁵

As of 2022, the most common spheres of discrimination are social media, the press

21. MOLISA, the Programme on the Prevention and Response to GBV in the Period of 2021-2025, Hanoi, 2020.

22. Supra Connecting the Dots at 21.

23. The Institute for Studies of Society, Economy and Environment (iSEE), Luong The Huy and Pham Quynh Phuong, Is it because I am LGBT?: Discriminations on Sexual Orientation and Gender Identity in Viet Nam, Hong Duc Publishing House, Hanoi, 2016, pg. 96.

24. MOLISA (2022). Findings of the Survey on the Experience of Discrimination against LGBT People.

25. MOLISA (2022). Findings of the Survey on the Implementation and Recommendations for the Amendment of the GE Law of 2006.

(22,6%), family (22,1%).²⁶Traditional perceptions of sex, sexuality and family in Viet Nam make families generally hostile to LGBTQIA+ individuals. For a long period, the media was extremely hostile towards LGBT people and their issues, filled with inaccurate information. However, the media's perception of the LGBTQIA+ community has improved over the last few years and LGBTQIA+ and LGBTQIA+ supportive groups are using community media channels to provide alternate voices, and with each other.

GBV in emergencies (pandemics, natural disasters): According to sources, domestic violence and gender-based violence increased during emergencies such as natural disasters and COVID-19, affecting a large number of Vietnamese women and children with serious consequences for themselves and their families.²⁷ In particular, natural disasters increase GBV, causing women and girls to be sexually exploited, trafficked, or forcibly married for survival.²⁸ Gender responsive prevention and response to disasters and emergencies mainly focuses on measures to ensure the right to life, food, and freedom of sexual abuse and exploitation.²⁹

A study in 2020 showed that during COVID-19, the proportion of women experiencing any types of violence perpetrated by husband/partner was similar to the results of the 2019 National Study on VAW. Even rates of physical violence, behavioral control and the economic violence in that study are higher than the 2019 National Survey.³⁰ In March - April 2020, the Call Center (1900969680) of Viet Nam Women's Union received around 350 calls from women who needed support, an increase by 7 times compared to the same period in 2019. The Peace House Shelter data shows an increase of 48% of women received face-to-face counselling related to DV, and 80% of children and women made use of temporary shelter services as compared to the pre-COVID-19 period.³¹ For children, emotional violence and sexual abuse, especially in the Internet environment, were two forms of violence with high prevalence during COVID-19. There were half of women who experienced violence by their husbands/partners during COVID-19 without telling anyone about it (51.8%).³²

26. MOLISA (2022). Findings of the Survey on the Experience of Discrimination against LGBT People.

27. See UN in Viet Nam and Hanoi Medical University (2020), A rapid assessment of VAW and children as an impact of Covid-19 and proposal of necessary support and responses. See also, UN Women & UNDP "COVID-19 Socio-economic Impact on Vulnerable Households and Enterprises: a gender sensitive assessment" (July 23, 2020), online: UNDP <undp.org/vietnam/publications/covid-19-socio-economic-impact-vulnerable-households-and-enterprises-gender-sensitive-assessment> [Gender Sensitive Assessment].

28. UN Women and General Office for Disaster Prevention and Control (2022), Policy Brief: Gender Mainstreaming into the Coordination Mechanism of Disaster Management in Viet Nam.

29. Ibid.

30. UN in Viet Nam and Hanoi Medical University (2020), A rapid assessment of VAW and children as an impact of Covid-19 and proposal of necessary support and responses.

31. Supra Gender Sensitive Assessment.

32. UN in Viet Nam and Hanoi Medical University (2020), A rapid assessment of VAW and children as an impact of Covid-19 and proposal of necessary support and responses.

An increased use of alcohol by husbands during social isolation, financial difficulties in families due to unemployment or reduced working hours, conflict in family activities (caring for children, the elderly) are major factors related to the risk of female partner experienced violence by her husband/partner during this time.³³ The ability of women and children to respond to violence during COVID-19 was limited due to social distancing, fear of epidemic transmission illness, and difficulty in accessing support services.

Consequences/Impacts

The consequences of GBV are considerable for victims, families and communities. They include negative health, financial/economic, social and personal development consequences and increased vulnerability to additional GBV.³⁴ Importantly, these consequences play out over the lifetime of the person affected and may extend to future generations. Educational attainment and related life chances are potentially curtailed for victims. While physical injuries including death as a result of DV, sexual harassment, trafficking, forced sex work and forced or repeated abortions have been well documented, the debilitating psychological health consequences of GBV are often overlooked.

Some of these health consequences associated with different forms of GBV include: All types of physical injuries, death; mental health disorders and addiction (suicide, attempted suicide, emotional distress and other mental health difficulties, addiction); reproductive and sexual health (miscarriage, stillbirth, abortion, obstetric complications, multiple births, HIV and other STIs, unwanted pregnancy).

According to the National Study in 2019, while 42% of women who did not experience violence report good or excellent health, only 31% of women who experienced violence report the same. Similarly, while only 10% of women who did not experience violence report poor or very poor health, this is higher (13%) for women who experienced violence.³⁵ Reproductive health outcomes were worse for women who experienced violence from their husband compared with women who had not experienced violence.³⁶ Women who experienced physical and/or sexual violence by a husband were more likely to say that their children had behavioural issues, including nightmares, bedwetting, being quiet or withdrawn, and aggressiveness, compared to women who had not experienced violence.³⁷

33. UN in Viet Nam and Hanoi Medical University (2020), A rapid assessment of VAW and children as an impact of Covid-19 and proposal of necessary support and responses.

34. Supra Connecting the Dots at 21.

35. Supra VAW Study Viet Nam at 21.

36. Ibid at 6.

37. Ibid at 86.

The economic costs of violence are significant with women who experienced violence in the past 12 months spending about a quarter of their annual income on costs associated with health care and/or replacing damaged/destroyed goods. Women experiencing physical and sexual violence are likely to have a 30.8% reduction in their annual income compared with women not experiencing violence. It should be highlighted that national productivity losses due to VAW are equivalent to 1.81% of 2018 GDP in Viet Nam.³⁸

2.2 Harmful practices against Women and Girls

Harmful practices is a term used in international human rights law to refer to practices which are based on discriminatory stereotypes and attitudes that consider women, girls and boys as inferior and are used to justify GBV, among other discriminatory acts. International standards related to harmful practices are discussed in section 3.2.

Harmful practices which constitute discrimination against men and women, boys and girls in Viet Nam include child and forced marriage and gender-biased sex selection (GBSS).

Scope and degree of Harmful practices

Early and forced marriage: Although the minimum legal age for marriage is 18 for women and 20 for men in Viet Nam, studies have found a significant proportion of Vietnamese women marry during adolescence before the legal age of marriage. According to the Survey measuring Viet Nam SDG indicators on Children and Women 2020-2021, 1.1% of women and 0.3% of men age 20-24 years were first married or in union before age 15, and 14.6% of women and 1.9% of men age 20-24 years were first married or in union before age 18.³⁹ The data shows that child marriage among women of all age groups is more prevalent than among their male peers; rural women and men are much more likely to marry before age 15 and 18 than their urban peers; women who have lower education and come from poorer households are more likely to marry before their 18th birthday; women age 20-40 years from ethnic groups other than Kinh and Hoa are more likely to marry before age 18. The highest proportion of child marriage before age 18 is among Mong ethnic women, at 53.4%. Early marriage among Mong ethnic men ages 20-49 years is also prevalent, at 26.1%.⁴⁰ Although anecdotal evidence suggests that child marriage is common among certain ethnic minority groups,⁴¹ a gap

38. Ibid at 104.

39. GSO and UNICEF “Survey Measuring Viet Nam SDG Indicators on Children and Women 2020-2021: Survey Findings Report” (December 2021) at 38, online (pdf): UNICEF <[unicef.org/vietnam/media/9576/file/Full%20report%20-%20MICS%206.pdf](https://www.unicef.org/vietnam/media/9576/file/Full%20report%20-%20MICS%206.pdf)>.

40. Ibid at 375 and 378.

41. MOLISA, Findings of the Survey on the Implementation and Recommendation for the Amendment of the GE Law of 2006, Hanoi, 7/2022; Reports on 15 Year Implementation of the GE Law by Quang Ngai, Quang Ninh, Lao Cai, 6/2022.

remains in fully understanding the link between child marriage and ethnic minorities in Viet Nam.

Alongside with child marriage, there exist among number of ethnic minorities in Viet Nam some customs of forced marriage, for example, “prolonged rope” (nối dây), where a spouse died, his/her wife or husband is forced to marry to his brother or her sister; or stealing bride when a girl is forced to marry to a man.

GBSS: GBSS has been identified as the major cause of the sex ratio at birth imbalance in Viet Nam. According to the 2019 Census, sex ratio at birth (SRB) in Viet Nam is 111.5 male births per 100 female births, showing a very high level of sex imbalance at birth. When compared with normal SRB (105-106 male births per 100 female births), the situation in Viet Nam points to a yearly deficit of 45,900 female births in 2019. The missing female births represents 6.2% of the observed female births.⁴²

SRB varies by macro-economic region and by urban and rural areas within the regions. According to the 2019 Census, the SRB is higher in rural areas of the Red River Delta at 115.2 while it is 112.8 in urban areas. Higher-than-average SRBs are also visible in the Northern Midlands and Mountains regions. In contrast, the SRB is lower in the South, most notably in the Mekong River Delta or in the rural parts of the Central Highlands. The higher SRBs are more evident among wealthier households with 108.2 among the poorest quintile, in comparison with 112.9 among the richest one. In addition, SRBs are higher among those with higher educational levels and socioeconomic status, and among specific ethnic groups.⁴³

According to 2019 Census, SRB differentials per parity demonstrate son preference. In particular, the sex ratio of the last birth illustrates the variations in the intensity of son preference, ranging from 109 to 119 among last births in the country. Sonless parents are twice as likely to have an additional child. The need for a son is especially strong in the northern regions and among more affluent or educated populations. GBSS is more prevalent among the wealthier segments of the population – that is, among people who are likely to have accumulated assets that can sustain them in their old age.⁴⁴

The primary factor driving practice of sex selection is deeply rooted in the traditional culture of Confucianism and patriarchal family systems, and the social norms of valuing

42. UNFPA “2019 Population and Housing Census: Sex Imbalances at Birth Viet Nam: Trends and Variations” (2020) at 2, online (pdf): UNFPA <vietnam.unfpa.org/sites/default/files/pub-pdf/20210301_final_srb_factsheet_eng_1.pdf> [Sex Imbalances Birth].

43. Ibid.

44. UNFPA “Sex Ratio at Birth Imbalance in Viet Nam: In-depth analysis from the 2019 Census” (March 2, 2021), online: UNFPA <[---

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REGARDING GENDER-BASED VIOLENCE AND HARMFUL PRACTICES](http://vietnam.unfpa.org/en/video/sex-ratio-birth-imbalance-viet-nam-depth-analysis-2019-census#:~:text=The%20sex%20ratio%20at%20birth,has%20levelled%20off%20ever%20since.>.”</p></div><div data-bbox=)

boys more than girls in general.⁴⁵ A study on son preference among men showed a strong relationship between the level of education of men and intensity of son preference. Men with higher education have less son preference, and men with lower education have stronger son preference. Similarly, men engaging in manual and agricultural work are in the majority in the group having a high level of son preference. Men who tend to control their partner, which is a manifestation of gender inequitable attitudes, appear also to have high levels of son preference.⁴⁶ On the other hand, another survey on sex ratio at birth showed that a high level of awareness of the issue does not necessarily correlate with a low prevalence of GBSS in practice.⁴⁷

While son preference has a long history in Viet Nam, the recent availability and accessibility of technology for selecting the sex of the fetus, gender-biased sex identification and induced abortion explain the fast rise in the sex ratio at birth imbalance in Viet Nam since 2005. In addition, country's low fertility rate, declining from 2.6 children per woman in 1999 to 2.04 in 2017⁴⁸ and 2.0 in 2020⁴⁹ has contributed to an increased SRB imbalance in Viet Nam. As the number of children declines, and many couples want to have at least one son, they may practice sex selection in favor of boys from the first birth.

Consequences/Impacts

The SRB imbalances in Viet Nam will have a long-lasting impact on the country's population structures. Among adults aged 15–49 years, the excess of males will rise to 1.5 million by 2034 and may further increase to almost 2.5 million by 2059 (9.5% of the corresponding male population) if the SRB level does not decline. In the best scenario of SRB, the surplus of males is likely to remain above 1.8 million by 2059.⁵⁰ If Viet Nam's imbalanced SRB continues in the coming years, gender inequality will be further increased due to more pressure for women to marry at a younger age, rising demand for sex work, and the expansion of trafficking networks that will increase the risks of GBV.

2.3 Legal and Policy framework gaps

GBV and harmful practices relate to a number of laws such as the GE Law, Law on Domestic Violence Prevention and Control (DVPC), Criminal Code, Law on Administrative

45. UNFPA "Global Programme to Prevent Son Preference and the Undervaluing of Girls: Improving the sex ratio at birth in select countries in Asia and the Caucasus" (2019) at 4, online (pdf): UNFPA <vietnam.unfpa.org/sites/default/files/pub-pdf/Viet_Nam_country_profile_eg.pdf> [Undervaluing of Girls].

46. ICRW and al. "Study on Gender, Masculinity and Son Preference in Nepal and Viet Nam" (2012) at 3, online (pdf): UNFPA <nepal.unfpa.org/sites/default/files/pub-pdf/Studyonsonpreference.pdf>.

47. See UNFPA "End-line study on Situation of DV and Sex Ratio at Birth in Hai Duong and Ben Tre Provinces" (2016).

48. Supra Undervaluing of Girls at 4.

49. See World Bank Data "Fertility rate, total (births per woman)", online: WB <data.worldbank.org/indicator/SP.DYN.TFRT.IN>

50. Supra Sex Imbalances Birth at 5.

Violations, Law on Disabled Persons, Children Law, Population Ordinance, etc. This part of the proposal identifies general gaps in the legislative and policy framework on GBV, harmful practices, and domestic violence (DV). In addition, see the review of a number of laws and policies on GBV, harmful practices, and DV in the Annex.

Gaps in the framework on Gender-based violence and Harmful practices

Lack of a comprehensive approach⁵¹ to GBV: One of the most significant and cross-cutting issues was the tendency to overlook the linkages between different forms of GBV and harmful practices, and address each one independently, with programmes and interventions narrowly focusing on one form and different ministries and agencies tasked with addressing specific forms of GBV.⁵² As a result, different types of GBV are approached and addressed in a disjointed way that limits a comprehensive approach to GBV and the ability of policies and programmes to develop effective interventions. For example, while DV is under the remit of the Ministry of Culture, Sports and Tourism (MOCST); trafficking in persons falls under the aegis of the MPS; child marriage involves MOLISA (Department of Children's Affairs),⁵³ Ethnic Minorities Committee,⁵⁴ Ministry of Justice (MOJ), etc., and GE and gender-driven acts of violence under MOLISA. This results in the clear links between various forms of GBV being overlooked and GBV as a holistic concept not being comprehensively addressed.

GBV is not defined: In article 10 (3), the GE Law refers to GBV as an act to be prohibited, but it does not define GBV in Article 5 (interpretation of terms) or elsewhere in the Law.⁵⁵ No concrete specific provisions on various forms of GBV in different spheres in line with the UN High Commissioner for Refugees (UNHCR)'s definition mentioned above. Specifically, as representatives from agencies and provinces noted, the GE Law does not explicitly identify sexual harassment as a form of GBV, there is considerable need to develop a more specific definition of "sexual harassment". Various forms of GBV, including technology-facilitated gender-based violence (e.g. cyber harassment) are not identified in a clear definition of GBV. It is also noteworthy that the National Strategy on GE does not address GBV separately but sets out a target on GBV along with an objective on family life.

51. Comprehensive is used as a term to indicate that different forms of violence that are gender-based should be addressed in an integral manner and not as separate phenomena that do not share a common cause (of gender inequality).

52. Supra Connecting the Dots at 40.

53. MOLISA's Department of Children's Affairs is a state department assigned with the function of state management in the area of children's affairs.

54. Child marriage occurs mostly in areas where ethnic minorities live, so Ethnic Minorities Committee has been assigned with the Programme on Prevention and Response to Early/Child Marriage in the Period of 2015 to 2025.

55. See Review GE Law supra at 28. MOLISA (2022). Findings of the Survey on the Implementation and Recommendation for the Amendment of the GE Law of 2006; Reports on 15 Year Implementation of the GE Law by provinces, Hanoi, 6/2022.

Actions not identified: The GE Law lacks measures to prevent GBV and protect GBV victims, especially vulnerable groups such as women with disabilities, women of ethnic minorities.⁵⁶ No specific actions to address GBV are assigned by the GE Law to duty bearers.

Laws contribute to stigma and discrimination against LGBTQIA+: There have been in recent years some developments in the legal framework relating to LGBTQIA+.⁵⁷ However, discriminatory laws or the absence of protection or anti-discrimination laws contribute to ongoing stigma and discrimination against LGBTQIA+ individuals in a broad range of areas from sexual conduct to same-sex marriage and recognition of gender identity.⁵⁸ Particularly, according to a survey in 2022, the legal framework does not recognize specific acts of discrimination against LGBTQIA+ people, nor are those acts sanctioned (84% of respondents agreed with this assessment); nor are equal rights for LGBTQIA+ people recognized (76,7% agreed).⁵⁹ Notably, the Law on Family and Marriage does not recognize same-sex marriage; and as a result, same-sex partners will not receive any legal recognition or benefits. Many situations arise related to sexual orientation, gender identity and gender expression (SOGIE) but are not legally defined, which confuses authorities when dealing with cases such as same-sex marriage, differences in gender identification on legal documents, as well as, more generally, discrimination based on sexual orientation and gender expression.⁶⁰ The draft Gender Affirmation Law has been postponed, affecting interests of people who want to change their assigned sex.

