

# GENDER-BASED VIOLENCE: SOME ASPECTS ON THE LAW AND POLICY IN VIETNAM

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**Abstract:** To recognize more clearly Vietnam's laws and policies for prevention of gender-based violence, the paper focuses on some issues, including: concepts relating to gender-based violence; content and scope of the current policies involved with types of gender-based violence within family and community (such as trafficking in women and children, prostitution, and sexual abuse). Based on the viewpoint of prohibiting strictly acts of gender-based violence, Vietnam government has made a lot of efforts for the past years to build a legal framework and deal with acts that are manifestations of gender-based violence. However, there are still loopholes in the system of existing laws and policies. There has not been yet a clearly specific definition of gender-based violence as well as detailed regulations on specific manifestations of gender-based violence. Besides, it is necessary to pay attention to some other factors such as cost, coordination, supervision, and database of gender-based violence, when carrying out policy implementation.

**Key words:** Gender-based violence, abuse, harassment, trafficking.

## 1. The concept of gender-based violence

The term gender-based violence (GBV) is generally used to distinguish common violence from violence that targets individuals or groups of individuals as a result of the unequal power relationships between different genders. Not only women and girls, but also men and boys can be victims of this type of violence.

*United Nations High Commissioner for Refugees (UNHCR 2003)* used the term "gender-based violence" according to the Articles No.1 and No.2 of the Declaration on the Elimination of Violence against Women in 1993 and the General Recommendation No.19, Part VI of the 11<sup>th</sup> Session of

CEDAW Committee. Thus, *gender-based violence means the violence directed at a person on the basis of the gender or sex. It includes any act that inflicts physical, sexual or psychological harm, threats of such acts, coercion or arbitrary deprivation of liberty of the person...*

Gender-based violence is understood to encompass, but not be limited to, the following:

a) Physical, sexual and psychological violence occurring in the family, including battering, sexual exploitation, sexual abuse of children in the household, dowry-related

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violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.

b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.

c) Physical, sexual and psychological violence perpetrated or condoned by the state and organizations, wherever it occurs. For example, women are prevented from voting, driving or participating in the labor market.

Although men and boys may be sometimes victims, women and girls make up a dominant proportion of gender-based violence victims. In some cases, damage caused by gender-based violence can be devastating, both materially and spiritually, such as cost of healthcare, damage of household assets, and loss of earnings etc...

According to some scholars, there are four factors leading to gender-based violence, including: (1) economic inequality; (2) use of physical violence in handling a conflict; (3) men's domination and control over decision-making; (4) Limitation of women's opportunity to take part at work in society (*Bernedette Muthien & Helene Combrinck, 2011*).

Violence against women is one type of gender-based violence. In reality, women and girls are the majority of those, who have been at the highest risk and most impacted by gender-based violence; therefore, the terms "violence against women" and "gender-based violence" are often used the

same in many documents.

Until now, the definition of gender-based violence has not been yet described officially in legal documents of Vietnam. The term "gender-based violence" was mentioned in the Law on Gender Equality in 2006<sup>(1)</sup>; however, this type of acts was never defined before. In addition, acts of gender-based violence in family were also defined in the Article No.46 of the Law on Gender Equality in 2006. Although a formal definition of gender-based violence is not described basically in the existing policies in Vietnam, the concept of gender-based violence is commonly understood the same as the definition given by the United Nations.

## **2. Legal framework and policies on issues of gender-based violence in Vietnam**

Vietnam government is viewed as a regional pioneer in building laws and policies that promote gender equality and eliminate violence against women. It approved of the CEDAW Convention in 1982 and signed many international agreements and conventions on human rights relating to gender-based violence. Vietnam's efforts to perform and report the implementation of CEDAW Convention as well as the Millennium Development Goals have made a contribution into setting up a legal framework that aims at dealing with gender-based violence (UNFPA, 2012), although it has not yet issued any general legal regulations on gender-based violence.

