

Challenges of mainstreaming gender in policy and law

Kim Anh Duong^{1,*}, Van Tuan Luong²



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ABSTRACT

Gender mainstreaming has become an international tool with the purpose of realizing gender equality and reducing obstacles to gender equality. Mainstreaming gender in policy and law is both a national and an international requirement to promote gender equality. Gender mainstreaming involves the integration of a gender perspective into different stages of a policy cycle (including policy planning, policy implementation, policy monitoring, and evaluation) to promote gender equality and eliminate gender discrimination. Why does gender mainstreaming matter in relation to law and policy? It is because gender mainstreaming not only effectively solves policy issues, but also ensures that policy-making and legislative work is of a high quality and is greatly relevant to society.

Gender mainstreaming, however, is a difficult technique, as illustrated by the fact that, the effectiveness of mainstreaming gender into policy and law remains low. Through the application of feminist legal theory which criticizes law and policy as patriarchal institutions that contribute to the subordination of women and the lack of gender-sensitive laws and policies, this paper details the challenges of mainstreaming gender in law and policy. These challenges include, but are not limited to, the patriarchal gender ideologies that shape the way policy-makers plan and implement laws and policies, the lack of knowledge and skills in gender mainstreaming, or the rigid way of applying gender mainstreaming in different areas of life, the lack of understanding of gender construction of law and policy, the lack of gender personnel, and the inadequate attention paid to mainstreaming gender in law and policy.

The paper also proposes solutions to mainstream gender effectively in law and policy. In addition, this paper calls for more discussion and research regarding gender mainstreaming in law and policy, for gender mainstreaming to become a comprehensive strategy in promoting gender equality in Vietnam.

Key words: Gender mainstreaming, policy, law, challenges, feminist legal theory

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INTRODUCTION

Promoting equality between women and men must be at the heart of everything we do. There are different ways to promote gender equality, however, the most effective and strategic solution is gender mainstreaming. Gender mainstreaming is a comprehensive approach, a strategic solution that changes thinking and ways of action to thoroughly address the causes of inequality in different areas of social life, contributing to achieving the goal of gender equality. This is a strategy that makes the concerns and experiences of women as well as of men being an integral part of the planning, implementation, monitoring and evaluation of policies and programs in all economic, political and social spheres, so that women and men enjoy equal benefits, and fully develop. It should be noted that the fundamental goal of gender mainstreaming is to achieve gender equality.

Thus, gender mainstreaming is the inclusion of gender perspective in all steps of preparing, designing,

implementing, monitoring and evaluating programs, policies and activities with the goal of promoting equality between women and men to combating gender discrimination. Gender mainstreaming is a strategy to make gender concerns and experiences part of all activities in the political and socio-economic spheres so that everyone is equal and eliminates injustice. In other words, gender mainstreaming is a way of bringing gender equality perspectives into every policy, program, and development plan of society and community, creating a flow of gender in different areas of life. In terms of policy, gender mainstreaming means assessing the different implications for people of different gender of any planned policy action, including legislation and programmes, in all areas and levels. Gender mainstreaming implies looking at the human implications of any activity, highlighting the inequalities and differences between women and men and thus the potential differential impact of policies on both women and men.

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RESEARCH METHODOLOGY

This paper uses secondary data, with the analysis of theoretical and practical issues on gender mainstreaming in laws and policies, the current status of gender mainstreaming in law and policy in Vietnam, comparing with requirements of international law to see the gaps that exist, and the difficulties and obstacles in the mainstreaming of law and policy. On that basis, make recommendations to promote gender mainstreaming in laws and policies, to minimize difficulties and obstacles to gender mainstreaming in law and policy, in order to promote gender-sensitive policy cycles. Research on this issue is limited, due to the complex and intensive nature of gender mainstreaming in law and policy. The article also uses the authors' experience of mainstreaming gender in law and policy.