Gaps in the legislative framework on preventing and responding to GBV in emergencies: Related laws, programs, plans on disaster prevention and control, climate change, and environment protection have included general principles of GE, with a certain focus on the needs of vulnerable groups. However, detailed gender analysis is not conducted, and gender perspectives are not taken into account while designing concrete contents of disaster prevention and response. Notably, there is a lack of a sufficient mechanism

56. MOLISA (2022). Findings of the Survey on the Implementation and Recommendation for the Amendment of the GE Law of 2006; Reports on 15 Year Implementation of the GE Law by provinces, Hanoi, 6/2022.

57. In 2014, the Marriage and Family Law achieved an important stepping-stone by removing provisions outlawing same-sex marriage. The Civil Code of 2015 opens the door to the option of legal gender change by medical operation for transgenders. In 2015, a new Penal Code was passed where crime of rape has been extended to any forced sex activities between two persons (not only between a man and a women), which means transgender people can be protected. Law on Detention and Imprisonment of 2018, Law on Criminal Judgement Enforcement of 2019, Law on Military Service, Law on Youth, etc. have included provisions relating to the interests of LGBT people.

58. UNDP, USAID “Being LGBT in Asia: Viet Nam Country Report” (2014) at 14, online(pdf): UNDP <undp.org/sites/g/files/zskgke326/files/migration/asia_pacific_rbap/rbap-hhd-2014-blia-viet-nam-country-report.pdf> [LGBTI in Asia].

59. MOLISA (2022). Findings of the Survey on the Experience of Discrimination against LGBT People.

60. Supra LGBT in Asia at 18.

61. UN Women and General Office for Disaster Prevention and Control (2022), Policy Brief: Gender Review of Policies and Mechanism on Disaster Risk Reduction Cooperation in Viet Nam.

for reporting and addressing GBV in emergencies such as disasters, pandemics.⁶¹ GBV prevention and response in emergencies receives little attention in supervision and monitoring activities of the NA, local People's Councils, Viet Nam's Fatherland Front, Women's Union.⁶²

Harmful practices not identified: While the GE Law implicitly mentions some harmful practices, there are no explicit measures to address such practices as son preference manifested through sex-selective abortion.

A key challenge in relation to addressing son preference and GBSS in Viet Nam is to ensure a balance between effective law enforcement that bans the practice and also protects women's reproductive rights.⁶³

At the same time, the GE Law does not include specific measures in successful approaches to eliminate harmful practices, including equality in employment opportunities, women's rights to land ownership, and equality in the division of property at divorce and inheritance.

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 GE" are different from "all forms of gender discrimination". Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) states that discrimination includes a distinction, exclusion or restriction made on the basis of sex that has the effect of nullifying a woman's rights (in various fields). The GE Law lacks specific provisions on violations relating to GBV.

Sanctions: The major approach in the GE Law is the prohibition of GBV and sex selection practices. However, the Law just provides generally on this issue, but no specific provisions on sanctions for GBV and harmful practices in the Law.

In regard to other laws, due to the lack of a clear, comprehensive definition of GBV and harmful practices in the GE Law, the law enforcement agencies like the Police, the Procuracy, the Inspectorate, or the Courts face significant challenges in identifying, dealing with, and applying criminal or administrative sanctions to GBV acts as such. These agencies can only impose sanctions based on other legal provisions for other crimes or administrative violations, such as assault, rape, physical attack causing serious injury, but not to GBV acts. On the other hand, sanctions seem to be ineffective in preventing violence acts, especially administrative sanctions to GBV, child marriage, GBSS.⁶⁴ The Penal Code of 2015, at Article 165, provides for the crime of violating GE, but no case has been prosecuted for this crime.

62. Ibid.

63. Supra Undervaluing of Girls at 17.

Enforcement appears to be limited in Viet Nam as data on the sanctions applied under the GE Law or other laws are not available. It is important to note that sanctions related to sex selective abortion should not restrict access to abortion. Still, complaints and sanctions under article 42 of the GE Law have not been effectively implemented and a widespread cultural practice cannot be effectively eliminated on an individual case by case basis.

Legal Aid: According to the Law on Legal Aid 2017, due to the lack of a definition of GBV in the GE Law, many groups of GBV victims are not entitled to free legal aid. The Law just give this right to victims in family DV cases, and victims of human trafficking cases as specified in the Law on Human Trafficking Prevention and Combat.⁶⁵ There will be cases with no clear solution, for example, whether a woman who was coerced into aborting a female fetus and wishes to take action against a family member, be able to access free legal aid? Whether a woman who is a victim of discriminatory inheritance and has financial difficulties be regarded as victim of GBV, and entitled to free legal aid?

Gaps and Overlap in the Domestic Violence Prevention and Control Law

A number of studies found that the primary weaknesses of the 2007 DVPC Law, and its main areas of divergence from international standards, were in two main areas: a) a limited integration of a GE perspective including the lack of a definition of GBV in the text; and b) limited avenues for justice for DV victims within the sanctions and responses provided by the law.⁶⁶ Particularly, the 2007 DVPC Law contained weak sanctions that focus on monetary fines, warnings, advice and education and an inability to criminally prosecute non-physical forms of DV. The Law encouraged conciliation rather than prosecution which may divert the focus from recognizing DV as a violation of the human rights of women and is not recommended under international standards.⁶⁷ Women are at enhanced risk of being discriminated against in reconciliation due to the imbalance of power and the absence of judicial safeguards.⁶⁸ Moreover, reconciliation risks to fail,

64. MOLISA (2022). Findings of the Survey on the Implementation and Recommendation for the Amendment of the GE Law of 2006; Reports on 15 Year Implementation of the GE Law by provinces, Hanoi, 6/2022.

65. Reports on the 15 Year Implementation of the GE Law of Ba Ria – Vung Tau and Nghe An provinces, Hanoi, 6/2022; See more in: Nguyen Thi Pha, Legal Aid for GBV Victims under International Treaties Where Viet Nam is a Party, and Under the Vietnamese Law, 2020.

66. See supra Connecting the Dots. See also supra GBV in Viet Nam at 3. MOLISA and UNFPA (2020). See also supra Review GE Law.

67. UN Women Regional Office for Asia and the Pacific, “DV Legislation and its Implementation: An analysis for ASEAN countries based on international standards and good practices” (2013) at 48, online(pdf): UN Women <asiapacific.unwomen.org/sites/default/files/Field%20Office%20ESEAAsia/Docs/Publications/2015/03/Domestic%20Violence%20Legislation%20and%20its%20Implementation-CEDAW.pdf> [DV Legislation Analysis].

68. OHCHR “Access to Justice – Concept Note for Half Day General Discussion: Endorsed by the CEDAW Committee at its 53rd Session for the General Discussion”, (February 2011) at 10, online (pdf): OHCHR <ohchr.org/sites/default/files/documents/HRBodies/CEDAW/AccessToJustice/ConceptNoteAccessToJustice.pdf>.

and in practice it did not produce the expected outcome and violence continued.⁶⁹

To overcome these shortcomings, as to gender perspectives, the 2022 DVPC Law that came into effect in July 2023 includes some gender sensitive provisions. Particularly, DV acts shall include neglecting, not caring about pregnant women, mothers with children under 36 months; discrimination to a family member based on gender; forced child marriage, forced marriage; gender-biased sex selection as a harmful practice. Violence among various types of familial relationships are also considered as DV, including violent acts between divorced persons, persons living together as husband and wife, and adoptive parents and adopted children by the amended Law. GE is mentioned in the Law as one of the guiding principles in prevention and control, particularly in the areas of information, communication, education and reconciliation.

Regarding the alternative dispute resolution approach of reconciliation, the 2022 DVPC Law has included provisions that reconciliation is applied for DV **prevention** and; reconciliation shall not replace the measures of handling perpetrators. If reconciliation is used, both parties should voluntarily agree to participate in reconciliation and the process should ensure the safety of survivors. The Law encourages persons trained in social work or psychology, with experience in DVPC, to conduct reconciliation.

The new DVPC Law also requests DV perpetrators to be present at the commune police stations in the community where the DV occurred. This facilitates the use of protective measures (e.g., provisions prohibiting contact).

In principle, the above-mentioned measures are expected to enhance the effectiveness of prevention of and response to DV. However, it takes time to make observations and conclusions about outcomes and impacts of the 2022 DVPC Law. Overall, the new Law still does not treat DV as a crime equal to that of violence committed outside the home – such as crime occurring in public or between unrelated individuals – and thus the law leaves punitive measures to the Criminal Code.

69. See supra DV Legislation Analysis at 11. MOSCT (2022), Report on the 15 Year Implementation of the Law on DVPC of 2007.



3. International Standards and Examples on Gender-based violence and Harmful Practices

In this section, international human rights standards relevant to the GOV as State Party to international human rights treaties and as a new member of the UN Human Rights Council for the period 2023 – 2025. International human rights standards are derived from three main categories of international law: binding instruments (treaties), multi-country declarations, and soft law (general recommendations, expert reports, etc.). In each of the topics examined below, international standards are explained and then examples of how countries adopt an international standard through legislation or other measures are described. Examples from Southeast Asia are prioritized as they are considered more comparable to the social and cultural contexts in Viet Nam.

3.1 Defining Gender-based violence

The definition of GBV in international law has emerged through declarations and treaties related to violence perpetrated against women because of socially understood gender roles that perpetuate the subordination of women compared to men. While some discrimination against women is based on sex (biological) differences, in the international standards discussed below, VAWG is understood to be based on gender inequality. Due to the higher incidence of GBV against women and girls (GBVAWG), international human rights standards focus on GBVAWG. That is not to say men and boys, include gay, bisexual and transgender men, do not face GBV. International discourse on GBV against men and boys has focused on violence occurring in armed conflict and humanitarian settings.⁷⁰ In addition, violence against LGBT individuals because of prejudice based on SOGIE is increasingly recognized as a form of GBV, and evolving international norms are discussed below.

International standards related to Gender-based violence against women

The CEDAW treaty does not address violence directly and thus does not contain a definition of GBV against women. The Committee's general recommendations 19, 28 and 35 define GBV to varying degrees and present various elements of a definition of GBV against women (GBVAW).

First, it is important to define GBVAW as one form of discrimination against women. This was first introduced by the CEDAW Committee in General Recommendation (GR) 19 in 1992⁷¹ and then in the Declaration of VAW in 1993. Such violence also results in the impairment of women's other human rights and fundamental freedoms, including rights to life, to not be subjected to torture or cruel, inhuman or degrading treatment, sexual and reproductive health, among others.

Another core element of a GBV definition is the underlying rationale of the violence. According to GR 35, it is "violence that is directed against a woman because she is a woman or that affects women disproportionately."⁷² In GR 35 the Committee recommended using "GBVAW" as a more precise term to make explicit the gendered

70. See ICRC "That never happens here: Sexual and gender-based violence against men, boys, LGBTIQ+ people" (February 3, 2022), online: ICRC <[icrc.org/en/document/sexual-gender-violence-against-men-boys-lgbtiq](https://www.icrc.org/en/document/sexual-gender-violence-against-men-boys-lgbtiq)>. See also Veronique Barbelet "Male gender-based violence: a silent crisis", online: ODI <[odi.org/en/insights/male-gender-based-violence-a-silent-crisis/](https://www.odi.org/en/insights/male-gender-based-violence-a-silent-crisis/)>.

71. UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 19: Violence against women, 1992 at paragraph 6, available at: refworld.org/docid/52d920c54.html [GR 19].

72. See *ibid* at paragraph 6; See also UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010 at paragraph 19, CEDAW/C/GC/28, available at: refworld.org/docid/4d467ea72.html [GR 28]. See also UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 35 on gender-based violence against women, updating general recommendations No. 19, 26 July 2017, at paragraph 1, CEDAW/C/GC/35, available at: <https://digitallibrary.un.org/record/1305057?ln=en> [GR 35].

causes and impacts of the violence.⁷³ This links the concepts of gender, violence and discrimination in an integral manner and frames GBVAW as a means to subordinate women; thus, such violence is not an individual but a complex social problem requiring responses that consider the social norms and practices that perpetuate GBVAW as well as responses to individual incidence of violence.⁷⁴ It is important to note that the violence can occur at any stage of the life cycle and thus girls as well as women can be subjected to GBV.⁷⁵ While the CEDAW Committee focuses on GBVAW, the motivation of the violence is based on gender-discrimination. This is the same cause for GBV against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. Gender-based prejudices, biases and stereotypes are the underlying cause of GBV.

A third element to consider when defining GBVAW is **the type of conduct** considered. GR 19 stated that GBV includes “acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”⁷⁶ GR 35 elaborated on the forms of violence to include “all forms of violence” or in other words, physical, sexual, economic, and psychological⁷⁷ and includes forced GBSS, child marriage, forced marriage, medical procedures performed on women with disabilities without their consent, and criminalization of non-heterosexual sexual orientations and the criminalization of women working in prostitution (CEDAW Committee GR 35).

Another element addressed by the Committee is two-pronged. The general recommendations reference the sites of violence and also the types of perpetrators in those sites. The perpetrator may be a state, inter-governmental organization, or non-state actors, including private individuals or armed groups.⁷⁸ Given GBVAW subordinates women on a massive social scale, such violence may occur in public or private.⁷⁹ Thus, it could occur in the family, other interpersonal relationships or other site (such as online internet-based violence or violence during an emergency).⁸⁰ The CEDAW Committee has noted that GBV is affected by political, social and economic crises, humanitarian and natural disasters, natural resource exploitation and civil unrest,⁸¹ and provides specific guidance for violence occurring during armed conflict.⁸² As is evident in the examples provided from different countries, the sites and perpetrators are not

73. Ibid GR 35 at paragraph 9.

74. Ibid at paragraphs 9 and 10.

75. Ibid at paragraph 14.

76. Supra GR 19 at paragraph 6.

77. Supra GR 35 at paragraph 14.

78. Ibid at paragraph 6.

79. Ibid at paragraphs 5 and 6.

80. Supra GR 28 at paragraph 19.

81. Supra GR 35 at paragraph 14.

82. UN CEDAW, GR No. 30 on women in conflict prevention, conflict and post-conflict situations, 1 November 2013, CEDAW/C/GC/30, available at: <https://www.refworld.org/docid/5268d2064.html>.

described in the definitions of GBV in legislation in order to not exclude any site or category of perpetrator from the scope of the laws.

GR 28 integrates the above elements in its definition of GBVAW: “violence that is directed against a woman because she is a woman or violence that affects women disproportionately. It is a form of discrimination that seriously inhibits women’s ability to enjoy and exercise their human rights and fundamental freedoms on the basis of equality with men. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, the violence that occurs within the family or domestic unit or within any other interpersonal relationship, or violence perpetrated or condoned by the State or its agents regardless of where it occurs”.⁸³

In GR 28, gender means “socially constructed identities, attributes, and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between men and women and in the distribution of power and rights favoring men and disadvantage women”.⁸⁴ This definition of gender remains focuses on biological differences based on sex assigned at birth that contribute to stereotypes. Still, it is important to note that the CEDAW Committee applies an intersectional analysis to understand that discrimination is “inextricably linked to other factors” affecting women’s lives, including ethnicity, sexual orientation, gender identity among many others.⁸⁵ And thus, lesbian women, trans women, ethnic minority women, among others, may experience more GBV or experience it differently due to multiple forms of discrimination.

Evolving international norms and a broader definition of Gender-based violence

It is important to note that other UN agencies and experts adopt a broader definition of GBV than the CEDAW Committee, consistent with their mandates and considering gender beyond the binary concept of men and women. While gender theory considers a broader definition of gender, and some countries are adopting broader definitions of gender and GBV, the discourse on this topic is ongoing.

While some countries refer to violence based on sexual orientation and gender identity (SOGI) as hate crimes, the crimes are rooted in discrimination, the same as violence perpetrated against women and girls because their gender is rooted in discrimination and inequality.

83. Supra GR 35 at paragraph 19.

84. Supra GR 28 at paragraph 5.

85. Supra GR 35 at paragraph 12

Sexual and GBV against women and girls and violence against LGBTI persons because of SOGI are rooted in discriminatory social norms of masculinity that privilege male dominance and heterosexuality. Human rights law related to these types of violence has evolved at different times, with standards related to GBVAW emerging in the early 1990s and discrimination based on SOGI being introduced in the UN more recently from December 2010. Although the development of human rights related to GBV and violence based on SOGI developed at distinct moments, the same human right standards inform the two areas: equality and non-discrimination, life, physical security and integrity, the prohibition against torture and other cruel, inhuman or degrading treatment or punishment.

Just as GBVAW is not explicitly addressed in the CEDAW treaty, there is not a specific international human rights treaty addressing SOGI discrimination. Existing treaties, such as the International Covenant on Civil and Political Rights (ICCPR), and the Universal Declaration on Human Rights (UDHR) protect all human beings. Specialized declarations and soft law specific to LGBTI persons and SOGI rights have evolved in recent years. The Yogyakarta Principles (2006) and the Yogyakarta Principles Plus 10 (2017)⁸⁶ provide guidance to States on their obligations in international human rights law related to sexual orientation, gender identity, gender expression and sex characteristics. The principles are signed by UN Special Rapporteurs, judges and other human rights experts. Below, a table setting out the source of international norms related to gender-based violence for women, girls and LGBTI persons are described.

86. "The Yogyakarta Principles" (adopted on November 10, 2017), online: Yogyakarta Principles <yogyakartaprinciples.org/>.