From 2004 up to now, a lot of important

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<sup>(1)</sup> Specifically, "gender-based violence" is mentioned as one of the prohibitive acts in the Article No.10.

legal documents relating to gender-based violence have been approved; for example, the National Program for Prevention of Trafficking in Women and Children in 2004, the Law on Gender Equality in 2006, the Law on Prevention of Domestic Violence in 2007, the Action Plan on Prevention of Domestic Violence by the Ministry of Culture, Sports and Tourism for the period 2008 – 2015, etc... These legally normative documents made a significant contribution into improvement of the legal framework and policies involved with gender-based violence in Vietnam.

In the following part, we will describe Vietnam's legal regulations and policies on manifestations of gender-based violence. The manifestations of gender-based violence are divided into two major groups: gender-based violence in family (domestic violence, forced marriage, selection of sex for the embryo to be born, etc...) and gender-based violence in community (trafficking in women and children, sexual harassment, prostitution, etc...).

### ***2.1. Laws and policies on gender-based violence in family***

#### ***Prevention of domestic gender-based violence***

Legal regulations on domestic violence are expressed in the Law on Domestic Violence Prevention (2007) and other documents, such as: the Law on Gender Equality (2006), the Civil Code (1995), the Criminal Code (1999), the Law on Marriage and Family (2000), the Law on Child Protection, Care and Education (2004)...

The Law on Prevention of Domestic Violence provides a definition of domestic

violence and shows nine types of domestic violence acts (Articles No.1 and No.2). Vietnam's legal regulations on domestic violence were built on the basis of combining and synchronizing different measure to prevent and deal with domestic violence, in which precautionary measures play the key role; propaganda and education on family issues are attached with particular importance; and, consultancy and negotiation are made suitably with traditional values of Vietnamese national culture and customs.

#### ***- Legal regulations on prevention of domestic violence***

According to the laws, prevention of domestic violence consists of following activities: disseminating information about prevention of domestic violence; negotiating contradictions and conflicts between family members; and, giving advice, assessment, and suggestions on domestic violence in communities. Article No.11 of the Law on Prevention of Domestic Violence identifies rather clearly types of communication for domestic violence prevention<sup>(2)</sup>.

#### ***- Sanctions to deal with acts that violate the Law on Prevention of Domestic Violence***

Regulations on sanctions against those

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<sup>(2)</sup> Direct communication; communication via the mass media; communication combined with teaching and learning at educational places of the national system of education; communication via literature, arts, community activities, and other types of public cultural activities. When family members have a contradiction or a dispute, the family is responsible for learning about it and making negotiations. Only when the family cannot negotiate the contradiction/dispute or when the family asks for assistance, should the family-line or relevant institutions/organizations take part in making a negotiation.

who violate the Law on Prevention of Domestic Violence are described in Articles No.42 and No.43. According to these articles, those who have violated the Law will suffer administrative penalties or will be imputed with the blame for a criminal liability, depending on the extent of the violation. Administrative penalties for acts of domestic violence are specifically described in the Decree No.110/2009/NĐ-CP. Criminal liabilities for acts of domestic violence are described in detail in many articles of Chapter VII of the Criminal Code.

- *Legal regulations on protection and help for victims of domestic violence*

According to the Law on Prevention of Domestic Violence, victims of domestic violence are protected from acts of domestic violence through following measures: Forcing those who caused the violence to stop immediately such acts; Giving emergency aid to the victims of domestic violence; Imposing administrative penalties or carrying out the criminal procedures on those who have acts of domestic violence; and prohibiting those who have acts of domestic violence from contacting others. In addition, victims of domestic violence receive support for medical care, consultancy and basic needs.

- *Prevention of unsound customs that cause harm to women, such as: child marriage, forced marriage, and selection of sex for the embryo to be born.*

The Law on Marriage and Family regulates clearly the concept of “forced marriage” and “child marriage”<sup>(3)</sup>. Article No.146 of the Criminal Code describes regulations on

the offences for forcing a marriage or blocking a voluntary marriage and progress.

Selection of sex for the embryo to be born is also legally prohibited. This is shown clearly in the Population Decree (2003) and the Law on Gender Equality (2006)<sup>(4)</sup>.

## ***2.2. Laws and policies on gender-based violence in community***

Common types of gender-based violence in community include: rape, sexual harassment, trafficking in persons, and forced prostitution. This part is focused on types of trafficking in women and children, prostitution and sexual harassment.

