



Access to justice: A CASE STUDY ON WOMEN DOMESTIC VIOLENCE SURVIVORS IN VIET NAM

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WORKING CONCEPTS

- **Justice:** The quality of being just, conformity to the principles and common interests of all those involved (Nguyen Nhu Y, 1998).
- **Access to justice:** The ability of people to seek and obtain a remedy [for grievances] through formal and informal justice institutions in conformity with human rights standards (Ursua, 2014).
- **Plural legal system:** A combination of State, non-State and quasi-State legal systems.

PLURAL LEGAL SYSTEM IN VIETNAM

	State legal system	Non-State legal system	Quasi-State legal system
Standards and regulations	<ul style="list-style-type: none"> - State policies and legal documents. 	<ul style="list-style-type: none"> - Unwritten law, customs, practices, beliefs and traditional cultural values. - Tenets and religious beliefs. 	<ul style="list-style-type: none"> - Conventions of hamlets/villages. - Regulations of the community and socio-political organizations.
Justice enforcement authority	<ul style="list-style-type: none"> - Representatives of local authorities. - Representatives of law enforcement agencies. - Parties providing consultative services and legal assistance. 	<ul style="list-style-type: none"> - Those who hold power in the family and community, consisting of householder, head of family/clan, village patriarch. - Representatives of religious organizations, such as a Catholic priest or vicar. 	<ul style="list-style-type: none"> - Community representatives, including head of hamlet/village and residential areas. - Representatives of socio-political organizations.

RESEARCH OBJECTIVES

- Identify gaps and limitations which hinder women from accessing justice through the plural legal system in response to cases of domestic violence (DV).
- Enhance commitments by duty bearers to address those gaps and limitations through increased awareness and knowledge on the plural legal system and DV.
- Increase the knowledge of women, especially those who experience DV, on means to access justice through the plural legal system.
- Put forward policy recommendations which define the specific needs and action steps for the elimination of barriers in the State, quasi-State and non-State legal systems, in order to enhance women's access to justice.

RESEARCH QUESTIONS

- 1. How do women experiencing DV have access to justice through plural legal systems?
- 2. Which are the factors that facilitate or restrict the access to justice of women experiencing DV?
- 3. What should be done to promote the access to justice of women experiencing DV?