Gender-based violence	
Sexual and gender-based violence against women and girls	Violence against LGBTI persons because of sexual orientation and/or gender identity
United Nations Standards (Conventions, Declarations and Soft Law)	
<p><i>CEDAW, Right to equality and non-discrimination, article 1</i></p>	<p>UDHR (sets standards but is not legally binding)</p> <p>Right to dignity (Article 1 UDHR: "All human beings are born free and equal in dignity and rights.")</p> <p>Right to equality and non-discrimination (Article 2: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as ...or other status.)</p>
<p><i>UN Declaration on the Elimination of VAW (based on the rights set out in ICCPR, International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention Against Torture (CAT), and CEDAW).</i></p> <p><i>CEDAW GR 19 on VAW.</i></p> <p><i>CEDAW GR 35 updates GR 19 and notes that VAW is gender-based.</i></p>	<p>ICCPR is the key UN treaty cited in relation to states obligation to protect LGBTI persons from violence</p> <p>Right to Life, article 6</p> <p>Liberty and Security of the Person, article 9</p> <p>Prohibition against torture article 7</p> <p>Prohibition against incitement to discrimination (Article 20 (2). "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.")</p> <p>CAT</p> <p>LGBTI persons in detention who are victims of torture and cruel treatment in detention by fellow detainees or prison staff. States have the obligation to prevent torture.</p>
<p><i>CEDAW Committee GR 28 on the core obligations of States parties under article 2 of the Convention. In paragraph 18 the Committee calls on States Parties to recognize intersecting forms of discrimination.</i></p>	<p>Yogyakarta Principles (2006)</p> <p>29 principles covering a range of human rights. Principle 5 deals with security of the person and the States duty to protect all individuals from violence and harassment, including that based on SOGI. Other principles also relate to the right to humane treatment while in detention</p>

Gender-based violence

Sexual and gender-based violence against women and girls

It notes that discrimination against 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.”

And in paragraph 19: “States parties have a due diligence obligation to prevent, investigate, prosecute and punish such acts of gender-based violence.”

CEDAW Committee GR 35 on GBVAW, updating GR 19: The Committee, in paragraph 13 notes that other factors in a woman’s life, including SOGI, can affect the impact of violence. “Accordingly, because women experience varying and intersecting forms of discrimination, which have an aggravating negative impact, the Committee acknowledges that gender-based violence may affect some women to different degrees, or in different ways, meaning that appropriate legal and policy responses are needed.”

Violence against LGBTI persons because of sexual orientation and/or gender identity

Yogyakarta Principles Plus 10 (2017)
 Relevant additional principles (30 – 38) include a restatement of principles, including principle 30 Right to State Protection: “Everyone, regardless of SOGIE or sex characteristics, has the right to State protection from violence, discrimination and other harm, whether by government officials or by any individual or group.” The actions to be taken by States Parties align with CEDAW standards on GBV, including due diligence obligation to “prevent, investigate, prosecute, punish and provide remedies for discrimination, violence and other harm, whether committed by State or non-State actors,” sensitivity training, support services for victims of violence, etc

Human Rights Council Resolution 32/2 (2016) Protection against violence and discrimination based on SOGI. In this resolution, the Council appointed an Independent Expert on protection against violence and discrimination based on SOGI with the mandate to report annually to the Council and to the General Assembly. In the expert’s annual report (2018) report (A/73/152), he examined violence and discrimination in three categories: hate crimes and hate speech; violence and discrimination based on gender identity; and violence and discriminations based on sexual orientation. The expert highlighted the rates of violence, including gender-based violence against trans and gender-nonconforming persons. The expert acknowledges violence in the family based on SOGI, especially among bisexual persons, who are more likely to experience intimate partner violence than lesbian or gay persons.

Gender-based violence	
Sexual and gender-based violence against women and girls	Violence against LGBTI persons because of sexual orientation and/or gender identity
<i>Convention on the Rights of the Child, Duty to protect children from all forms of violence, article 19 (1)</i>	UN Human Rights Council Resolution 27/32 “Human rights, SOGI”- 2 October 2014 (The “new” resolution; the first resolution on human rights, SOGI was in 2011).
<i>General Comment No. 13 of the Committee on the Rights of the Child, the right of the child to freedom from all forms of violence</i>	The Yogyakarta Principles call for the protection of children from medical abuses (principle 18), application of the best interests of the child in family regardless of the parents’ sexual orientation or gender identity and protection of children (principle 24), and the right to bodily and mental integrity (principle 32).

The UN Independent Expert on SOGI notes that societal gender norms make assumptions about how people should behave or relate, solely based on sex assigned at birth in his comprehensive 2021 report on the Law of Inclusion. He challenges the definitions of gender and gender-based violence.⁸⁷ Madrigal-Borloz reviews international human rights law and notes that gender does not exclude other gender identities as gender and sex are not conflated into one concept.⁸⁸ In summary, “there is nothing in this definitional system that restricts gender to women.”⁸⁹ Given all individuals have a gender identity and we live in gendered societies, the concept of GBV includes violence based on prejudices concerning gender identity and gender expression.⁹⁰ He goes on to say that a “broad understanding of gender allows for the systematic assessment of discrimination impacting persons because of their real or perceived sexual orientation, gender identity and/or expression and the interpretations issued by UN human rights treaty bodies indeed suggest this conclusion as a consequence of gender-based analysis.”⁹¹ Madrigal-Borloz review various comments from treaty bodies and notes that

87. Victor Madrigal-Borloz, “Law of Inclusion: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity”, online (pdf): CFNHRI < [cfnhri.org/wp-content/uploads/2021/10/A_HRC_47_27_E.pdf](https://www.cfnhri.org/wp-content/uploads/2021/10/A_HRC_47_27_E.pdf)>.

88. See Ibid at 4, paragraph 13 states: Analysis of the sources of international human rights law reveals a robust corpus iuris in which gender is the term used to describe the sociocultural constructs that assign roles, behaviours, forms of expression, activities and attributes according to the meaning given to biological sex characteristics. Under this definition, gender and sex do not substitute each other, and gender identity and gender expression are inextricably linked to them as practices of concern in anti-discrimination analysis.

89. Ibid, paragraph 14.

90. Ibid at 8-9, paragraphs 31-35.

91. Ibid at 8, paragraph 30.

the “Committee on the Rights of Persons with Disabilities uses the phrase “all genders”, suggesting an understanding of gender as not binary.”⁹²

The UNHCR is often referenced when defining GBV because they do not use the male/female construction of gender, rather GBV refers to “harmful acts directed at an individual based on their gender. It is rooted in gender inequality, the abuse of power and harmful norms.”⁹³ This broader definition used by UNHCR is important because men, boys and persons with diverse gender identities/expressions are also victims of GBV, especially in the context of armed violence where the agency is active.⁹⁴

Examples of Gender and Gender-based violence definitions adopted in the Southeast Asian region

Association of Southeast Asian Nations (ASEAN) and various countries in the region continue to focus on GBVAW. Some exceptions are noted below, particularly legislation in the Philippines and Thailand, where gender expression and gender identity are integrated in legislation focusing on GE.

The ASEAN Declaration on the Elimination of VAW in the ASEAN Region does not refer to GBV to define VAW;⁹⁵ however, the ASEAN Regional Plan of Action on the Elimination of VAW (2016-2025) adopts the definition of VAW in the Beijing Declaration and Platform for action which refers to GBV: “Any act of GBV that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”⁹⁶

The **Kingdom of Cambodia**, in its Law on the Prevention of DV and the Protection of Victims, does not define gender, gender discrimination or GBV.

92. Ibid at 8, paragraph 30, referencing the Committee on the Rights of Persons with Disabilities, general comment No. 5 (2017), paragraph 23.

93. UNHCR “Gender-based violence”, online: UNHCR <[unhcr.org/what-we-do/protect-human-rights/protection/gender-based-violence/](https://www.unhcr.org/what-we-do/protect-human-rights/protection/gender-based-violence/)> [Gender-Based Violence].

94. See: International Committee of the Red Cross, “That Never Happens Here: Sexual and Gender-Based Violence Against Men, Boys And/Including LGBTIQ+ Persons in Humanitarian Settings” (2022) at 9, online (pdf): ICRC <[icrc.org](https://www.icrc.org/)>. In this document GBV is defined as: “An umbrella term for any harmful act that results in, or is likely to result in, physical, sexual or psychological harm or suffering to a man, woman, girl or boy on the basis of their gender. Gender-based violence includes but is not limited to sexual violence, DV, trafficking, forced or early marriage, forced prostitution and sexual exploitation and abuse”.

95. ASEAN “Declaration on the Elimination of VAW in the ASEAN Region” (October 12, 2012), online: <[asean.org/declaration-on-the-elimination-of-violence-against-women-in-the-asean-region/](https://www.asean.org/declaration-on-the-elimination-of-violence-against-women-in-the-asean-region/)>.

96. ASEAN “ASEAN Regional Plan of Action on the Elimination of VAW (ASEAN RPA on EVAW)” (2021) at 6, online (pdf): ASEAN <[asean.org/wp-content/uploads/2021/01/ASEAN-Regional-Plan-of-Action-on-Elimination-of-Violence-Against-](https://www.asean.org/wp-content/uploads/2021/01/ASEAN-Regional-Plan-of-Action-on-Elimination-of-Violence-Against-)

The Philippines has various laws that address VAW and GBV.

- The Philippines Republic Act 9710: Magna Carta of Women defines VAW using GBV, in Chapter 2, s. 4 (k), “VAW” refers to any act of GBV that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life. It shall be understood to encompass, but not limited to: “physical, sexual, psychological and economic violence occurring in the family; physical sexual and psychological violence occurring in the general community, and physical, sexual, and psychological violence perpetrated or condoned by the State, wherever it occurs.”⁹⁷
- The Safe Spaces Act, defines:
 - Gender as “a set of socially ascribed characteristics, norms, roles, attitudes, values and expectations identifying the social behavior of men and women, and the relations between them.”⁹⁸
 - Gender identity and/or expression as: “Refers to the personal sense of identity as characterized, among others, by manner of clothing, inclinations, and behavior in relation to masculine or feminine conventions. A person may have a male or female identity with physiological characteristics of the opposite sex, in which case this person is considered transgender.”⁹⁹
 - Gender-based online sexual harassment is “conduct targeted at a particular person that causes or likely to cause another mental, emotional or psychological distress, and fear of personal safety, sexual harassment acts including unwanted sexual remarks and comments, threats, uploading or sharing of one’s photos without consent, video and audio recordings, cyberstalking and online identity theft.”¹⁰⁰

In Thailand the GE Act (2015) has a broader definition of gender-based discrimination:

- In section 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. (Emphasis added).

97. The Philippines Republic, REPUBLIC ACT NO. 9710, AN ACT PROVIDING FOR THE MAGNA CARTA OF WOMEN: <https://pcw.gov.ph/magna-carta-of-women/> [Magna Cart of Women].

98. The Philippines Republic, REPUBLIC ACT NO. 11313: SAFE SPACES ACT at s. 3 (d): <https://pcw.gov.ph/republic-act-11313/>.

99. Ibid at s. 3 (f).

100. Ibid at s. 3 (e)

- In section 10, the reference to special measures to address violence is general and does not refer to women: “Improving social practices and cultural norms toward GE so as to eliminate bias based on sex inequality and violence due to gender which obstruct entitlement of various rights.”

Examples of Gender and Gender-based violence definitions adopted in other

The following countries in other regions have broadened the definitions of gender-based discrimination or GBV. It is important to note that definitions of GBV do not generally include sites of violence or specific perpetrators because it is understood that violent conduct can occur in any public or private sphere. Fields or duty bearers identified in the GE Law should capture all forms of gender-based discrimination, including violence, whether in an emergency context or not.

In Australia, the Sex Discrimination Act (1984 with amendments to 2021),¹⁰¹ addresses discrimination based on sex, SOGI, and inter-sex status, among other protected characteristics. This Act does not address violence, which is dealt with as a criminal matter; however, it does consider harassment as a form of discrimination. Discrimination in the fields of work, education, goods, facilities and services, clubs (e.g., sport clubs), land transactions, and the administration of state laws and programs is covered in the law.

In Malta, the GBV and DV Act (2018) adopts broad definitions of gender and GBV. The Act defines “gender” as “the socially constructed roles, expectations, activities, behaviours and attributes that society at any given time associates with a **person of any sex, assuming any form of gender identity or gender expression**”.¹⁰² The Act defines “GBV” as: “all acts or omissions that are directed against a person because of their gender, that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.¹⁰³ The law also notes that the Act applies in times of peace or armed conflict¹⁰⁴ and that the government will ensure protection measures are provided without discrimination on multiple grounds (ensuring an intersectional approach).¹⁰⁵

In Rwanda, Law N° 51/2007, Determining the Responsibilities, Organisation and Functioning Of the Gender Monitoring Office In Rwanda,¹⁰⁶ also adopts a broad

101. Australia Sex Discrimination Act 1984: <https://www.legislation.gov.au/Details/C2021C00420>.

102. Malta, Gender-based Violence and DV Act (CAP. 581): <https://legislation.mt/eli/cap/581/eng> at s. 2.

103. Ibid.

104. Ibid at s. 3 (2): “This Act shall apply in times of peace and in situations of armed conflict.”

105. Ibid., s. 3(3) (1).

106. Rwanda, Law No 51/2007 of 20/09/200 Determining the Responsibilities, Organisation, and Functioning of the Gender Monitoring Office in Rwanda: http://gmo.gov.rw/fileadmin/user_upload/laws%20and%20policies/Law_establishing_Gender_Observatory.pdf [Gender Monitoring Rwanda].

definition of gender. Article 2, defines gender as “a concept that refers to responsibilities, rights, opportunities, respect and value a person receives from society in accordance with his/her sex, and which is likely to change in relation to time, culture and other criteria.”¹⁰⁷

In the United Kingdom, the Equality Act (2010), a broad anti-discrimination law that promotes equality among various protected characteristics, including discrimination based on sex and gender reassignment, among other characteristics. It does not address GBV, as that is a criminal matter.

In Wales, the VAW, domestic abuse and sexual violence Act (2015)¹⁰⁸ addresses VAW and GBV. It includes a broad definition of GBV, which also incorporates specific harmful practices. In section 24 (1), “GBV” means (a) violence, threats of violence or harassment arising directly or indirectly from values, beliefs or customs relating to gender or sexual orientation; (b) female genital mutilation; (c) forcing a person (whether by physical force or coercion by threats or other psychological means) to enter into a religious or civil ceremony of marriage (whether or not legally binding).

In Iceland, the Act on Equal Status and Equal Rights Irrespective of Gender (2021), defines gender as “women, men and persons whose gender is registered as neutral in Registers Iceland, unless otherwise stated” (article 1). GBV is “violence based on gender which results in, or could result in, physical, sexual or psychological injury or suffering on the part of the affected person, including the threat of such, coercion or arbitrary deprivation of freedom, both in private life and in a public venue” (article 2 (4)).

Examples of assessment of Gender-based crimes in other regions or countries

While the GE Law is not a criminal law, the following examples are provided to demonstrate how some countries interpret gender-bias as a factor when assessing violent conduct. The examples used are those that the international consultant is familiar with from previous work.

The Criminal Code of Canada includes a section where a judge can assess “evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor”¹⁰⁹ as aggravating factors to consider for sentencing in any crime. This section has mostly been used in crimes motivated by bias, prejudice or hate based on race, religion or

107. Ibid. at s. 2.

108. Wales, VAW, Domestic Abuse and Sexual Violence Act 2015: https://www.legislation.gov.uk/anaw/2015/3/pdfs/anaw_20150003_en.pdf.

109. Canada, Criminal Code, RSC, 1985, c. C-46 at s. 718.2 (a) (i).

sexual orientation; however, some cases have assessed a bias based on sex (VAW).¹¹⁰ Each judge can apply criteria to assess evidence of bias, prejudice or hate. In one case of bias based on sexual orientation, the judge identified the following factors in the assessment: anti-gay language (slurs), location of crime (was it in a location LGBTI persons are known to use, frequent), disproportionate violence, the lack of provocation, previous interactions between the victim and perpetrator, the absence of an alternative explanation.¹¹¹ Subsequent decisions in the courts also applied the six factors identified by the judge in the case cited.

Latin American Model Protocol for the investigation of gender-related killings of women¹¹²

In various countries in Central and South America, gender-based killing referred to as femicide (or feminicide) is a serious problem. Below specific countries will be described, however, UN Women and the Office of the High Commissioner Human Rights (OHCHR) for Central America have prepared a regional protocol on investigating gender-related killings. To assess whether a murder is a femicide (and not a homicide), the motivation and context need to be considered to understand if misogyny or gender-discrimination based on superiority of one gender over others, among other stereotypes, are present. The protocol provides some details of how to assess whether violence is gender-based. For example, to “verify the presence or absence of gender-related motives that led to or explain the killing of the woman”, some specific factors should be assessed:¹¹³

- The context surrounding the death (the crime). This includes cultural, personal, family, community and societal context (the ecological model).
- Circumstances of the violent act (in the case of murder, the circumstances of the killing and the disposal of the body).
- History of violence between the victim and the perpetrator.
- Type of violence (method, acts of violence), in the case of killing, acts perpetrated before and after death.
- Type of connections that link the victim and perpetrator (e.g., family, work, education, etc.).
- Power inequalities that exist between the victim and perpetrator.
- The victim's level of risk at the time of the crime.

110. Department of Justice “Hate as an Aggravating Factor at Sentencing A Review of the Case Law from 2007-2020” (2020) at 17, online: Canlii <canlii.org/en/commentary/doc/2020CanLII Docs3732#!fragment/zoupio_-_Toc3Page48/BQCwhgziB-cwMYgK4DsDWSzIQewE4BUBTADwBdoAvbRABwEtsBaAfx2zgGYAFMAc0IAsADgCUAGmtZShCAEVehXAE9oAcIvIhMLg-TzFK9Zu26QAZTykAQioBKAUQAy9gGoBBAHIBhe2NJgAI2hSdHERIA>.

111. Referencing R. v. Kandola case in Department of Justice Canada, *Ibid* at 38.

112. United Nations High Commissioner for Human Rights, “Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide)” (2015), online: UN Women <lac.unwomen.org/sites/default/files/Field%20Office%20Americas/Documents/Publicaciones/LatinAmericanProtocolForInvestigationOfFemicide.pdf>.

113. *Ibid* at 37.