*Prevention of trafficking in women and children*

Trafficking in women and children is prohibited. It, however, still takes place in Vietnam and abroad as well. The Action Plan for Prevention of Trafficking in Women and Children for the period 2004 – 2010 shows that thousands of Vietnamese women and children have been victims of

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<sup>(3)</sup> “Forced marriage is an act that forces others to get married against their will” (Article No.8, the Law on Marriage and Family). A marriage is considered a child marriage, when the groom or the bride or both of them gets married at the age younger than the legally marital age (20 or above for men; and 18 or above for women) (Article No.8, the Law on Marriage and Family).

<sup>(4)</sup> Term 2 in Article 7 of the Population Decree regulates: “Selection of sex for embryo to be born is prohibited in any form“. Articles No.13 and No.14 of the Decree indicate clearly: “Institutions, organizations, which undertake policy-making and socio-economic development planning, are responsible for keeping the gender balance“. Term No.7 of Article No.40 in the Law on Gender Equality prohibits “selection of sex for embryo to be born in any form; it is prohibited to force others to give an abortion due to the sex of the embryo“.

cross-border trafficking via different forms such as match-making marriage and child adoption, according to uncompleted statistical data (the Steering Committee of the Program No.130/CP 2009).

Realizing the danger and risks caused by trafficking in women and children, Vietnam has participated in a lot of international conventions against trafficking in persons; at the same time, it has set up close cooperation with many countries, especially those in Southeast Asia that have a border with Vietnam, in order to prevent trafficking in persons.

In terms of legislative work, Vietnam government attached special importance to building a legal framework for prevention of trafficking in persons generally and trafficking in women specifically. Many laws, such as: the Criminal Code (1999), the Labor Code (Revision 2012), the Law on Vietnamese Workers Working Abroad under the Labor Contract (2006), and the Law on Child Protection, Care and Education (2004), provide fully regulations on criminal types involved with trafficking in women and children<sup>(5)</sup>. Besides, many other legal documents imply regulations relating to trafficking in women and children; for example, the Law on Handling of Administrative Violation (2012); the Decree on Prostitution Prevention (2003); the Law on Marriage and Family (2000); and others.

In 2011, the National Assembly promulgated the Law on Prevention of Trafficking in Persons (Law No.66/2011/QH12) and the Decree No.09/2013/NĐ-CP that described

in detail some articles of the Law on Prevention of Trafficking in Persons. The Law on Prevention of Trafficking in Persons accuses not only the trafficking in women and children but also other types of trafficking in persons; it includes not only cross-border trafficking but also trafficking in any geographical places; and, it is applied with not only trafficking for the purpose of prostitution, but also trafficking for any other purposes. The promulgation of the Law on Prevention of Trafficking in persons has a great political significance for both internal and external affairs. It shows the efforts of the communist party and the government to struggle against trafficking in persons generally and trafficking in women and children specifically.

To prevent the acts that take advantage of marriage and match-making to do trafficking in persons, the legal regulations on marriage with foreign factors provide specifically and in detail marital procedures. Marital registration will be rejected, if the interview and verification disclose one of following facts: the marriage is made through illegal match-making; it is a false marriage that does not aim at building a happy, equal and sustainable family; it is not suitable with the national customs; or, it is used for trafficking in women, sexual abuse, or other profitable purposes. Recently, the government promulgated the Decree No.24/2013/NĐ-CP on family and marital

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<sup>(5)</sup> Articles No.119 and 120 in the Criminal Code and Article No.8.6 in the Decree on Implementation of Child Protection, Care and Education.

relationships with foreign factors, which prohibits the acts that make corrupt use of marriage or child/parent adoption for trafficking in persons, labor exploitation, sexual abuse, or other mercenary purposes (Article No.2).

Vietnam's law on child adoption with foreign factors was initially set up in the 1980s. Basic regulations were provided in chapter 9<sup>th</sup> of the Law on Marriage and Family in 1986. Some revisions have been made since then; and, the legal framework on the international child adoption has been relatively complete now. To protect fully the rights of adopted children, the Law on Marriage and Family in 2000 regulates specifically that "it is prohibited to take advantage of child adoption for labor exploitation, sexual abuse, trafficking in children or other mercenary purposes". The regulations about child adoption in the Law on Marriage and Family aim at ensuring that: child adoption is made on the basis of charity and for the best interests of the children; children's basic rights must be respected; and it is necessary to prevent trafficking in children as well as child abuse through child adoption.