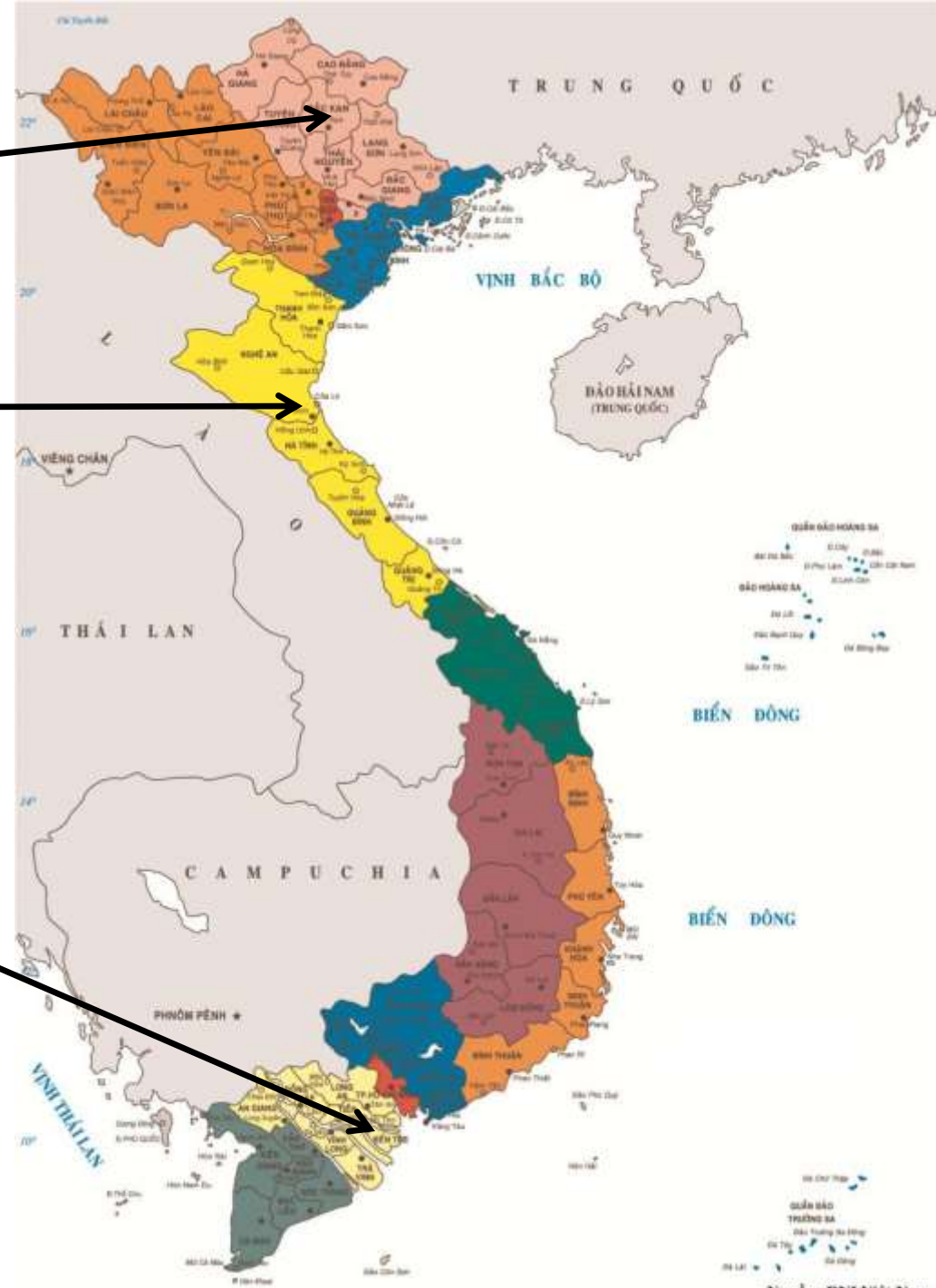
RESEARCH METHODS

- Feminist Participatory Approach Research (FPAR).
- Research team: National research team and local research team.
- Research participants: 72 representatives from local authorities, organizations and unions; 80 community women, 28 women domestic violence survivors.
- Primary data collection: **28 in-depth interviews** (women, experienced DV, including physical, emotional, economic and sexual violence); **8 focus group discussions** (4 FGDs with community women and 4 FGDs with local authorities).

**Dương Phong
commune, Bạch
Thông district,
Bắc Kạn province**

**Nghi Hòa ward, Cửa
Lò town, Nghệ An
province**

**An Khánh
commune, Châu
Thành district and
Vĩnh Bình
commune, Chợ
Lách district, Bến
Tre province**



RESEARCH FINDINGS:

Response of the plural legal system

- In Viet Nam, women may seek justice through State, quasi-State and non-State legal systems. In reality, however, not many women refer to the State legal system as they find quasi- and non-State legal systems more accessible.

RESEARCH FINDINGS:

Response of the plural legal system, example

- *“I rarely ask for assistance from local authorities and police. Whenever it occurs, members of residential area and Women’s Union come and help me and my husband to reconcile ...I only ask for help from local authorities and police when it’s serious”* (Survivor, Nghi Hoa Ward, Nghe An).
- *“When disputing with my husband, I often ask for assistance from the Women’s Union and heads of residential area...if it is serious, I would ask for local authorities to talk to my husband...I would only go to court if I want to divorce my husband or if I have a land dispute with him...it’s complicated to get there, and I do not have the money either... If I bring my problem to the court I have to pay for it”* (Survivor, Nghi Hoa, Nghe An).

RESEARCH FINDINGS:

Response of the plural legal system

- The general reluctance to deal with domestic violence cases, in fact, was reported against different actors throughout the plural legal systems. Most of the reported cases were brought to reconciliations regardless of the different legal systems which were utilised.

“When violence is reported we go to their house to see what happened and advise them to reconcile with each other”
(Police, Duong Phong, Bac Kan)

RESEARCH FINDINGS:

Gaps in the legal framework

- Measures taken against perpetrators of DVs at quasi and non-State legal systems are not adequate and punishments are not effective enough to deter perpetrators from causing violence.
- The fact that DV is not classified as a criminal offence against the State gives an impression that it is a petty offence and leaves plenty of space for reconciliation and impunity. In reality, reconciliation agreements place blame on both parties and requires both parties to modify their behaviours.
- In some cases, the implemented sanctions are proving ineffective to change the violent behaviours of abusers and even causing harm to survivors. (eg. fining DV offences do not have any deterrent effect on the abuser but rather burden the survivor to pay from their pockets).