Argentina. In a 2012 amendment to the Criminal Code, aggravating factors in cases of murder were added. These include a relation between the victim and perpetrator such as spouses or partners (even if they do not live together) and hate based motives related to race, religion, gender, sexual orientation, gender identity or gender expression.¹¹⁴

Honduras. Due to the high number of gender-related killings in Honduras, the Criminal Code includes the crime of femicide in article 208: the crime of femicide is committed by a man who kills a woman in the context of unequal power relations based on gender.¹¹⁵ Despite the fairly high rate of murders of transgender women, the Criminal Code does not include a specific crime; however, aggravating factors are considered at section 32 when criminal responsibility is assessed. Aggravating factors include “crimes committed based on racist or other motives including ideology, religion or beliefs of the victim, age, language, ethnicity, race, family situation, sex, sexual orientation or gender identity, gender, or disability.”¹¹⁶

Guatemala promulgated a law on femicide and other forms of VAW in 2008. Definitions of misogyny and power relations are among the many definitions in the law to relate the violent acts to gender-based discrimination. Misogyny is defined as “hate, contempt, or undervalue women only because they are women”¹¹⁷ and is one of the factors considered in femicide and the crime of “VAW” (physical, sexual or psychological violence). The law defines economic violence against separately and without reference to misogyny or power relations, although unequal power in financial transactions is implicit in the definition of economic violence. Power relations are defined as control or other forms of dominance that seek to subordinate women and to discriminate against them.¹¹⁸

The law also includes aggravating factors to consider: the personal circumstances of the perpetrator, the personal circumstances of the victim, the power relations between the victim and perpetrator, the context of the violence and the harm caused to the victim, and the methods used by the perpetrator in the violent act and the harm caused.¹¹⁹

Importantly, the law prohibits the accused perpetrator to refer to customs or cultural or religious traditions to justify a violent act or to promote or tolerate VAW.¹²⁰

3.2 Defining Harmful practices

114. Attorney General's Office, Special Prosecutor's Unit Specialized in VAW, Aggravated Homicide for Gender Reasons (2016) referencing section 80 (1) and (4) of the Criminal Code.

115. Honduras, Código Penal, 2019: <https://www.tsc.gob.hn/biblioteca/index.php/codigos/830-codigo-penal-2019>.

116. Ibid at s. 32 (8).

117. Guatemala, Decree 22/2008 (Ley contra el Femicidio y Otras Formas de Violencia contra la Mujer) at s. 3: https://www.oas.org/dil/esp/ley_contra_el_femicidio_y_otras_formas_de_violencia_contra_la_mujer_guatemala.pdf.

118. Ibid.

119. Ibid. at s. 10.

120. Ibid at, s. 9.

International standards

The CEDAW treaty provides the legal basis for harmful practices. Article 2 of the Convention calls on States Parties to: ...condemn discrimination against women in all its forms, agree to pursue by all appropriate means and, without delay, a policy of eliminating discrimination against women and, to this end, undertake: ... (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women (emphasis added). Further, article 5 (a) of CEDAW requires States Parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (emphasis added).

The joint CEDAW GR 31 with the Committee on the Rights of the Child (CRC) states that:

Harmful practices are persistent practices and forms of behaviour that are grounded in discrimination on the basis of, among other things, sex, gender and age, in addition to multiple and/or intersecting forms of discrimination that often involve violence and cause physical and/or psychological harm or suffering.¹²¹

The joint recommendation notes that harmful practices are based on discriminatory stereotypes and attitudes based on the inferiority of women, girls and boys and have been used to justify gender-based violence, among other discriminatory acts. "Many other practices having been identified as harmful practices are all strongly connected to and reinforce socially constructed gender roles and systems of patriarchal power relations and sometimes reflect negative perceptions of or discriminatory beliefs regarding certain disadvantaged groups of women and children..."¹²²

Practices should meet the following criteria to be regarded as harmful:¹²³

1. They constitute a denial of the dignity and/or integrity of the individual and a violation of the human rights and fundamental freedoms enshrined in the CEDAW and CRC.
2. They constitute discrimination against women or children and are harmful insofar as they result in negative consequences for them as individuals or groups,

121. UN, "Joint GR No. 31 of the CEDAW Committee/General Comment No. 18 of the CRC (2014, revised 2019) on Harmful Practices" (8 May 2019) at paragraph 15, online (pdf): United Nations <documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/78/PDF/N1462778.pdf?OpenElement> [GR 31].

122. Ibid, paragraph 9.

123. Ibid, paragraph 16.

including physical, psychological, economic and social harm and/or violence and limitations on their capacity to participate fully in society or develop and reach their full potential.

3. They are traditional, re-emerging or emerging practices that are prescribed and/or kept in place by social norms that perpetuate male dominance and inequality of women and children, on the basis of sex, gender, age and other intersecting factors.
4. They are imposed on women and children by family members, community members or society at large, regardless of whether the victim provides, or is able to provide, full, free and informed consent.

In relation to criterion 3, the traditional cultural underpinnings of such harmful practices make them particularly difficult to eradicate. They are based in practices that “reflect values and beliefs held by members of a community for periods often spanning generations. Every social grouping in the world has specific traditional cultural practices and beliefs, some of which are beneficial to all members, while others are harmful to a specific group...”¹²⁴

The Committees use certain examples of harmful practices based on the frequency that they are raised in States Parties reports. “While the nature and prevalence of the practices vary by region and culture, the most prevalent and well documented are female genital mutilation, child and/or forced marriage, polygamy, crimes committed in the name of so-called honour and dowry-related violence”.¹²⁵ Although most references relate to practices that harm women and girls, the committees do recognize that “boys are also the victims of violence, harmful practices and bias and that their rights must be addressed for their protection and to prevent GBV and the perpetuation of bias and gender inequality later in their lives”.¹²⁶

The CEDAW Committee states in GR 35, that “Harmful practices and crimes against women human rights defenders, politicians, activists or journalists are also forms of GBVAW affected by such cultural, ideological and political factors”.¹²⁷ Furthermore, the Committee states “GBVAW may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, DV or harmful practices. In certain cases, some forms of GBVAW may also constitute international crimes”.¹²⁸

124. United Nations, FactSheet No.23, Harmful Traditional Practices Affecting the Health of Women and Children

125. Ibid, paragraph 7.

126. Ibid, paragraph 4.

127. Supra GR 35 at paragraph 14.

128. Ibid at paragraph 16.

In a resolution on early, child and forced marriages, the Human Rights Council¹²⁹ noted that these harmful practices increase the risk of GBV but the Council and CEDAW have not equated early and child marriages with GBV, although it is important to note that some international campaigns, such as Girls not Brides, that forced marriage, at any age, could be considered GBV as well as a harmful practice.

The UNHCR defines GBV to include recognized harmful practices identified by the CEDAW and CRC committees: “GBV can include sexual, physical, mental and economic harm inflicted in public or in private. It also includes threats of violence, coercion and manipulation. This can take many forms such as intimate partner violence, sexual violence, child marriage, female genital mutilation and so-called ‘honour crimes’”.¹³⁰ It’s important to note that the joint recommendation 31 does not definitively place harmful practices within a GBV frame, although in paragraph 61 the committees do refer to “harmful practices and other forms of GBV”.

In the context of Viet Nam, harmful practices based on traditional norms and stereotypes based on inequality and inferiority of women and girls include GBSS and child, early and forced marriage. These harmful practices are not included in the GE Law at present; however, “other prohibited acts” could be defined to include these harmful practices. In the current GE Law, article 40 (7) GBSS is considered as violations of GE in public health: a) Impeding, inciting or forcing other people not to participate in the activities of health education for gender preconception reasons; b) Choosing gender for the fetus under all forms or inciting and forcing other people to abort because of the fetus’s gender.

Finally, it is important to note that the SDG number 5 on GE and the empowerment of women and girls, calls for the end of all forms of discrimination against women and girls and the eradication of harmful practices targeted at women and girls. The six targets to achieve goal five are consistent with international human rights standards responding to discrimination, GBVAWG, harmful practices, equality opportunities and participation and sexual and reproductive rights.

Legislative examples related to Harmful practices in Southeast Asia

Initial research did not reveal definitions of “harmful practices” in laws. Rather, most countries pass legislation specific to a harmful practice, for the purpose of eradicating it, or laws that advance GE in a specific field or sector. In the Philippines, their GE law references “traditional practices” when identifying different forms of VAW.

129. UN General Assembly, Resolution 35/16 on Child, early and forced marriage in humanitarian settings adopted by the Human Rights Council, A/HRC/RES/35/16, 12 July 2017, A/HRC/RES/35/16, available at: <right-docs.org/doc/a-hrc-res-35-16/>. 130. *Supra* Gender-Based Violence.

The Republic of the Philippines mentions harmful practices in the definition of VAW. In the Magna Carta for Women, the definition of VAW references harmful practices as “traditional practices”. In chapter 2, section 4 (k) (1) such violence includes: physical, sexual, psychological, and economic violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, and other traditional practices harmful to women, non-spousal violence, and violence related to exploitation (emphasis added).¹³¹

Legislative examples related to Harmful practices in other countries

In India, the Prohibition of Child Marriage Act of 2006 applies to all citizens of Indian without and beyond India. This Act mentions, in article 3, that “every child marriage, whether solemnized before or after the commencement of this Act, shall be voidable at the option of the contracting part who was a child at the time of the marriage”.¹³² The Act increased the penalties for child marriage up to 2 years in jail and fines up to 100,000 rupees. India has also enacted its ‘Pre-natal Diagnostic Techniques (Regulation and Prevention Misuse) Act 1994’ that regulates the use of pre-natal techniques for the purpose of pre-natal sex determination leading to female feticide. In Article 6, it is stipulated that “no person conducting pre-natal diagnostic procedures shall communicate to the pregnant women concerned or her relatives the sex of the fetus by words, signs or any other manner”.¹³³

In 2014, in the United Kingdom, **England and Wales** criminalized forced marriage under the Anti-social Behavior, Crime and Policing Act. Part 10 “Forced Marriage” in sections 120-122, refers to the Family Law Act and mentions an amendment related to the offence of breaching a forced marriage protection order, the offence of forced marriage in England and Wales and the offence of forced marriage in Scotland.¹³⁴ This explains that forcing someone to marry, including children, will be punished with seven years in jail. The Act also criminalizes forcing a British national into marriage outside of the United Kingdom and sets the penalty for breaching the forced marriage protection order is now five years in jail. In addition, the United Kingdom amended its Marriage Act of 1949 with the Marriage and Civil Partnership (Minimum Age) Act of 2022.¹³⁵ This Act raised the minimum age for marriage and civil partnerships from 16 to 18 years of age.

131. Supra Magna Cart of Women.

132. India, The Prohibition of Child Marriage Act (2006) at s. 3: https://www.indiacode.nic.in/bitstream/123456789/6843/1/child_marriage_prohibition_act.pdf.

133. India, The Pre-Natal Diagnostic Techniques (Regulation and Prevention Of misuse) Act, 1994 at s. 6: <https://indiankanoon.org/doc/151676/>.

134. UK, Anti-social Behaviour, Crime and Policing Act (2014) at s. 120-122: <https://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>.

135. UK, Marriage and Civil Partnership (Minimum Age) Act (2022); <https://www.legislation.gov.uk/ukpga/2022/28/enacted>

Malawi in 2017 made an amendment to the Constitution to raise the age by which a person is defined as a child to 18 years (from 16 years) and raised the minimum age of marriage for boys and girls to 18 years from 15 years.¹³⁶

South Korea, in order to address son preference and sex selective abortion, introduced a series of legal reforms that would advance equality for women and girls, rather than drafting a specific law on son preference. For example, a ban on fetal sex identification was instituted in 1987 and strengthened in 1994, as well as public awareness campaigns on GE in family planning and for girls generally.¹³⁷

3.3 Reporting and Referral mechanisms

International standards

CEDAW GR 35 calls on States Parties to repeal any legislation that “prevent or deter women from reporting GBV”.¹³⁸ The same recommendation requires States Parties to incorporate messages about reporting, including bystander reports, incidents of GBVAW.¹³⁹ Unfortunately, the Committee does not provide more guidance on reporting mechanisms related to GBV, however, it is important to note that GR 35 recommends that all forms of GBV against women in all spheres should be dealt with as criminal matters.¹⁴⁰ This requires States Parties to promulgate criminal legislation that includes provisions to ensure all forms of GBV (physical, sexual, psychological and economic) can be dealt with, and sanctioned, by the criminal justice sector. States Parties are also expected to ensure the “adequate documentation of such violence, giving due respect for women’s privacy and right to confidentiality and with the free and informed consent of the victims/survivors.”¹⁴¹

In GR 35 paragraph 30 (f) the Committee also calls on States Parties to encourage private sector employers to adopt actions to reduce GBV in all spheres, including the workplace, and to adopt internal complaint procedures that should include the possibility of reporting a case to competent legal authorities.

Reporting gender-based violence

According to the CEDAW Committee, reporting of GBV crimes should be made to the police, however the statistical and referral systems need to be coordinated between

136. UN Women “Malawi Parliament adopts amendment to end child marriage” (February 22, 2017) online: UN Women <www.unwomen.org/en/news/stories/2017/2/news-malawi-parliament-adopts-amendment-to-end-child-marriage>.

137. Inksater, K and Van Cuong, N. Review of policies relating to GBSS in Viet Nam, (2019)

138. Supra GR 35 at paragraphs 29 (c) (iii).

139. Ibid at paragraphs 30 (b) (ii).

140. Ibid at paragraph 29.

141. Ibid., paragraph 30 (e) (iii)

agencies. In GR 35, paragraph 34, the Committee calls on States Parties to collect data on GBV complaints and to track the complaint process through to prosecution and reparations. Reporting and statistical systems also facilitate prevention and protection efforts (discussed below).

Establish a system to regularly collect, analyse and publish statistical data on the number of complaints about all forms of GBVAW, including technology-mediated violence, the number and type of orders of protection issued, the rates of dismissal and withdrawal of complaints, prosecution and conviction and the amount of time taken for the disposal of cases. The system should include information on the sentences imposed on perpetrators and the reparations, including compensation, provided to victims/survivors. All data should be disaggregated by type of violence, relationship between the victim/survivor and the perpetrator, and in relation to intersecting forms of discrimination against women and other relevant sociodemographic characteristics, including the age of the victim/survivor. The analysis of the data should enable the identification of failures in protection and serve to improve and further develop preventive measures, which should, if necessary, include the establishment or designation of observatories for the collection of administrative data on the gender-based killings of women, also referred to as “femicide” or “feminicide”, and attempted killings of women.

The Council of Europe’s Convention on preventing and combating VAW and DV (Istanbul Convention), provides more detail to signatories with regard to reporting and referral mechanisms. It states that all Parties should take measures to encourage any person to report any kind of violence to the competent organizations or authorities (article 27); Parties need to ensure that professional confidentiality rules do not impede reports to competent authorities (article 28). Additionally, all parties need to train professionals on referral mechanisms (article 15) and take the necessary legislative or other measures to have appropriate and accessible rape crisis or sexual violence referral centers for victims (article 25). This Convention also explains that all parties need to have official bodies responsible for the coordination of the collection of data, analyze and disseminate its results (page 4, article 10).

Joint GR 31 also calls on States to make reporting mandatory in law “for professionals and institutions working for and with children and women to report actual incidents or the risk of such incidents if they have reasonable grounds to believe that a harmful practice has occurred or may occur. Mandatory reporting responsibilities should ensure the protection of the privacy and confidentiality of those who report”.¹⁴²

142. Supra GR 31 at paragraph 55 (j).

Referral and Coordination Mechanisms

In terms of referral mechanisms, CEDAW, in GR 35 the Committee calls on States Parties to provide referral centres to victims/survivors (paragraph 31 (a) (iii)) and that public officials across sectors receive training and education related to coordination and referral mechanisms (paragraph 30 (e) (iii)). Many countries implement a referral “route” to ensure victims of GBV receive the attention required to be able to report a violent incident and to receive protection services.

Reporting and referral mechanisms in Viet Nam

The 10-year review of the GE Law found overlapping responsibilities among relevant ministries working on GBV and no formal coordination mechanism at the national or local levels. Women in Viet Nam can report gender-based DV to various party officials or mass organizations including local party authorities, the Viet Nam Women’s Union, or the police (according to the 2016 Evaluation of the DVPC Law, p. 100, those entities recorded cases). Presumably these local entities share information with the provincial Departments of Culture, Sports and Tourism (Family Department) and/or the Department of Labour - Invalids and Social Affairs (DOLISA). To supplement the DVPC Law, the MOCST prepared a circular (Circular 07/2017/TT-BVHTTDL) requiring statistical information on cases of DV to be recorded and then submitted by People’s Committees at all levels up to the Ministry.

According to the 10-year review of GE Law, MOLISA does not have a system to receive and track complaints of gender-based discrimination or GBV.

The harmful practice of sex selective abortion due to son preference is managed by the Ministry of Health but information is shared with MOLISA, as state management agency responsible for GE. In the 10-year GE Law review report, the researchers found limited information on sanctions applied in cases of violations of the GE Law. The Government’s report of 2017 provided no information on the handling of violations, although the same report noted there were two violations of the prohibition on sex-selective abortions, and those were the only sanctions reported by MOLISA.¹⁴³

Referral and coordination pilot project

UNFPA supported MOLISA and the National Committee for the Advancement of Women to implement a pilot initiative “Building a Model to respond to VAWG in Viet Nam” at the Quang Ninh Social Work Center. This model included referral, coordination and protection services: the hotline of the center, including software for data recording, was upgraded to provide counseling, support and referrals for GBV survivors. Another aspect of the project focused on multi-sectoral coordination of services to GBV survivors.

143. Supra note 8, 10-year GE Law Review, supra note 8, pp. 66-67.

Examples of reporting and/or referral mechanisms in Southeast Asia

The most relevant example from the region in relation to reporting and data collection is the Philippines legislation and guidelines for local statistics on reporting.

The Philippines Republic Act No. 9710, An Act Providing for the Magna Carta on Women creates a Commission (chapter IV, 9 (d)) states that all decentralized government units “shall establish a VAW’s desk in every barangay to ensure that VAW cases are fully addressed in a gender-responsive manner”.¹⁴⁴ The “Guidelines in the Establishment of a VAW desk in every Barangay” provide details of procedures when cases of GBV are reported, including keeping confidential records in secure locations, reporting statistics on GBV cases on a quarterly basis to the municipal social welfare office. This VAW desk is also tasked with developing the locality’s inter-agency coordination and referral system.