*- Regulations on handling of the acts involved with trafficking in women and children*

Those who have an act of trafficking in persons or other acts involved will receive administrative penalties or criminal liability, depending on the extent of the violation; if the act causes damage, they will have to make compensation according to the legal regulations. The Criminal Code in 1999 also consists of articles that identify two

types of crime involved directly with trafficking in women and children, including: *Trafficking in women* (Article No.119) and *Trafficking, Exchanging fraudulently, or Appropriating children* (Article No.120). Penalties imposed on those types of crime are described specifically in Articles No.20 and 53 of the Criminal Code<sup>(6)</sup>.

*- Legal regulations on protection and support provision for victims of trafficking*

In the Law on Prevention of Trafficking in persons, there are two regulations on the necessity to do "reception, verification and identification, and protection of victims of trafficking". Those regulations provide specific terms involved with some activities; for example, to help victims return home; to receive them at the home location; to verify and protect them (this is mainly to arrange an emergency place for them to stay temporarily and keep information confidential). The Law prohibits "discrimination against victims of trafficking" and "revelation of information about victims without acceptance of the very victims or their legal representatives"

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<sup>(6)</sup> Imprisoning up to 7 years for the crime of trafficking in women and up to 10 years for the crime of trafficking in children. Committing such crimes in one of the following circumstances, the offenders shall be sentenced to between ten and twenty years of imprisonment or life imprisonment (for trafficking in children): In an organized manner; Being of professional character; For use for prostitution purposes; Dangerous recidivism; Causing serious consequences; For the purpose of sending them abroad; and for use for inhumane purposes, etc... The offenders may also be subject to a fine. Organizers, doers, instigators, and helpers will receive criminal responsibilities, depending on the specific circumstances and the extent of participation in the crime.

(Article No.3).

The Criminal Code also promulgates some regulations to ensure that victims of trafficking, who are the aggrieved persons or witnesses of cases, can perform their rights in the criminal procedure (Articles No.133, 135, 137, and 59...).

In addition to being protected, victims of trafficking also receive assistance in re-integration with home community, after they return. The legal regulations on receiving and assisting victims in integrating back with their home community are specifically described in many documents, including: the Decision No.17/2007/QĐ-TTg on reception and support provision for returned victims of trafficking issued by the Prime Minister on 29 January 2007; the Circular No.116/2007/TTLT/BTC-BLĐTBXH of the Ministry of Finance and the Ministry of Labor, Invalids and Social Affairs that instructs how to make payments for verification and reception of victims of trafficking; the Joint Circular No.03/2008/TTLT-BCA-BQP-BNG-BLĐ-TB-XH on 08 May 2008 that provides a guidelines on procedures for verification and reception of women and children, who are victims of trafficking and return from overseas... According to the legal regulations, assistance to be provided for victims of trafficking in persons include: help to meet basic needs and travel; medical assistance; psychological assistance; legal assistance; vocational learning assistance; financial assistance for initial difficulty; and loan provision.

In general, Vietnam's laws provide relatively

full regulations on prevention of trafficking in persons, including trafficking in women and children. The Law on Prevention of Trafficking in Persons, however, has not yet given a definition of trafficking in persons, although it has given definition of other acts involved, such as: sexual exploitation, sexual slave, and forced labor etc... At the same time, Vietnam's legal documents have not yet mentioned a clear definition of "trafficking in women and children". In practice of legal application, "trafficking in women and children" is understood generally as to transfer women and children from an individual or a group of individuals to another individual or another group of individuals in order to seek profit (money or other material interests). It is, therefore, very necessary to have a legal definition of trafficking in persons, especially trafficking in women and children, in which acts, methods and purposes of this crime<sup>(7)</sup> must be clearly defined, so that offences are not omitted and there is no unjust punishment (the Governmental Committee for Coordination of Legal Dissemination and Education, 2012).