RESEARCH FINDINGS:

Gaps in the legal framework, example

- *“The husband violated the law. We compiled the files and fined him VND 1.5 million. Then it was the wife who came to pay the fine for him. We punish the husband, but after all it affects the family’s economy. So it is the wife to bear the consequences, while the husband still mistreats her, and she no longer asks for our intervention, fearing that she will have to pay more fines.”* (Police, Duong Phong, Bac Kan)

RESEARCH FINDINGS:

Institutional and procedural obstacles

- There is an overreliance on reconciliation measures, while there are no safeguard in place to ensure impartiality and fairness of reconciliation measures.
- Police were not responsive if the violence already stopped before their arrival at the scene. Public criticisms by the People's Committee or head of residential area were not carried out when the perpetrator did not attend the meeting.
- In many cases, authorized persons ignore or lack of accountability in addressing DV cases, regard them as the private issues of families.

RESEARCH FINDINGS:

Institutional and procedural obstacles, example

- *“The order of legal procedures is zigzagging. If we closely follow the order, the intervention may be too late for victims. Files are too complicated. First of all, victims should submit their own petition, and then police have to make documents verifying the statement and evidence which includes signature of witnesses... So many files. If files are insufficient, the case cannot be handled. In some cases, police already completed the files, but when they were submitted to the judicial body to be verified, the documents were rejected because they were insufficient. The work of the police and the judiciary are not compatible, so the cases were not dealt with” (Police, Vinh Binh commune, Ben Tre)*
- *“If the husband is still violent towards his wife after reconciliation, he will be warned in public meetings. However, only the wives turn up at the meetings, not the husbands – the violent man – so no one can warn or ask him to admit his fault publicly” (Village head in An Khanh Commune, Ben Tre)*

RESEARCH FINDINGS:

Social barriers

- Customs and traditional cultural views tend to prioritize family harmony and happiness over women's human rights and gender equality => reconciliation measures are prioritized.

“The commune administration only intervenes and supports women experiencing domestic violence when survivors themselves or their families report the case or submit a petition to them. It's a matter of fact that it's hard for the commune authorities to intervene because most families choose to 'resolve their own problem behind closed doors'”
(Duong Phong's People's Committee official, Bac Kan)

RESEARCH FINDINGS:

Social barriers, example

- Legal systems of a patriarchal nature lead to negative gender stereotyping and discriminatory attitudes of the law enforcement officers, including the police and judiciary => women DV survivors were sceptical of their attitudes, accountability and helpfulness.

“I did not tell anybody (that I was beaten by my husband). It’s better to make concessions. I don’t want to report to local administration because I don’t trust them. I want to settle the problems myself and do not want to exaggerate. I live my life for my children and still adore my husband. I’m afraid to hurt my husband if I ask for legal assistance. Through TV programmes, I know that the police will fine my husband” (Survivor, Duong Phong, Bac Kan).

RESEARCH FINDINGS:

Practical and economic challenges

- Financial resources often prevent women from pursuing remedies for protection from violence because they are entirely dependent on the abuser for financial security, shelter and social status within the community.
 - Some ethnic minority couples are married without legal marriage certificates and therefore they hold higher anticipation of uncertain consequences of legal procedures, including their entitlement to child custody.
- => The uncertainties of taking legal action against their husbands accompanied by the lack of legal support bear considerable pressure on women to maintain family life.

RESEARCH FINDINGS:

Practical and economic challenges, example

- *“I don’t want to report this to local administration because my husband can make it more serious and divorce me. Then I would be homeless. Everything belongs to him now, if I go, I go with empty hands.”* (Survivor, Vinh Binh, Ben Tre)
- *“I still suffer from violence. I asked for assistance from local authorities but it did not work. I cannot divorce him because we did not register when we got married... Land is mine, we just live under the same roof. He came to live on my land, but now he claims it’s his land and chases me away. I know I was wrong to have transferred the land ownership to him.”*(Survivor, Nghi Hoa, Nghe An)

CONCLUSIONS

In seeking justice, female DV survivors are facing many challenges:

1. Gaps in the legal framework
2. Institutional and procedural obstacles
3. Social barriers
4. Practical and economic challenges

Thank you !