In Cambodia the Law on the Prevention of DV and the Protection of Victims requires local (village) authorities who receive information or a report of DV to report it to the prosecutor’s office (article 9 and article 15). While the Law does not reference a reporting and referral system, there are multi-sectoral (including civil society) Working Groups on Gender and GBV functioning at the national, provincial and district levels that support inter-agency referrals and coordination for the purpose of prevention and protection of victims/survivors of GBV.¹⁴⁵

Examples of reporting and/or referral mechanisms in other countries

While Viet Nam has experience piloting a coordinated referral mechanism for GBV, the example of a coordinated mechanism to respond to violence based on SOGI in the United States is relevant. It is important to note that many of the referral mechanisms are organized through national or local plans and not always through legislation. The law in Rwanda is dedicated to monitoring and referrals so it is an example that may be relevant to Viet Nam.

In Rwanda the Law No. 51/2007 Determining the responsibilities, organization and functioning of the gender monitoring office in Rwanda, establishes a monitoring office that receive and examine complaints related to GBV and forward them to the Chief Gender Monitor, they collect the information related to GBV and ensure that the judicial police, prosecution and the judiciary follow the cases accordingly.¹⁴⁶

144. See supra Magna Carta of Women at 9(d). See also Circular RA-9710 which provides GUIDELINES IN THE ESTABLISHMENT OF A VAW (VAW) DESK IN EVERY BARANGAY available at <https://cws.up.edu.ph/wp-content/uploads/RA-9710-Magna-Carta-of-Women.pdf>.

145. Royal Government of Cambodia “National Action Plan to Prevent VAW 2019-2023” (October 9th, 2020), online (pdf): UNFPA <cambodia.unfpa.org/sites/default/files/pub-pdf/nap_2019-2023_english_final.pdf>.

146. Supra Gender Monitoring Rwanda.

Jordan established a National Referral System under a rights-based approach, where the Jordanian National Women’s Commission (JNWC) was established in 1992, and specifically deal with women’s issues. This is a key mechanism to protect women. “It functions as a one-stop-shop under JNWC and received and documents complaints of violence, refers women for care and support, and follows up to ensure that women receive the help they need”.¹⁴⁷ They offered services such as social, legal, psychological and health services and economic empowerment.

In Albania, as part of its National Strategy for GE, a coordinated referral mechanism for DV cases was established in 61 municipalities of the country, and this mechanism is expected to be implemented in municipalities across the country to ensure specialized and effective treatment of all harmful practices, GBV and DV.¹⁴⁸ The objective is to provide “better access to specialist support services for women, men, young women, young men, girls and boys in all their diversity who have been subjected to harmful practices, sexual violence, and other forms of GBV and DV”.¹⁴⁹

United States: Following a violent, mass attack on LGBTI individuals in Portland, Oregon the state designated funds to encourage civil society organizations to create specialized referral mechanisms for LGBTI individuals impacted by the event as victims or witnesses.¹⁵⁰ The funding allowed community groups, trusted in the LGBTI community, to act as a point of contact for those who have experienced hate crimes; the goal is to set up “a community-run reporting system for hate crimes”.¹⁵¹

3.4 Prevention mechanisms related to Gender-based violence and Harmful practices

International standards

In GR 35 the CEDAW Committee calls on States Parties to prevent GBV by state officials (paragraph 23) and also prevent, as part of the due diligence obligations, GBV by non-state actors, especially if public officials have become aware that women are at risk of violence. In addition, the Committee dedicates a section of its recommendation to prevention (paragraph 24 (2)).

147. UNRWA “Community of Practice in Building Referral Systems for Women Victims of Violence” (July 2010) at 4, online (pdf): UNRWA <[unrwa.org/userfiles/2010081854458.pdf](https://www.unrwa.org/userfiles/2010081854458.pdf)>.

148. Republika e Shqipërisë “National Strategy for GE 2021-2030” (June 30, 2021) at 34, online (pdf): Shendetesia <[shendetesia.gov.al/wp-content/uploads/2022/02/WEB_Strategjia-Kombetare-EN.pdf](https://www.shendetesia.gov.al/wp-content/uploads/2022/02/WEB_Strategjia-Kombetare-EN.pdf)> [Albania GE Strategy].

149. Ibid, objective III.2

150. Tyler Bishop et al, “Exploring Alternative Approaches to Hate Crimes” (2021) at 26, online(pdf): Stanford Law School <https://law.stanford.edu/wp-content/uploads/2021/06/Alternative-to-Hate-Crimes-Report_v09-final.pdf>. [<https://perma.cc/T8WU-K44L>].

151. Ibid.

According to GR 35 (paragraph 30 (a)) the objective of prevention efforts (legislative and other measures) “to address the underlying causes of GBVAW, including patriarchal attitudes and stereotypes, inequality in the family and neglect or denial of women’s civil, political, economic, social and cultural rights, and to promote the empowerment, agency and voices of women.”

The joint GR 31 on harmful practices also emphasizes prevention efforts to combat such practices. The recommendation states that prevention can “best be achieved through a rights-based approach to changing social and cultural norms, empowering women and girls, building the capacity of all relevant professionals who are in regular contact with victims, potential victims and perpetrators of harmful practices at all levels and raising awareness of the causes and consequences of harmful practices, including through dialogue with relevant stakeholders.” (Joint GR 31 paragraph 56).

It’s important to note that guidelines in international human rights law related to violence perpetrated based on the victim’s sexual orientation or gender identity follows the same framework as CEDAW Committee guidance on GBVAW. States have the duty to prevent, protect, investigate, prosecute and sanction violent crimes based on bias and prejudice. UN bodies, including the UN Office on Drugs and Crime (UNODC) provide crime prevention guidance and the UN Human Rights Council and other UN and regional mechanisms provide guidance on prevention of discrimination against LGBTI persons. Similar prevention mechanisms as those mentioned above, includes abolishing discriminatory laws, promoting equality and non-discrimination based on SOGIE through public education and media,¹⁵² collecting data for evidence-based decision-making,¹⁵³ and introducing special measures. Prevention involves a variety of initiatives, including the following.¹⁵⁴

Research Data for the development of evidence-based policies and programs

Both GR 35 and joint GR 31 call on States Parties to collect data. In GR 35 at paragraph 34, the Committee recommends that states establish systems to collect data regarding

152. Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity “Overview of violence and discrimination based on sexual orientation and gender identity” (May 11, 2018), online: OHCHR <[ohchr.org/en/special-procedures/ie-sexual-orientation-and-gender-identity/overview-violence-and-discrimination-based-sexual-orientation-and-gender-identity](https://www.ohchr.org/en/special-procedures/ie-sexual-orientation-and-gender-identity/overview-violence-and-discrimination-based-sexual-orientation-and-gender-identity)> [Overview of Violence and Discrimination], paragraph 97

153. See UN General Assembly “Report of the Independent Expert on protection against violence and discrimination based on SOGI” (May 11, 2018) at paragraph 94, online (pdf): <[pgaction.org/inclusion/pdf/resources/2018-05-Report-Independent-Expert-protection-against-violence-discrimination-SOGI.pdf](https://www.ohchr.org/inclusion/pdf/resources/2018-05-Report-Independent-Expert-protection-against-violence-discrimination-SOGI.pdf)>. Also see United Nations General Assembly “Discrimination and violence against individuals based on their sexual orientation and gender identity” (May 4, 2015) at paragraph 78, online (pdf): <[view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2FHRBodies%2FHRC%2FRegularSessions%2FSession29%2FDocuments%2FA_HRC_29_23_en.doc&wdOrigin=BROWSELINK](https://www.ohchr.org/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2FHRBodies%2FHRC%2FRegularSessions%2FSession29%2FDocuments%2FA_HRC_29_23_en.doc&wdOrigin=BROWSELINK)>.

154. Supra Overview of Violence and Discrimination, paragraph 97

GBVAW (based on cases reported, protection measures, prosecution and conviction rates), research studies, surveys and other efforts that will inform prevention and protection measures.

Likewise, in joint GR 31, at paragraph 37, also recommends “the regular and comprehensive collection, analysis, dissemination and use of quantitative and qualitative data” to contribute to the design of effective policies, appropriate strategies and actions that will change attitudes, behaviours and practices. Similar to GR 35, the Committee recommends data be “disaggregated by sex, age, geographical location, socioeconomic status, education level and other key factors are central to the identification of high-risk and disadvantaged groups of women and children, which will guide policy formulation and action to address harmful practices.”

It’s important to note that Viet Nam has conducted two studies on VAW, among other studies related to GBSS. The challenge is to ensure the statistical information from case reporting meets common standards across institutions so that decisions can be made to design prevention and protection measures.

Participation in strategies to respond to GBVAW and harmful practices

The CEDAW Committee calls for participation of women, men, girls and boys in addressing GBVAW and harmful practices. In GR 35, in paragraph 28, the Committee notes that “measures should be designed and implemented with the participation of women, taking into account the particular situation of women affected by intersecting forms of discrimination”. Participation is reiterated in relation to prevention, referral mechanisms, prosecution of perpetrators, safe public spaces, and other protection efforts.

In relation to harmful practices, numerous paragraphs of GR 31 call on States Parties to ensure effective participation of stakeholders, especially women and girls, but also local leaders and men and boys in efforts to end harmful practices. This includes participation in the drafting of legislation (paragraph 45) and public awareness raising (paragraph 77). The Committee also recommends that States “engage men and boys in creating an enabling environment that supports the empowerment of women and girls” (paragraph 69 (f)).

Eradicating stereotypes and changing social norms

Prevention involves the eradication of stereotypes and social norms that perpetuate inequality, GBVAW and harmful practices. Education is seen as a strategy to address root causes of gender inequality.

Formal education: The Committee in GR 35 paragraph 30 (b) (i) recommends education curricula at all levels include content on GE from a human rights approach as a key prevention measure. To prevent harmful practices, GR 31 paragraph 69 (a) calls on

States Parties to provide free education: “provide universal, free and compulsory primary education that is girl-friendly, including in remote and rural areas, consider making secondary education mandatory while also providing economic incentives for pregnant girls and adolescent mothers to complete secondary school and establish non-discriminatory return policies”. The Committee envisions education as a strategy to increase opportunities for girls and women and ensure their empowerment and preparation to actively participate in all spheres of life (GR 31, 61-68, especially paragraph 63).

Media portrayal of women: In GR 35, the Committee recommends that States Parties implement various initiatives with media outlets “to eliminate discrimination against women, including the harmful and stereotypical portrayal of women or specific groups of women” (paragraph 30 (d)). Such initiatives may include self-regulation of the media (including social media), independent monitoring of the media and guidelines for the coverage of cases of GBVAW in the media. The Committee also recognizes the role of media in awareness raising efforts related to GBVAW and harmful practices.

Awareness raising: In both general recommendations the CEDAW Committee calls on States Parties should collaborate with media and other stakeholders, including local leaders, to challenge stereotypes and social norms and practices that are used to justify GBV and harmful practices. In joint GR 31 awareness raising is noted as part of a longer-term strategy to change attitudes, norms and behaviours that underly sex and gender-based discrimination (see paragraph 74-80 in GR 31). Likewise, the Independent Expert on SOGIE has also recommended States to encourage the media to address the stereotypical portrayals of LGBTI persons and play a positive role in addressing the stigma, prejudice and discrimination they face.¹⁵⁵

Mandatory capacity building for public officials

The CEDAW also calls on States Parties to develop mandatory and continual professional development training courses for public officials.

Training to public officials: As part of the prevention section, GR 35 (paragraph 30 (e)), calls for the provision of “mandatory, recurrent and effective capacity-building, education and training to the judiciary, lawyers and law enforcement officers, including forensic medical personnel, legislators, health-care professionals, including in the area of sexual and reproductive health, all education, social and welfare personnel”. This also includes personnel working with women in institutions, such as residential care homes, and prisons to equip them to prevent and address GBV. Content should include:

155. Supra note 149 and 150.

1. Impact of gender stereotypes and bias leading to GBV.
2. Understanding of trauma and its effects, power dynamics and the diverse experiences of women facing GBV. This includes intersectional discrimination, affecting vulnerable groups, and addressing factors that could re-victimize them.
3. Domestic legal provisions and institutions on GBV, legal rights of victims/survivors, international standards, international mechanism and their responsibilities.

In the joint GR 31, training to professionals is also considered part of prevention measures. Training should include systematic training for medical and government officials (paragraph 50); training for traditional leaders and mediators implementing alternative, resolution mechanisms and traditional justice systems on human rights and harmful practices, as well as training on the implementation of legislation, criminal elements of harmful practices, to ensure that they are aware of women and children's rights (paragraph 71 and 73); and specialized training programs for health care providers, child welfare services, the police and justice sector, politicians and media personnel (paragraph 73).

In GR 33 on access to justice, the Committee calls on State parties, in paragraph 64 (a), to take immediate steps, including capacity building and training programs on the CEDAW, women's rights for justice personnel. This to ensure that religious, customary, indigenous and community justice systems are harmonized with international human rights standards.

Examples of prevention measures in Southeast Asia

It's important to note that GE laws assign responsibilities for prevention of discrimination and violence, but they do not include details of prevention measures. Such initiatives are generally explained in regulations or strategic plans. To ensure relevant design and implementation of prevention measures, mandatory training for public officials on gender-based discrimination and violence is an important first step.

Data collection for evidence-based policies and programs

Laos published its National Survey on women's health and life experience: A study on VAW. This Study was the first one to provide nationally representative data focused on DV. The study established key recommendations for program and policy development to address and prevent VAWG in Laos.¹⁵⁶ **Cambodia** and **Viet Nam** have completed similar studies.

156. National Commission for the Advancement of Women "Lao National Survey on Women's Health and Life Experiences 2014: A Study on VAW" (2015) at 10, online (pdf): UNFPA <lao.unfpa.org/sites/default/files/pub-pdf/Final_Eng_VAW%20Report.pdf>.

Eradicating stereotypes and changing social norms

Cambodia has prepared a campaign called “Good Men”, to raise awareness on positive masculinity to reduce VAW. The campaign was a nationwide communication initiative, which targeted 3.5 million of men aged 15 to 49 years old. It produced a number on TV, radio spots, posters, brochures and other materials to deliver messages for a positive behavior change among men.¹⁵⁷

Cambodia: In Cambodia the Rainbow Community Kampuchea Organization operates at the community level to help raise awareness about the realities of being LGBTI in the country and the issues faced by LGBTI individuals.¹⁵⁸ The organization engages in various training and learning activities target towards different local groups including authority figures in the community, public officials, and general villagers.¹⁵⁹ The organization takes their community-based findings and then holds National Dialogues with representatives of relevant government ministries to discuss challenges of LGBTI community within the country and create action plans to find solutions for each of the relevant stakeholders to the different issues.¹⁶⁰

Laos has also developed advocacy strategies to prevent GBV to increase public awareness on laws and regulations related to VAW. They commemorate and advocate every year a message from the Prime Minister on the International Day for the Elimination of VAW and VAC, as well as implement a national campaign on patriotism and development to promote families and communities that practice GE and non-DV, particularly women and children.¹⁶¹

Mandatory capacity building for public officials

In Cambodia, UN Women has supported training for the Ministry of Women’s Affairs and civil society lawyers with regard to international human rights standards and feminist/gender responsive approaches to ending VAW. The Ministry has provided training to the judicial police agents,¹⁶² as well as training regarding international standards for GBV and VAW, these pieces of training were implemented by an international consultant through online platforms with NGOs working in issues related to women and government officials.

157. Ministry of Women’s Affairs “Good Men Campaign” (2011), online: UN Women Global Database <evaw-global-database.unwomen.org/en/countries/asia/cambodia/2011/good-men-campaign>.

158. Rainbow Community Kampuchea Organization “Advocacy and Awareness Raising”, online: Rock Cambodia <rockcambodia.org/what-we-do/advocacy-and-communication/>.

159. Ibid.

160. Ibid.

161. Ibid.

162. Supra ASEAN Plan of Action at 33.

Examples of prevention measures internationally

Data for evidence-based policies and programs

Albania, in its National Strategy and Action Plan on GE, aims to reduce GBV and DV. In this Action Plan, the Ministry of Social Welfare and Youth is in charge of coordinating the data collection process for the achievement of the goal to reduce GBV and DV among all gender employees in Ministries. The results are disseminated through annual publications. They also made an amendment to Law No. 9669 “On Measures against Violence in Family Relations”, following recommendations of CEDAW and Group of Experts on Action against VAW and DV. As part of this amendment, they adopted a by-law joint instruction of the Ministry of Justice and the High Judicial Council No. 9 on determining the rules for the creation of a special DV cases database on the courts and the unification of their registration”.¹⁶³

Canada: Statistics Canada publishes the number of victims of spousal homicide, the data is collected through surveys sent to police departments.¹⁶⁴ The Federal Government of Canada also published The GBV Strategy in 2017. As part of the Strategy the GBV knowledge Centre launched an online platform to bring together research evidence and resources, such as existing data, evidence and federal initiatives on GBV, to enable evidence-based action.¹⁶⁵

Canada: Statistics Canada regularly collects data on various forms of LGBTI-targeted violence. Included in this data is hate-crime data as well as data that examines experiences of violence and unwanted sexual behaviours among LGBTI individuals in Canada.¹⁶⁶ The agency collect data on the likelihood of sexual minorities in Canada to experience inappropriate behaviours from others while in public.¹⁶⁷ The collected data is then compared to data collected from the wider public demonstrate that there are particular issues within this group. This data is then used to explain why harmful trends such as drug use is found to be more frequent among these groups and to suggest methods of addressing these issues.¹⁶⁸

163. Supra Albania GE Strategy at 12.

164. Statistics Canada “Number of victims of spousal homicide” (August 2, 2022), online: Statistics Canada <www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510007401>.

165. Government of Canada “The Gender-Based Violence Strategy” (June 2017), online: Government of Canada <women-gender-equality.canada.ca/en/gender-based-violence-knowledge-centre/gender-based-violence-strategy.html>.

166. Brianna Jaffray “Experiences of violent victimization and unwanted sexual behaviours among gay, lesbian, bisexual and other sexual minority people, and the transgender population, in Canada, 2018” (September 9, 2020), online (pdf): Statistics Canada <www150.statcan.gc.ca/n1/pub/85-002-x/2020001/article/00009-eng.htm> [<https://perma.cc/N84Y-7FPE>].