#### *Prostitution*

Prostitution and trafficking in persons are closely related to each other. It is the

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<sup>(7)</sup> It is necessary to refer to other countries' laws on prevention of trafficking in human as well as the Protocol on prevention, suppression and penalty of trafficking in human, especially that in women and children, and supplement the UN Convention on transnationally organized criminal prevention, showing that "exploitation" must be viewed as one of factors to constitute a human-trafficking offence.

relationship of supply (of victims of trafficking) and demand (of individuals or organizations/units) involved with sexual exploitation. In reality, trafficking in persons (especially, that in women and children) is often disguised by “sensitive” trading and service activities. Many trading and service businesses are run with seriously debauched activities, such as: to organize secretly immoral activities after regulated hours; to use CDs and music with forbidden content; to hold a nude-show, sexual arousal or love-making; to use heroin and ecstasy; to make the business place become a place of debauchery; and, to provide prostitution service or mediation... Thus, it is very significant to strengthen activities for prevention of prostitution, which should be accompanied by more effective control over trading and service businesses involved.

At present, the state legal documents on administration of service activities, which are easily used to disguise prostitution, have been step-by-step improved, creating a favorable legal framework to prevent activities of prostitution as well as trafficking in women and children for prostitution. The legal document that provides the most prostitution - related regulation is the Ordinance No.10/2003/PL-UBTVQH11 on Prevention and Suppression of Prostitution promulgated by the Standing Committee of the National Assembly on 17 March 2003.

*- Regulations of administrative punishment for prostitution-related acts*

The Ordinance gives a list of forbidden acts involved with prostitution, including:

a) buying sex; b) selling sex; c) harboring prostitution; d) organizing activities of prostitution; e) coercing others into prostitution; f) procuring prostitution; g) protecting prostitution; h) making corrupt use of trading or service activities to organize prostitution; i) other relevant acts involved with prostitution that are mentioned in the Ordinance of Prevention and Suppression of Prostitution (from Article No.22 to Article No.29).

Furthermore, the Criminal Code also issues the penal regulations to be imposed on prostitution-related acts, such as: “harboring prostitutes” (Article No.254), “procuring prostitutes” (Article No.255), and, “sexual intercourse with juveniles” (Article No.256). Article No.7 of the Law on Child Protection, Care and Education prohibits all “acts of seducing, tricking, guiding, harboring, and coercing children into prostitution”.

*- Legal regulations on protection and assistance for victims of prostitution*

Those who used to work as prostitutes can get assistance in healthcare and vocational training; at the same time, they can be provided with a loan and instructions to do production or trading activities, which will enable them to earn a stable income. This is regulated in Article No.10 of the Ordinance on Prevention and Suppression of Prostitution.

In the past, prostitutes had to pay an administrative punishment, or had to undergo a reformatory course in the commune/ward/town, or were sent to a medical treatment camp, depending on specific cases (Article



No.23 in the Ordinance on Prevention and Suppression of Prostitution). After the Law on Administrative Punishment was passed by the National Assembly on 20 June 2012, however, prostitutes were no longer sent to the medical treatment camp.

The Ordinance on Prevention and Suppression of Prostitution does not provide specific measures to guarantee equal treatment for female prostitutes involved in cases of rape and forced sex, in which they are very vulnerable and should be protected. Also, there are not any specific regulations that prohibit discrimination against female prostitutes in accessing basic service and other rights. In making clear regulations on the above-mentioned issues, it is completely necessary to ensure non-discrimination for female prostitute, as they often have to suffer discrimination in society. Besides, all rights for prostitutes should be underlined. They include basic human rights (e.g. the right to access medical service and the right to education) as well as other specific rights that are suitable with their situation (e.g. the right to get special support in taking legal proceedings, the right to privacy, and others) (UNIFEM, 2009).

#### *Sexual harassment*

In Vietnam, victims of sexual harassment are mainly women, who have a lower position or a lower rank, and depend on those, who harass them. There are diversified types of sexual harassment, including: come-hither words, obscene language, sexual arousal words, messages via phone, physical touch, proposal for sex, and forced sex. The most

common type is to harass with language. Sexual harassment may take place at work, at school, at medical and other public places.