167. Ibid.

168. Ibid.

Bosnia Herzegovina has data collection practices to enhance the existing system of collecting administrative data on VAW and DV.¹⁶⁹ The police register the reports of criminal acts with their district office of the Ministry of the Interior. The Federal Administration of the Police compiles the aggregated data on crimes and publishes it once a month.¹⁷⁰ Since 2013, the Gender Center maintains a database specifically for DV cases, and it is used directly by police and Social Welfare Centers; it is also accessible to the NGO-run shelters. The Gender Centre reports to the Government of the Federation of Bosnia and Herzegovina annually about the implementation of the Strategy.¹⁷¹

In Kosovo, an organization “supported the development, testing and launching of the national unified database, enabling the monitoring and prosecution of DV cases. This will enhance accountability by obliging relevant institutions to update the database with the necessary information from central and local levels”.¹⁷²

In Montenegro, an organization designed “a standardized data collection among CSOs that provided assistance and support services to women in order to conduct evidence-based analysis to improve the delivery of services”.¹⁷³

In North Macedonia, an organization designed “software for data collection on cases of VAW among CSO service providers. In alignment with article 11 of the Istanbul Convention, data collection will be obligatory as introduced in the new legislation”.¹⁷⁴

In Serbia, an implementing partner designed a model data collection framework for cases of femicide. The model framework has been adopted by officials from the Ministries of Interior and Justice.¹⁷⁵

Jamaica launched a 10-year National Strategic Action Plan to eliminate GBV. The plan focuses on five strategic areas, with the GBV prevention strategy including baseline data collection on a) attitudes to GBV to track behavioral change and b) prevalence of GBV to track the rate of reporting.¹⁷⁶

169. Council of Europe, “Administrative Data Collection on VAW and DV in Bosnia and Herzegovina, in line with Istanbul Convention Standards” at 4, online (pdf): Council of Europe <rm.coe.int/administrative-data-collection-on-violence-against-women-and-domestic-/1680966db3>.

170. Ibid at 5.

171. Ibid.

172. UN Women, “Ending VAW in the western Balkans and Turkey: “Implementing Norms Changing Minds”” (January 31, 2020) at 15, online (pdf): UNDP <info.undp.org/docs/pdc/Documents/MNE/Final%20Narrative%20Report%2025082020.pdf>.

173. Ibid.

174. Ibid.

175. Ibid.

176. “A Comprehensive Multi-Sector National Strategic Action Plan to Eliminate Gender-based Violence in Jamaica” (2012), online (pdf): Organization of American States <scm.oas.org/pdfs/2012/CIM03208-A.pdf>.

Honduras: The Office of the Attorney General tracks violent crimes against LGBTI individuals and also reports the percentage of cases to reach trial and cases to reach a judicial sentence.¹⁷⁷

Eradicating stereotypes and changing social norms

The following examples from various regions of the world provide innovative examples of initiatives to eradicate stereotypes that have a negative effect on women and LGBTI. Changing concepts of masculinity and customs or attitudes that perpetuate violence and discrimination require initiatives involving the public and private sectors.

The UN Women – European Union regional programme on Ending VAW in the Western Balkans and Turkey has supported various innovative initiatives to eradicate gender stereotypes and social norms related to VAW were implemented and evaluated.

In Turkey a non-governmental foundation implemented a father support program to transform norms through early childhood education program. This program was developed to introduce gender-sensitive parenting and promote the inclusion and participation of fathers in family life.¹⁷⁸

In Kosovo*, a door-to-door campaign was implemented to gather information on beliefs and to influence families' understanding of early marriage in communities where rates of child marriage have been high, has been recognized as an effective advocacy approach.¹⁷⁹

In Montenegro, a Roma organization has focused on prevention of child and early marriages through theatre, roundtable discussions, life stories, workshops and a billboard, and was constantly present in the communities to work with individuals. Target groups included Roma women, teachers, and service providers. Early positive indications of behavioural change results were shared with the evaluation: women began reporting child marriage, whereas before the project, men or community elders would report, if at all.¹⁸⁰

In Honduras the OHCHR works with journalists to conduct training on human-rights based reporting especially in relation to GBVAW and LGBTI persons. Opinion leaders are also engaged to further disseminate messaging through social media.

177. Inter-American Commission on Human Rights "Violence Against LGBTI Persons" (November 12, 2015) at 246, online (pdf): Organization of American States <oas.org/en/iachr/reports/pdfs/violenceagainstlgbtipersons.pdf> [Violence Against LGBTI].

178. Tülay Güler "Father Education Program in Turkey: Transforming norms through early childhood education program" (2017), online: UNICEF <[unicef.org/turkiye/en/stories/father-education-program-turkey-transforming-norms-through-early-childhood-education](https://www.unicef.org/turkiye/en/stories/father-education-program-turkey-transforming-norms-through-early-childhood-education)>.

* References to Kosovo shall be understood in the context of UN Security Council Resolution 1244 (1999).

179. Ibid at 43.

180. Ibid.

Brazil: The Brazilian federal government has implemented numerous initiatives education-based initiatives at the national level in efforts to counter violence against LGBTI individuals. Included in these initiatives are Brazil without Homophobia and the National System to Face Violence against LGBT Persons and to Promote Rights.¹⁸¹ The Brazil without Homophobia campaign resulted in “increased capacity of institutions working in [hate-crime prevention] through the facilitation of regional meetings and workshops on the issue, which involve state authorities and civil society representatives”.¹⁸²

Scotland, the United Kingdom: Scotland has undertaken extensive efforts to eradicate LGBTI stereotypes and change social norms. They have been trailblazers being the first country in the world to establish a LGBTI inclusive content in the curriculum for all public schools.¹⁸³ The mandatory lessons address same-sex marriage, same-sex parenting, homophobia, biphobia, and HIV/AIDS epidemic.¹⁸⁴ This education has been designed to create a more informed and understanding nation.

Examples of mandatory capacity building for public officials

The Council of Europe has supported various countries in their efforts to address domestic and GBV. In countries such as Armenia, Azerbaijan and Georgia, project activities have included training for criminal justice officials and social workers.¹⁸⁵ A comprehensive training of trainers’ manual prepared by the Council of Europe was used for this purpose.¹⁸⁶

3.5 Protection mechanisms to respond to Gender-based violence and Harmful practices

As mentioned above, the protection mechanisms recommended by the CEDAW Committee are also applicable to protection of LGBTI individuals who have experienced violence. Protection measures are identified in reports of the Independent Expert

181. Supra Violence Against LGBTI at 227.

182. UN “Living Free & Equal: What States are Doing to tackle Violence and Discrimination Against Lesbian, Gay, Bisexual, transgender and Intersex People” (2016) at 25, online (pdf): United Nations <<https://www.ohchr.org/sites/default/files/Documents/Publications/LivingFreeAndEqual.pdf>> [<https://perma.cc/W6JG-WUQE>].

183. Ruth Foran “Scotland: first Country in the World to include LGBT Education” (July 8, 2020), online: The Organization for World Peace <<https://theowp.org/scotland-first-country-in-the-world-to-include-lgbt-education/>> [<https://perma.cc/J8AT-W34W>].

184. Ibid.

185. Council of Europe GE Division “Information about ongoing capacity building and cooperation projects” (October 18, 2021) at 7, online (pdf): Council of Europe <rm.coe.int/oct-2021-cooperation-projects-on-vaw-and-dv-2770-1225-6260-v-1/1680a43ca4> [Building and Cooperation Projects].

186. See Anna Costanza Baldry and Elisabeth Duban “Improving the effectiveness of law enforcement and justice officers in combatting VAW and DV: Training of Trainers Manual” (June 1, 2016) online (pdf): Council of Europe <rm.coe.int/16807016f3> Law Enforcement Training Manual.

on SOGIE. Risk assessment and coordinated multi-sectoral services (housing, health, counselling, etc.) are key to respond to GBV regardless of the specific form or victim characteristics.

International standards

Risk assessment

Protection measures in cases of GBV should include immediate risk assessment (GR 35 paragraph 31 (a) (ii)). Risk assessment by first responders allows for security planning with the victim, appropriate referrals to other protection services and flags potential for further violence. In relation to harmful practices, helplines and other first responders should also assess risk of victims to ensure safety measures are implemented (see paragraph 83, GR 31).

Coordinated multi-sectoral gender responsive protection services

The CEDAW sets out various recommendations related to protection in GR 35 (paragraph 31, especially paragraph (a), also paragraph 33), including protection orders to ensure further violence is not perpetrated, health services, safe housing, psychosocial support and counselling services, and free legal aid. Importantly, these services should be coordinated in “multi-sectoral referral mechanisms.” This recommendation also calls on States Parties to provide education, childcare, and other forms of financial and employment assistance. Data collection should adhere to confidentiality and security guidelines.

The CEDAW Committee, along with the CRC, also call on States Parties to offer protective and responsive medical, psychological and legal services, and protection that is gender responsive and child friendly (GR 31, paragraph 83). A 24-hour toll-free helpline should be available, as well as specialized services.

Limited or prohibited mediation.

In GR 35 the Committee calls on States Parties not to refer women mandatorily to alternative dispute resolution and if mediation or conciliation is used it should be strictly regulated and provided by trained professionals.

Paragraph 32 (b): Ensure that GBVAW is not mandatorily referred to alternative dispute resolution procedures, including mediation and conciliation. The use of those procedures should be strictly regulated and allowed only when a previous evaluation by a specialized team ensures the free and informed consent of victims/survivors and that there are no indicators of further risks to the victims/survivors or their family members. Procedures should empower the victims/survivors and be provided by professionals specially trained to understand and adequately intervene in cases of GBVAW, ensuring adequate protection of the rights of women and children and that interventions are conducted with no stereotyping

or revictimization of women. Alternative dispute resolution procedures should not constitute an obstacle to women's access to formal justice.

On the other hand, in relation to harmful practices, joint recommendation 31 does not prohibit alternative dispute resolution. Rather, as mentioned above, it calls on States Parties to train traditional leaders who mediate disputes in communities so that they apply human rights principles.

Examples of protection measures in Southeast Asia

Risk assessment

Examples not found.

Coordinated multisectoral gender responsive protection services

Cambodia has multi-sectoral working groups at the local level acting as response and referral mechanisms.

Korea: The Sunflower Centers provide emergency support and comprehensive services for GBV survivors. Currently, there are 39 centers throughout the country divided into three categories: support for prevention (16); support for children (7); and comprehensive support (16). There is a total of 580 staff. The center provides medical support (mental health dept, obstetric, emergency medical center, nurses); legal support (social workers, counsellor, public defender); psychological services (clinical psychologist, psychotherapist); administrative services (administrators, person in charge for treatment); investigative support (police officers). Each year, the centers support 26,878 victims of which women account for 90%, and 1,972 people with disabilities.

Viet Nam: With support from UNFPA and the Korean International Cooperation Agency, a Sunshine House was established at the Social Work Center, a unit under Quang Ninh's DOLISA to provide essential services to GBV survivors. Sunshine House has the following specific tasks: (1) Providing counselling and communication services in GE and GBV fields; (2) Providing information and referral to related services; (3) Providing urgent emergency care and shelters to GBV survivors; and (4) Connecting police, justice, health, Labour - Invalids and Social Affairs (LISA) agencies at provincial, district and commune levels to support GBV survivors. A counselling hotline for GBV survivors started in November 2019 and essential medical, police, judicial and social support services for survivors have been provided since April 2020 after completion of facilities.

Limited or prohibited mediation

UN Women Cambodia has provided technical support to the Ministry of Women's Affairs to develop guidelines on mediation titled, "Guidelines on the Limited Use of Mediation

as a Response to VAW” for the purpose of clarifying and limiting the use of mediation in DV cases. Mediation practice is culturally accepted but may further victimize women who have experienced intimate partner violence. Given the international standards on ending VAW are clear that mediation should not be used because i) DV should be addressed as a criminal matter, and ii) the parties do not have equal power, a requirement for effective mediation, the guidelines correctly state that:¹⁸⁷

Mediation should not be conducted when:

- There is a history of repeated abuse against the victim/survivor by the same perpetrator. In such a case, mediation could only result in retaliation and further harm to the victim/survivor.
- It is apparent that conducting or continuing with the mediation process will risk the victim/survivors’ safety and security or expose her to further violence or revictimization.
- The victim/survivors have been threatened by the perpetrator or another person, and it limits her decision-making ability.
- Where the perpetrator is a repeat offender and there has been a previous alternative dispute resolution (ADR) agreement that the perpetrator violated, pursuant to Article 36 of the Law on the Prevention of DV and the Protection of Victims.
- The dispute involves an attempted or completed rape or any form of human trafficking.
- The dispute involves harm to a child.
- Any of the parties have a developmental disability or other diminished capacity that also prevents them from fully understanding and participating in the ADR process.

Examples of protection measures internationally

Risk assessment

British Columbia, Canada. The government of the province provides funding and online resource materials for providers of victim services.¹⁸⁸ Risk assessment tools have been developed based on evidence related to factors that heighten risk of violence or killing (nineteen factors have been identified by researchers in Canada and the United States). A webinar on risk assessment and safety planning is available online.¹⁸⁹

187. UN Women, “Guidelines on the Limited Use of Mediation as a Response to VAW” (2021) UN Women Working Paper at 5.

188. See Government of British Columbia “Victim Service Providers Training” (March 3, 2021), online: Government of British Columbia <alpha.gov.bc.ca/gov/content/justice/criminal-justice/victims-of-crime/service-providers/training>.

189. Laura Woods and Debby Hamilton “Risk Identification and Safety Planning” (April 18, 2019), online (webinar): YouTube <youtube.com/watch?v=k5Tr14cl4ko&ab_channel=GovernmentofBC>.

United Kingdom. An academic, who was a police officer, studied cases of intimate partner femicide, and identified eight stages of coercive control leading to increased violence and ultimately femicide.¹⁹⁰ This research led to legislation recognizing coercive control as a crime¹⁹¹ and provided evidence to design a risk assessment tool.¹⁹²

Honduras. The public prosecution and police are receiving training from women's rights organizations and a Canadian organization to apply a comprehensive risk assessment template and security plans upon first contact with women victims of GBV. The risk assessment template includes disaggregated data on age, ethnicity, residency, and disabilities, and other pertinent information such as relationship with aggressor, previous complaints, health status, type of violence, and so on. The format also introduces a numeric value based on yes or no responses to questions formulated to collect key information based on available data related to victim vulnerability, the context of the violent event, and the profile of the aggressor. This allows a final risk rating of low, medium or high. The tool was piloted in various locations with victims and adjusted again based on lessons learned, including victims' reactions to questions. A guide for prosecutors and other personnel accompanies the tool. Importantly, according to prosecutors, no victim has been killed after the risk assessment tool and security plans have been applied.

Coordinated local gender responsive protection services

See examples in previous section.

Limited or prohibited mediation

Ontario, Canada: The Ontario Association for Family Mediation has prepared a policy on mediation in situations where intimate violence has occurred. While the mediators can address family conflict or separation, the mediators are not engaged to mediate the actual violence, nor are they to be neutral (no discussion of whether the violence took place or not). Family mediators need to be aware of risk factors in cases of intimate partner violence and assess whether both parties can participate freely and without

190.. See BBC News "Domestic abuse: Killers 'follow eight-stage pattern', study says" (August 28, 2019), online: BBC <[bbc.com/news/uk-49481998](https://www.bbc.com/news/uk-49481998)>. See also Police Science DR "The 8 Stages to Domestic Homicide – Prof Hane Monckton Smith" (April 27, 2021) online (podcast): YouTube <[youtube.com/watch?v=aFli-cfAjf4&ab_channel=PoliceScienceDr](https://www.youtube.com/watch?v=aFli-cfAjf4&ab_channel=PoliceScienceDr)>. See also Siseministeerium "Jane Monckton Smith (UK) "DV Killings" (September 9, 2021), online (podcast): YouTube <youtu.be/19oaO2PfMaE>.

191. Government of UK, "Review of the Controlling or Coercive Behaviour Offence" (March 2021) at 5, online (pdf): <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982825/review-of-the-controlling-or-coercive-behaviour-offence.pdf>.

192. Laura Richards "CAADA Domestic Abuse, Stalking and 'Honour'-based Violence (DASH) Risk Identification Checklist" (January 2009), online: VAWNET <vawnet.org/material/caada-domestic-abuse-stalking-and-honour-based-violence-dash-risk-identification-checklist>.

fear in the mediation process. If power imbalance or risk of further violence is present, family mediation should not occur.¹⁹³

Victim/gender legal services

Canada: “The 519” is a legal service provider that specifically targets and serves the LGBTI community in various ways. As part of this initiative, they offer numerous free, accessible, and gender/sexuality-sensitive legal services to the community.¹⁹⁴ The goal is to break down barriers for the LGBTI community in accessing legal resources and included in their services is the criminal law legal clinic which serves LGBTI individuals who have been charged with crimes as well as LGBTI victims of crimes including those victims of violence to provide consultation on their case and their concerns.¹⁹⁵

3.6 Prosecution and response to Perpetrators

International standards

Victim and gender sensitive criminal proceedings and sanctions

The CEDAW Committee emphasizes that States Parties are responsible, under article 2 (e) of the Convention, for violence perpetrated by individuals if they do not act with due diligence to prevent, prosecute and punish such acts.¹⁹⁶ In GR 28, at paragraph 34, the Committee states: “where discrimination against women also constitutes an abuse of other human rights, such as the right to life and physical integrity in, for example, cases of domestic and other forms of violence, States parties are obliged to initiate criminal proceedings, bring the perpetrator(s) to trial and impose appropriate penal sanctions” (emphasis added).

In GR 35 (paragraph 32 (a)), the Committee recommends that States Parties “that the authorities adequately respond to all cases of GBVAW, including by applying criminal law and, as appropriate, ex officio prosecution to bring alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and imposing adequate penalties”.

When cases are addressed in court, the procedures should be gender-sensitive and child friendly and safeguard the victims (see GR 31, 33, 35 and 38). Fees or court charges should not be imposed on victims/survivors (GR 35, paragraph 32 (a)).

Joint recommendation 31 recommends limiting the number of time victims provide statements, and reducing contact between victims and perpetrators and ideally, they

193. Ontario Association for Family Mediation “Policy on Intimate Partner Violence and Power Imbalances”, (revised February 11, 2022), online: OAFM < oafm.on.ca/about/standards/policy-on-intimate-partner-violence-and-power-imbalances/ >.

194. The 519 “Access to Justice and Legal Initiatives” (N.D.P.), online: The 519 <<https://www.the519.org/programs/access-to-justice>> [<https://perma.cc/JX3A-XEDQ>].

195. Ibid.

196. Reference to the CEDAW, 18 December 1979, 34 UNTS 180 at art 5(a) (entered into force 3 September 1981) [CEDAW], art 2(e).

should not be face to face in court (paragraph 87 (d)). In the case of children, a litigation guardian should be appointed (especially where the perpetrator is a parent or legal guardian) and child victims should have access to adequate child-sensitive information about the process and fully understand what to expect.

In GR 31 the Committees call on States Parties to ensure that perpetrators and those persons who aid or condone such practices are held accountable (paragraph 55(o)).

The Istanbul Convention calls on parties to apply dissuasive sanctions for perpetrators, including imprisonment, extradition, monitoring and supervision, and withdrawal of parental rights (article 45). The Convention also calls on parties to implement legislation that allows victims to claim compensation from perpetrators of violence (article 30).

Treatment for perpetrators

In GR 35 the Committee does not call for treatment programs explicitly, but does recommend effective measures, including awareness raising for “perpetrators of any form of GBV, so as to prevent repeat offending.” (paragraph 30 (b) (ii)). GR 31 (paragraph 56) takes a similar approach (awareness raising for perpetrators).

The Istanbul Convention, in article 16, is more explicit. Parties to that Convention “shall take the necessary legislative or other measures to set up or support programmes aimed at teaching perpetrators of DV to adopt non-violent behaviour in interpersonal relationships with a view to preventing further violence and changing violent behavioural patterns”.

Training of criminal justice personnel

As mentioned above, GR 35 calls on States Parties to implement mandatory and ongoing training for “members of the judiciary, lawyers and law enforcement officers, including forensic medical personnel”, among others (paragraph 30 (e)). GR 31 recommends providing training to all law enforcement personnel on new and existing legislation prohibiting harmful practices and ensure they are aware of how prosecute perpetrators (paragraph 73 (c)).

The Istanbul Convention also mentions the importance of training professionals dealing with perpetrators (article 15).

Examples of responses in Southeast Asia

Criminal proceedings and sanctions

It is important to note that most countries apply their general criminal legislation to cases of GBV, thus there are often not specialized laws referencing crimes and sanctions for GBV.

The Philippines, in the Safe Spaces Act (2018), criminalizes gender-based sexual harassment (online and in public spaces). The Anti-VAW and Their Children Act of 2004 also sets out crimes and penalties.

In Korea, the Act on Special cases concerning the Punishment of Crimes of DV (2011), sets out criminal sanctions, although the violence is not defined as GBV.

In Thailand, the DV Victim Protection Act of B.E. 2550 (2007) has been enacted and part of what this Act did was to allow for DV cases to be treated as “compounding offence where the offender and victim can negotiate and settle the case without going to trial”.¹⁹⁷ If a compounding approach is applied, when an offender breaks the settlement a criminal trial is set in motion.¹⁹⁸ The authorities in Thailand have also altered the criminal process in relation to violence committed against women through the use of an Alternate Intelligence device called “Police Noi”. Police Noi “is a computer programme that [is] designed to give friendly answers to questions relating to VAW in all aspects, ranging from medical treatment to preliminary legal counselling and includes providing the contacts of various related agencies from which help can be sought”.¹⁹⁹ This allows victims to gain information and talk about their situation without having to come face-to-face with a stranger when they are in a position of vulnerability and fear and helps them to gain confidence to make official reports to police.²⁰⁰

Treatment for perpetrators

In Singapore, the family violence specialist centers provide interventions for perpetrators and their families including therapy and rehabilitation.²⁰¹

Training of criminal justice personnel

Training for police is provided by UN agencies such as UNFPA, UN Women, UNODC and OHCHR in the region, including in Viet Nam and Cambodia

Examples of responses internationally

Victim and gender-sensitive criminal proceedings and sanctions

In Brazil the Maria da Penha Law recognizes all forms of DV, provided for criminal penalties for acts of DV and establishes a specialized court to handle such cases. It

197. Santanee Ditsayabut “Thailand’s Effort to End VAW: One Form of Crime Motivated by Gender Discrimination” (2019) [unpublished] at 52, online (pdf): United Nations Asia and Far East Institute <unafei.or.jp/publications/pdf/RS_No108/No108_09_VE_Ditsayabut.pdf>.

198. Ibid.

199. Ibid at 55.

200. Ibid.

201. Supra ASEAN Plan of Action at 41.

protects formed and current spouses and partners as well as unmarried intimate partners and provides for protection orders.

In Barbados the DV (Protection orders) Act, provides for protection orders and enumerates the duties of members of the police force in responding to DV complaints.²⁰²

Brazil, Colombia, Mexico, Honduras, and Nicaragua: In Brazil, Colombia, Mexico, Honduras, and Nicaragua specialized LGBTI police units have been tasked with proactively guaranteeing rights of LGBT persons in their jurisdiction.²⁰³ Part of their mandate in this area is to foster educational programs and aiding in the formulation of public policies through bringing their knowledge and experience to light in public policy conversations.²⁰⁴

In 2007 the Canadian government has established the office of the federal Ombudsman for victims of crime to ensure victims of crime have access to federal programs and services for victims and to address complaints from victims. Victims of GBV can receive support from a specialized section using victim-centered and trauma-centered approaches to empower victims. The approaches involve creating a supportive environment where victims who are suffering feel confident and comfortable enough to come forward and seek the help they need. Therefore, Canada is developing a nationally consistent minimum standard of care for all the services provided for victims of GBV.²⁰⁵

Antigua và Barbuda “established a special court for sexual assault cases to fast-track the delivery of justice and offer support for victims and witnesses. This court will be supported by the Judicial Reform and Institutional Strengthening Project in collaboration with the Government and the Eastern Caribbean Supreme Court. The Sexual Offence Model will improve the guidelines for Sexual Offence Cases which prescribes best international practices.”²⁰⁶

Pakistan set up the first specialized Model GBV Court in 2017. The court follows the guidelines to be followed in cases of GBV. The overriding purpose for a GBV Court is to try and minimize distress to victims and enable them to give their best evidence, and at the same time ensure that fairness is given to the accused.²⁰⁷ The Court also provides a

202. Special Secretariat for Women's Policies, Brazil “Maria da Penha Law” (2006) at 10, online (pdf): <assets-compromissoe-atitude-ijg.sfo2.digitaloceanspaces.com/2012/08/SPMlawmariapenha2006.pdf>.

203. Supra Violence Against LGBTI at 249.

204. Ibid.

205. Status of Women Canada “Supporting Victims of Gender-based violence in the Criminal Justice System” (September 2016), online: Government of Canada <victimsfirst.gc.ca/vv/FSAGV-SVVFS/index.html>.

206. Ismail Akwei “Antigua and Barbuda islands to set up special courts for sexual assault cases” (January 16, 2018), online: Face 2 Face <face2faceafrica.com/article/antigua-barbuda-islands-set-special-courts-sexual-assault-cases>.

207. Asian Development Bank “Court Companion on Gender-Based Violence Cases” (September 2021) at 131, online (pdf): ADB <adb.org/sites/default/files/publication/735941/court-companion-gender-based-violence-cases.pdf>.

“Female Support Officer” who is designated trained employee of the court to meet and escort the victim.²⁰⁸ Additionally, the GBV Court design provides a safe space for victims during testimony, as the accused is not visible for the victim.²⁰⁹

In Ontario, Canada there has been an introduction of Integrated DV Courts (IDVC). These courts set up one hearing where a single judge will hear a case which involves both a family law matter (which does not include divorce, family property, or child protection) and where there have also been summary criminal DV charges laid.²¹⁰ These Courts allow for more support to be given to victims and they help to fill the gaps between knowledge of family court and criminal court judges by allowing one judge to hear the entire presentation of evidence removing the isolation of information between cases.²¹¹ This method also uses the increased use of integration programs for the abusers and the result of these programs is a greater rate of convictions and pleas of guilt.²¹² One study examining the Ontario IDVCs showed that there was no difference between IDVC and the use of interventionist programs such as the Partner Assault Program. Comparing those using the IDVC courts and those using separate family and criminal courts, the individuals involved in the IDVC courts were 33.7% more likely to actually complete the Program.²¹³ The same study also found that the number of appearances that individuals make in courts IDVCs was the same for family portion and fewer for criminal courts, thus in total these programs were more efficient which also makes it less costly.²¹⁴

In Guatemala specialized courts throughout the country in order to address femicide and DV in the country and the shockingly low historic conviction rates for these crimes.²¹⁵ Courts including Tribunal de Sentencia Penal de Delitos de Femicidio y Otras Formas de Violencia Contra la Mujer have been set up to address these issues. Most judges on these cases are women and have received some specialized training on GBV and the law surrounding it in the country.²¹⁶ These courts are also specifically designed to increase access to justice for those involved in the process by setting up daycares for children of women who are testifying; these practices acknowledge that financial

208. Ibid at 134.

209. Ibid at 135.

210. Rachel Birnbaum et al, “Canada’s First Integrated DV Court: Examining Family and Criminal Court Outcomes at the Toronto IDVC” (2017) 32 J Fam Viol 621 at 621.

211. Ibid.

212. Ibid.

213. Ibid at 625.

214. Ibid at 627.

215. Catherine Withrow & Kristen Walker, “Fighting Femicide: Making Courts Work for Women” (1 December 2021), online: Dexis <dexisonline.com/insights/fighting-femicide-making-courts-work-for-women/> [<https://perma.cc/V4V6-PNAY>].

216. Louisa Reynolds, “New Femicide Courts Seek to End Gender Violence in Guatemala” (July 19, 2012) at 2, online (pdf): Digital Repository <<https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=10988&=&context=noticen&=&sei-redir=1&referer=>>

constraints of childcare can inhibit access to justice.²¹⁷ Further, they provide access to services such as counseling and therapy before hearings and social workers to assist in the process of finding shelter to women involved in the process.²¹⁸

Treatment for perpetrators

In North Macedonia the regional UN Women-EU Ending VAW Programme supported direct services to women, including psycho-social services to women and perpetrators provided by the Health Education Research Association.²¹⁹

United States: In the United States, there has been increased use of court-mandated counseling for those individuals charged with domestic assault; these programs are typically referred to as spouse abuse abatement programs or batterer intervention programs.²²⁰ There have been diverse forms of intervention strategies offered in the United States though research from 2004 found the results of the programs not to be positive with the programs having little impact on offenders' behaviours or attitudes.²²¹

Kosovo*: In Kosovo, the use of treatment programs for perpetrators of DV are becoming more commonplace. In the city of Gjakova their Safe House has been used as treatment programs. When a perpetrator has been sentenced using alternative measures, they are usually eventually referred to the Safe House which have, among other things, councillors with specialized DV training.²²² After conducting research on the Safe House and other treatment methods in Kosovo the Council of Europe found that with further professional training and consistent guidelines including possible licensing criteria for those involved in counselling process that these treatment methods can be consistently successful.²²³

Training of criminal justice personnel

In Canada in 2017 an increased budget was provided to the National Judicial Institute to develop training for federally and provincially appointed to judges. The training has

217. Ibid.

218. Ibid.

219. <https://hera.org.mk/servisi/prv-semeen-centar/?lang=en>. See UN Women "Evaluation of Ending VAW in the Western Balkans and Turkey: Implementing Norms, Changing Minds" at p. 48.

220. Lynette Feder & Laura Dugan, "Testing a Court-Mandated Treatment Program for DV Offenders: The Broward Experiment" (2004) at 4, online (pdf): National Institute of Justice <ojp.gov/pdffiles1/nij/199729.pdf> [<https://perma.cc/Z8A5-JDNE>].

221. Ibid at 6.

* References to Kosovo shall be understood in the context of UN Security Council Resolution 1244 (1999)

222. Cristina Oddone, "Setting up Treatment Programmes for Perpetrators of DV and VAW" (2021) at 20, online (pdf): Council of Europe <rm.coe.int/research-on-perpetrator-treatment-programmes-kosovo-eng/1680a24362> [<https://perma.cc/44EV-8Z67>].

a focus on GBV, including sexual assault and DV. Furthermore, to strengthen the federal judicial, 60% of federally appointed judges have to be women.²²⁴

Spain has the “Comprehensive Law of protective measures against GBV related to couples”, which reinforced the judicial responses with specialized bodies and prosecutors. “Specific courts are created and continuous training of judges is carried out. This encompasses knowledge of the causes, signs and effects of this violence”. As part of their judicial measures, they have restraining orders, victims receive a judicial response to their application of protection in 72 hours.²²⁵

In Mexico, UNODC supported capacity building for prosecutors and judges in prosecuting VAW and providing assistance to victims. A project also was established to develop capacities in 19 Mexican states of first response police officers and emergency services of the federal police for victims of GBV.²²⁶

Republic of Moldova: In the 2008 National Human Rights Action Plan, the Republic of Moldova included measures to ensure that all law enforcement officers have been trained in sensitivity for violence motivated by SOGIE.²²⁷

Belgium: The police force arranged training for its officers in conjunction with a transgender organization to ensure respect for the rights of trans persons.²²⁸ This training included taking a trans-sensitive approach to receiving complaints and police searches.²²⁹

Various countries. The Council of Europe has supported various countries in their efforts to address domestic and GBV. In countries such as Armenia, Azerbaijan and Georgia, project activities have included training for criminal justice officials and social workers.²³⁰ A comprehensive training of trainers’ manual prepared by the Council of Europe was used for this purpose.²³¹

223. Ibid at 7.

224. Department of Justice Canada “Government of Canada announces measures to combat gender-based violence” (April 26, 2017), online: Government of Canada <[canada.ca/en/departement-justice/news/2017/04/government_of_canada_announcesmeasurescombatgender-basedviolenc.html](https://www.canada.ca/en/departement-justice/news/2017/04/government_of_canada_announcesmeasurescombatgender-basedviolenc.html)>.

225. Imnaculada Montalban Huertas “Access to Justice of Victims of Gender-Based Violence Spain” at 4, online (pdf): OHCHR <[ohchr.org/sites/default/files/documents/HRBodies/CEDAW/AccessToJustice/SpanishGeneralCouncilForTheJudiciary.pdf](https://www.ohchr.org/sites/default/files/documents/HRBodies/CEDAW/AccessToJustice/SpanishGeneralCouncilForTheJudiciary.pdf)>.

226. UN Office on Drugs and Crime “UNODC strengthening of police responses to gender-based violence in Mexico proven to have strong positive impact” (July 2020), online: UNODC <[unodc.org/unodc/en/drug-trafficking/crimjust/news/unodc-strengthening-of-police-responses-to-gender-based-violence-in-mexico-proven-to-have-strong-positive-impact.html](https://www.unodc.org/unodc/en/drug-trafficking/crimjust/news/unodc-strengthening-of-police-responses-to-gender-based-violence-in-mexico-proven-to-have-strong-positive-impact.html)>.

227. United Nations “Living Free & Equal” (October 2016) at 65, online (pdf): OHCHR <[ohchr.org/sites/default/files/Documents/Publications/LivingFreeAndEqual.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/LivingFreeAndEqual.pdf)>.

228. Ibid at 27.

229. Ibid.

230. Supra Building and Cooperation Projects at 3.

231. Supra Law Enforcement Training Manual at 26.



4. Recommendations

4.1 Definitions in the Law

Redefine gender and define GBV in the GE Law

Gender is currently defined in the law in section 5 (1): “Gender indicates the characteristics, positions and roles of man and woman in all social relationships.”

Viet Nam should consider expanding the concept of gender and GBV when amending the Law on GE:

- I. Ensure the law explicitly advances the equality of women and GBV and harmful practices perpetrated against women. The CEDAW Committee’s definition of GBVAW, in GR 28, states “violence that is directed against a woman because she is a woman or violence that affects women disproportionately”.
- II. Adjust the law in keeping with the trend in gender theory and emerging international human rights analysis by defining gender more broadly and not as sex at birth or as a binary concept. Gender is a social construct and thus it is increasingly accepted that: gender and sex assigned at birth are not the same concepts, and gender identity is integral to gender.
 - A broader definition on gender in the GE Law could be “...discrimination impacting persons because of their real or perceived sexual orientation, gender identity and/or expressions”.²³² This allows GBV to include violence perpetrated against individuals because of stereotypes and prejudices deeply rooted in the roles that society has imposed.
 - Define GBV in the GE Law as physical, economic, emotional or sexual violence occurring in any sphere, including online cyber harassment, that is directed against a person on the basis of gender or sex, including violence based on prejudices concerning gender relations and SOGIE. This definition is based on UNHCR’s definition of GBV as “violence that is directed against a person on the basis of gender or sex”. GBV includes physical, economical, emotional, and sexual violence and occurs in different spheres: family sphere (gender-based DV, gender-based intimate partner violence, etc.); social sphere (rape; sexual abuse; sexual harassment and intimidation at work, in educational institutions, and elsewhere; trafficking in women and forced/coerced sex work, etc); and violence by the State’s bodies or State’s officials.²³³ This definition includes those core elements of GBV mentioned in Section 3: (i) the

232. Victor Madrigal-Borloz, Independent Expert, “Reports on Gender: The Law of Inclusion and the Practices of Exclusion” Summary of the reports, (2021).