By now, a concrete definition of sexual harassment has not been mentioned in any laws. However, there are some legal documents implying that sexual harassment is prohibited at public places, as enumerated below:

*Sexual harassment at medical places:* Article No.27.2 in the Decree No.45/2005/ND-CP promulgated by the government on 6 April 2005 provides regulations on administrative punishments in the medical sector<sup>(8)</sup>.

*Sexual harassment at school:* Article No.75.1 of the Law on Education 2005 prohibits teachers to assault the honor, dignity or body of learners.

*Sexual harassment at workplace:* Before the 2012 when Revision of the Labor Code was passed, there were no legal regulations prohibiting sexual harassment at workplace. Some general regulations involved with damage to life, health, honor, and dignity or gender-based violence could be found in article No.111 of the 2007 Revision of the Labor Code, Article No.10 of the Law on Gender Equality, and articles No.104, 110, 121, and 122 of the Criminal Code.

Sexual harassment at workplace was legally revised for the first time in the Revision of the Labor Code in 2012. In the Revision, there are 4 relevant articles that strictly prohibit sexual harassment, including:

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<sup>(8)</sup> Financial punishment ranges from 2 million to 5 million VND for following acts: Taking advantage of the profession to harass sexually patients.

Article No.8, which prohibits “persecution of laborers and sexual harassment at workplace”; Article No.37, which regulates that “laborers, who are sexually harassed” have the right to unilaterally terminate the labor contract; Article No.182, which regulates that housemaids are responsible to “make a denunciation to the authorities, if the labor user has an act of sexual harassment”; and, Article No.183, which prohibits housemaid users from “persecuting or harassing the housemaids”.

The fact that sexual harassment at workplace is regulated in the Revision of the Labor Code in 2012 is an advanced stride, aiming at ensuring a healthy and safe working environment. However, it still lacks a definition of what sexual harassment is. Legal terms concerning sexual harassment at workplace will not be implemented effectively in practice, if there is no full and clear explanation of “what sexual harassment means” and “how sexual harassment at workplace is understood”. Legal regulations enable laborers, who are sexually harassed, to terminate unilaterally the labor contract in the hope of protecting them, but this may result in a labor dispute, if there is no clear definition of sexual harassment. It is similar for the regulations relating to housemaids, according to which housemaids have the responsibility to make a denunciation to the authorities, if the labor users have an act of sexual harassment (Ministry of Labor, Invalids and Social Affairs and the International Labor Organization, 2012).

In general, we still lack a legally full

framework that consists of definitions, responsibilities (both legally and financially) of those who have an act of sexual harassment, procedures and measures for prevention and punishment. It is, therefore, necessary to promulgate a complete legal document on these issues. And particularly, we have to build regulations that prohibit sexual harassment at school, because such a regulation has been never issued till now.

### **3. Some issues of concern**

Reviewing legal document concerning gender-based violence in Vietnam, we realize that acts of gender-based violence are strictly prohibited, according to the viewpoint of Vietnam government. Yet, there have not been any specific and clear definitions of gender-based violence as well as its manifestations.

It is, therefore, necessary to provide a concrete definition of gender-based violence in legal documents and policies. In our opinion, we can use the definition suggested by the United Nations, as below: “*Gender-based violence is the violence directed at a person on the basis of gender or sex. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may happen in family, community, and organizations. Both men and women are targets of gender-based violence. However, women and girls are the majority of victims and are most seriously impacted by gender-based violence cause by men.*”

Based on the UN’s definition of gender-

based violence, it is obvious that Vietnam government has been making every effort to build a legal framework to deal with acts of gender-based violence, such as gender - based violence at family, trafficking in women and children, and sexual harassment etc., in order to ensure a healthy living and working environment for women and girls. However, detailed regulations concerning specific manifestations of gender - based violence, which will be used to identify acts of violation, still remain limited.

Another issue to be concerned is implementation of policies involved with prevention and suppression of gender-based violence. The major challenge to the policy implementation lies in coordination, supervision, and funding. In addition, it is essential to collect data of gender - based violence systematically at the national level, as we have now very limited data to be used to evaluate which policy or which measure has been most effective in prevention and suppression of gender - based violence. Especially, we should carry out research on a large scale on some types of gender-based violence, which still remain less concerned now, such as: sexual harassment at workplace, sexual abuse of women and girls, and trafficking in women and girls.

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