233. UNHCR 2003. Available at: <http://www.unhcr.org/4371faad2.pdf>. The definition is based on Articles 1 and 2 of the UN General Assembly Declaration of the Elimination of VAW (1993) and Recommendation 19, Paragraph 6, of the 11th session of the CEDAW Committee.

remit of GBV includes all groups of victims including women and girls who experience more violence; (ii) the recognition of the fundamental drivers of GBV introduced by CEDAW – inequitable gender relations expressed through norms, attitudes and social behaviours; (iii) the underlying rationale of the violence; (iv) the type of conduct considered “all forms of violence”; (v) the sites of violence and also the types of perpetrators in those sites. Thus, the proposed definition is broad and contextual, recognizing the many forms and guises through which GBV is manifested.

4.2 Define harmful practices in Viet Nam

Add the definition of harmful practices in the GE Law using definition in GR 31 “Harmful practices are persistent practices and forms of behaviour that are grounded in discrimination on the basis of, among other things, sex, gender and age, in addition to multiple and/or intersecting forms of discrimination that often involve violence and cause physical and/or psychological harm or suffering.”²³⁴

- Add definitions of harmful practices affecting GE in Viet Nam (without excluding other potential practices), following GR 31, such as forced or early marriage and son preference and GBSS. As emphasized in Section 3, practices should meet the following criteria to be regarded as harmful:²³⁵ denial of the dignity and/or integrity of the individual and a violation of the human rights and fundamental freedoms; negative consequences for victims as individuals or groups, including physical, psychological, economic and social harm and/or limitations on their capacity to participate fully in society or develop and reach their full potential; perpetuating male dominance and inequality of women and children, on the basis of sex, gender, age and other intersecting factors; they are imposed on women and children by family members, community members or society at large.

4.3 Reporting and referral mechanisms related to Gender-based violence and Harmful practices

In the Law or other legal normative documents (LNDs):

- Clarify that GBV motivated by prejudice or bias based on gender and SOGIE, that involves physical or sexual assault causing physical injury should be addressed as criminal matters and should be reported to the police. (See more in 4.6. Response to Perpetrators).

234. Supra GR 31 at 5.

235. Ibid at paragraph 16

- Assign responsibilities to ensure data on GBV and specific harmful practices will be tracked in an inter-agency statistical system as recommended by the CEDAW Committee in its GR 35, paragraph 34 (e.g., MOLISA, MOCST, the police, the health sector, local government, Women’s Union). Other agencies and organisations should collect and send data on GBV to the LISA sector at all levels up to the MOLISA.²³⁶ The regular collection of statistics gathered by these agencies is a critical starting point for developing a comprehensive national GBV database, based on the compilation of each sector’s data. The data would help evaluate the effectiveness and efficiency of the prevention and response to GBV, as well as providing evidence for policy and law making.
- Require individuals, survivors or third-party bystanders and professionals, to report incidents of GBV perpetrated by individuals in the private sphere to the police or other responsible agencies such as the the Inspectorate, local People’s Committees. Adequate documentation of such violence should respect survivors’ privacy and right to confidentiality and with the free and informed consent of the victims/survivors.
- Clarify the mechanism for reporting GBV and harmful practices perpetrated by state officials to a single agency such as MOLISA and involve a mass social organization such as the Women’s Union.
- Define an inter-agency coordination mechanism for GBVAW or GBV and specific harmful practices to be overseen by one agency, such as MOLISA.
- Establish, pilot and deploy the National Hotline on Prevention and Response to GBV. Hotline services become very important for providing psychological support as well as identifying safe solutions for violence survivors. GBV survivors are consulted to assess the needs of support and are connected to appropriate psychological counselling, medical, judicial, and social services. They also receive advice about skills needed to respond to violence and are provided with necessary support information and addresses to contact in urgent case. As the case of Sunshine House showed, one of the effective solutions is to promote the hotline number via SMS messages to 14 million mobile subscribers.
- In supplementary LNDs set out requirements for a community-based inter-agency referral and coordination mechanism (see more below in Protection).

236. This could be a suitable option taking into account the experience of MOCST system of reporting information and statistic data from the commune level up to the Ministry, as well as experience of Quang Ninh, where all related agencies and organizations shall collect, compile data on GBV and send them to LISA sector from commune level up to the provincial DOLISA.

4.4 Prevention related to Gender-based violence and Harmful practices

In the Law and other LNDs:

- Clarify that GBV and harmful practices prevention efforts should address the root causes of the practice (patriarchal attitudes that privilege men and masculine traits).
- In the law or supplementary LNDs ensure prevention initiatives include data collection and gender-based research on GBV and harmful practices in government agencies, compulsory training for public officials, mandatory and paid education for girls, mechanisms to ensure women's participation in all fields.

Programmes to prevent GBV or GBVAW and harmful practices.

- Develop data collection and research initiatives within all relevant ministries and mass organizations to ensure prevention initiatives are designed based on evidence related to GBV and harmful practices. Ensure ministries are collecting data on GBV and harmful practices based on the same variables.
- Develop campaigns and communication materials perspectives of victims of GBV and harmful practices to promote the importance of eliminating GBV and harmful practices.
- Coordinate with the Ministry of Education and Training to develop campaigns, training and ensure that curricula eradicate stereotypes and change social norms through rights-based education.
- Continue expansion of interventions that engage men and boys as a critical component of an overall strategy addressing the multiple forms of GBV and harmful practices. Men and boys should be considered as not only actual or potential perpetrators of GBV, but also as victims, survivors and agents of change to prevent this type of violence.
- Design specialized training programs on gender, GBV and harmful practices for public officials that have direct contact with survivors and perpetrators, based on their professional responsibilities.

4.5 Protection and response mechanisms to respond to Gender-based violence and Harmful practices

In the Law and supplementary LNDs:

- Include a provision that defines the protection measures to be offered by specific agencies in a coordinated manner at the decentralized levels to victims of GBV and harmful practices. Such measures should include risk assessment, safe houses, counselling, legal, medical, and financial support. This could include:
 - A provision that victims of GBV and harmful practices should be provided a free legal aid. The Law on Legal Aid then should also be amended accordingly.

- Paid leave from work calculated on actual number of days they require for medical treatment and other procedures.
- Piloting models of employment and financial support, such as free job skills training for some groups of GBV survivors.

Programming:

- Adopt a multi-agency service model, such as the Social Work center implemented in Quang Ninh province, that provides referral, coordination, and protection services to survivors of GBV. As presented in Section 3, this is a suitable for Viet Nam policy option, because Social Work Centres in provinces have many years of experience in providing counselling and support for vulnerable people, staff qualified to advise on policy matters for DOLISA and Provincial People's Committees, well-equipped to meet the requirements of the provision of essential services to GBV survivors, a hotline available to support disadvantaged groups. In order to ensure the sustainability of the model, technical assistance, a budget allocation mechanism, and policy support from both central and local governments is required. It is very important that Decision No. 2232/QĐ-TTg²³⁷ clearly state the solutions on maintaining, replicating and improving the effectiveness of models and service providers to prevent and respond to GBV. According to the Decision, the state budget for models like Sunshine House shall be included in the annual estimates of ministries, agencies, central agencies and localities in accordance with the Law on State Budget. The MOLISA has also planned to incorporate the model scale-up into the sector's strategy in order to expand the network and area of service delivery and enhance service quality.
- Train police, social workers and others in direct contact with survivors of GBV on risk assessment procedures to ensure violence does not escalate and to plan for the security and support services for victims/survivors. Particularly, build the capacity of social workers, especially at the grassroots level, who directly support GBV survivors on knowledge of GE, GBV, Viet Nam's legal and policy system, skills in counselling and working with GBV survivors, and case management. Health workers need to be trained with skills in detecting violence incidents and providing care for survivors.

4.6 Response to Perpetrators

In the law or supplementary LNDs:

- Amend the GE Law to clarify that serious physical and sexual forms of violence that are motivated by bias or prejudice based on gender, gender identity or

237. Decision No. 2232/QĐ-TTg dated 28 December 2020 on "Approval of the Programme on Gender-Based Violence Prevention and Response in the 2021-2025 period".

sexual orientation are criminal in nature and will be sanctioned according to the Criminal Code.²³⁸ This would form a firm legal basis to repeal and promulgate criminal legislation that includes provisions to ensure all related forms of physical and sexual GBV - depending on the degree of violence - can be dealt with, and sanctioned, by the criminal justice sector.

- Mediation between the perpetrator and victim should not be used in most cases of GBV, especially where the victim cannot freely participate without fear of reprisals by the perpetrator, as pursuant to GR 35. This recommendation also is based on the lessons learned from DVPC Law implementation, where the focus on mediation found ineffective.
- Consider whether harmful practices, specifically sex selective abortion and early, child and forced marriage, will be criminalized or whether administrative sanctions and professional disciplinary action will continue to be used as deterrents, along with prevention efforts. The consultants recommend criminal sanctions for sex selective abortion providers and adults arranging early or child marriage.
- Require mandatory counselling and rehabilitation programs for perpetrators of GBV, GBVAW and harmful practices to ensure they are also aware of why GBV and harmful practices are negative.

4.7 Roles and Responsibilities

- Amend the GE Law to clearly define the roles and responsibilities of government agencies regarding prevention, protection, criminal and administrative sanctions, reporting and referral mechanisms are clear and coordinated among MOLISA, Ministry of Health, MOCST, the Police, the Procuracy, the Court, MOJ, local governments, Women's Union, the Viet Nam General Confederation of Labour, the Chamber of Commerce and Industry, and other possible stakeholders. Assigning responsibility to a single agency would facilitate the coherence and coordination that includes all forms of GBV, with adequate resources across laws, policies and interventions for an effective multi-sectoral response and monitoring authority.
- MOLISA should be a primary responsible agency for this issue as the responsibility for implementing the GE Law and its implementing framework sits with the

238. Vietnamese law has the Penal Code and other laws dealing with criminal issues such as crimes, levels of punishment, enforcement, etc. The GE Law does not regulate these issues, but only states the principle of criminality of GBV acts, thus provides foundation for criminal laws to deal with.

MOLISA, while multiple ministries are involved in implementation of different laws addressing GBV. Particularly, MOLISA has been assigned by different Decisions of the Pre-Ministry the responsibility to carry out a number of Plans and Programmes on GBV prevention and response.²³⁹

- At the provincial level, DOLISA can act as a focal point to provide advice to the provincial People's Committee in coordinating GBV prevention and response efforts. It can be learned from Quang Ninh to promulgate the Inter-sectoral Coordination Regulation on GBV prevention and response.²⁴⁰ MOLISA and other central-level sectoral ministries need to provide guidelines on cooperation mechanisms to facilitate the implementation of local governments.

239. Decision No. 622/QĐ-TTg of the Pre-Ministry on Approval of the National Plan for the Implementation of the 2030 Sustainable Development Agenda; Decision No. 681/QĐ-TTg on the Roadmap for the Implementation of Viet Nam's SDGs to 2030 have assigned the MOLISA with the responsibility to implement Target 5.2: Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation; Decision No. 1464/QĐ-TTg on the Approval of the Project on Gender-Based Violence Prevention and Response in the 2016-2021 Period with the Vision to 2030; Decision No. 2232/QĐ-TTg on the Approval of the Programme on Gender-Based Violence Prevention and Response in the 2021-2025 period.

240. Decision No. 2996/QĐ-UBND of Quang Ninh People Committee dated September 06 2021 to Issue the Regulation on Inter-sectoral Coordination Mechanism in GBV, Child Abuse Prevention and Control in Quang Ninh. <https://drive.google.com/file/d/1qPkxP9pLiyFKCYl66Vte1MkCP3G8Lbih/view>.



ANNEX

Annex A: Brief review of the Legal and Policy Framework on Gender-based violence and Harmful practices

Within the scope of this report, the following LNDs are reviewed: The Constitution of 2013; The Law on GE; Criminal Code; Administrative Laws and Decrees setting out administrative fines to violations relating to GBV and harmful practices; Law on Legal Aid; Population Ordinance and its Decrees; DVPC Law; other LNDs relating to specific forms of GBV and harmful practices, etc. Some high-level policies that will be reviewed include: The National Strategy on GE 2021-2030, Programme on Prevention and Response to GBV for the Period of 2021 – 2025, the Communist Party Resolution 21 of 2017 on Population in the New Situation, etc.

(1) Constitution, 2013

The Constitution of 2013 provides the overarching legal framework for GE, including in the area of GBV and harmful practices. GE is explicitly stated in Article 26 of this Constitution: “Male and female citizens have equal rights in all fields. The State shall adopt policies to guarantee the right to and opportunities for GE... The State, society and family shall create the conditions for women to develop comprehensively and to advance their role in society... Gender discrimination is prohibited.” Other provisions of the Constitution of 2013 that protect rights and interests related to GE, as well as protections and responsibilities that correspond to GBV and GBSS issues.

(2) Law on GE

The Law on GE addresses discrimination in social and economic fields. The Law prohibits all forms of discrimination based on gender and GBV in article 10. In article 40 (7) (b)) of the Law it states that sex selection or encouraging another person to have a sex-selective abortion is a violation of GE in the field of public health. In article 41 (3) the Law states that treating members of the family unfairly because of their gender is a violation.

(3) DVPC Law

The newly promulgated DVPC Law, passed by the NA in November 11, 2022 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. The DVPC Law has six chapters:

Chapter 1 contains general provisions defining the scope of the law, defines acts of DV, and presents guiding principles or objectives for DVPC, rights and obligations of survivors, perpetrators, and various institutions assigned prevention and control responsibilities. In Article 3 (1) there are 16 types of DV acts.

Chapter 2 details the actions to be taken for the prevention of DV and general response to cases of DV. First, guidance on information and communication on DVPC is set out. Subsequently, principles and responsibilities for the reconciliation and counselling of family members in relation to DV (termed conflicts and disputes among family members) are set out.

Chapter 3 provides guidance to institutional stakeholders in the protection and assistance they are obligated to provide to victims of DV, particularly reporting and denouncing DV acts; prevent DV acts and protect, support survivors. The principle measure for protection is a no-contact order between the perpetrator and victim upon decision of the appropriate state authority (commune People’s Committee or court). DV will be sanctioned as a civil, administrative, or criminal matter, depending on the severity of the violence. Assistance to victims includes health care, counselling,

and temporary housing (shelters or reliable addresses) by social protection centers, individuals, organizations and counselling centers.

Chapter 4 set out enabling conditions for DVPC, including financial sources, database on DV, Inter-sectoral coordination, training in knowledge, skills about DVPC.

Chapter 5 provides on the State management and specific responsibilities for the state agencies, including the Government, various Ministries, and related organisations.

Chapter 6 is about enforcement, very briefly states the date the law becomes effective (July 1, 2023) and amends Article 135 of the Civil Procedure Code.

(4) Legal Provisions on Sanctions relating to GBV and harmful practices

Viet Nam's legal system contains many provisions on sanctions relating to GBV and harmful practices, including criminal and administrative sanctions. In particular, Criminal Code and Criminal Procedures Code have various Articles dealing with acts that indirectly relate to GBV and harmful practices, as well as protecting victims of the violence acts. Specifically the Criminal Code in Article 165 provides on "the crime against GE". The Decree detailing administrative sanctions in the field of GE identifies the monetary sanction for "Inciting others to make gender-based abortions".

(5) Other LNDs

The Law on Prevention and Suppression of Human Trafficking defines human trafficking acts, measures of the prevention and suppression of human trafficking; establishes guidelines for the receipt, reintegration and support of trafficked persons and detailed agencies responsible for implementation.

The Labour Code was amended in 2019 to specifically address sexual harassment in the workplace through various Articles, for example, prohibition of sexual harassment, employees' right to unilateral termination, prohibition of mistreatment, etc.

Population Ordinance and other related provisions: GBV is implicitly integrated in the Ordinance. Obstructing or forcing family planning and selecting the gender of an unborn fetus are two of the prohibited acts identified in article 7(2) of the Population Ordinance.

While the Ordinance recognize rights related to family planning, specifically to provides individuals and couples with ability to voluntarily decide on when to have children, the number of children and the spacing of children, other provisions of the Ordinance and subsequent amendments to article 10 are more restrictive. However, the amendments to article 10 states that families should have one or two children "except particular cases

stipulated by the Government". In addition, Article 27 of Decision 102 of the Party²⁴⁰ imposes different discipline measures for Party members if they have more than two children.

Law on Legal Aid: Gender related criteria, including DV, and other factors related to socio-economic disadvantage are considered in the Law. In accordance with Article 7 of the Law on Legal Aid of 2017, a number of persons are entitled to free legal aid including: people in poor households; children; ethnic minority people permanently residing in areas with exceptionally difficult socio-economic conditions; elderly people; disabled people; victims in family DV cases; victims of human trafficking cases as specified in the Law on human trafficking prevention and combat.

(6) National Strategy on GE

The National Strategy on GE (GE Strategy) for the 2021-2030 period includes objectives that are relevant to this review of public policies to address GBV and harmful practices like GBSS. Specific Objective 4 of the Strategy sets out targets that relate to the elimination of some forms of GBV and SRB:

- Target 1: The gender ratio at birth will not exceed 111 male infants/100 female infants by 2025 and 109/100 by 2030.
- Target 3: Percentage of giving birth during teenage years reduces from 23 cases/1,000 women to 18 cases/1,000 women by 2025 and below 18 cases/1,000 women by 2030.
- Target 4: Percentage of provinces and central-affiliated cities that have at least one medical establishment providing pilot healthcare services for homosexual, bisexual and transgenders reaches 40% by 2025 and 70% by 2030.

In specific objective 6 the GE Strategy seeks to: ensure GE in family life, gradually eliminating GBV. By 2025, 80% of women suffering from domestic and GBV will be given access to at least one of the basic support services, and the figure is expected to reach 90% by 2030.

(7) Programme on Prevention and Response to GBV for the Period of 2021 – 2025

The Programme sets out targets for 2025:

- At least 50% GBV survivors will seek the support from agencies providing services of prevention and response to GBV.
- 100% of GBV survivors who need to be supported will get the support in different forms.

240. Communist Party of Viet Nam, Decision 102, 15 November 2017.

The Programme sets out targets for 2025:

- To maintain, expand, and enhance the effectiveness of facilities that provide services of prevention and response to GBV.
- Training, capacity development for people who work in the field of GBV.
- To enhance the control, supervision, evaluation of activities relating to the prevention and response to GBV

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