RESULTS AND DISCUSSION

The importance of gender mainstreaming to policy and law

Gender mainstreaming is critically important to policy and law. It is as much about addressing gender inequalities in society through policies. Since the Beijing Platform for Action was adopted at the 1995 Fourth UN World Conference on Women in Beijing by the United Nations, the solid regulation of mainstreaming gender into programs, laws, and policies has been recognized as strategy in international gender equality policy.

Gender mainstreaming is important to policies and laws, according to the Council of Europe, effective gender mainstreaming leads to better informed policy-making and therefore better government¹. Gender mainstreaming challenges the assumption that policies are gender neutral (which they never are) and reveal the hidden assumptions on reality and values. Gender mainstreaming leads to a fairer allocation of resources and greater transparency in the policy process. Council of Europe also emphasizes that by making all policy-makers responsible for the inclusion of a gender equality perspective, gender mainstreaming makes full use of human resources¹. Gender mainstreaming, therefore brings gender equality into mainstream society. It makes it visible and is expected to change negative attitudes towards gender equality.

It is visible that gender issues can be addressed on all policy levels from ministries to communities, and in all the stages of the policy cycle, from planning, to implementation, monitoring, and evaluation. At the starting point when we define the policy problem to

be addressed by the public intervention in a specific policy field, we have to define the way and the extent to which the policy is gender relevant and what policy interventions we need to address gender gaps and gender differences. At the end of the policy cycle, we need to assess whether the policy has addressed gender needs of policy beneficiaries and fulfilled policy objectives.

From another way of gender mainstreaming in the policy cycle (Define, Plan, Act and Check)², gender is an important influencing factor that impacts on the whole policy processes. When defining a policy, we need to define gender-sensitive and gender equality policy goals and policy objectives based on the findings of gender analyses. At the gender plan process, we need to identify appropriate approaches and plan specific interventions to achieve policy objectives. In this phase, it is relevant to set up gender budget to identify how budget allocations contribute to the promotion of gender equality. Also, it is necessary to establish indicators that allow to monitor equality objectives and to compare gender impacts of policy on women and men. In the implementation phase (Act), it is essential to conduct intervention activities to ensure that all people involved in the policy processes have sufficient gender awareness. Therefore, we need to set up policy initiatives and interventions to solve policy problems. Finally, to follow up progress and remedy possible unforeseen difficulties, it is important to monitor and evaluate ongoing work. Gender-sensitive monitoring helps identify and readdress gaps and obstacles as soon as possible. Obstacles for effective gender mainstreaming need to be removed to accommodate effective gender mainstreaming. Gender-sensitive evaluation identifies whether policy has achieved gender objectives and fulfills the needs of policy beneficiaries. In the Check phase, we need to set up gender-sensitive evaluation criteria. European Institute for Gender Equality¹ has introduced five criteria, including relevance, efficiency, effectiveness, impact and sustainability.

Gender mainstreaming is important to policy and law, because it empowers policy beneficiaries, especially the vulnerable ones, which are the heart of policy intervention. The 2030 Sustainable Development Agenda emphasizes the need to enhance sustainable development for everyone in the society³. Leaving no one behind is the central promise of the 2030 Agenda and its SDGs. Thus, gender mainstreaming can establish the framework for action. Among vulnerable groups of people, women often show a high degree of responsibility. Their needs and expectations

should be main-streamed in policy planning, implementation, and evaluation to ensure that policy can support people who suffer from structural discrimination. Thus, gender mainstreaming is a strategy for promoting gender equality.

Feminist legal theory and gender mainstreaming

Feminist legal theory has been known as the study of the philosophical foundations of law and justice, informed by women's experiences, to transform the legal system to improve the quality of law and women's lives. Feminist legal theory, therefore, can be seen as a tool for effecting social change.

Feminist legal theory emphasizes that women have been degraded in parallel and stimulating ways through the machinery of law, at the same time, men characterise the standard of a human being. Women, therefore, are subordinated to men. In fact, Feminist Law Theory does not only reflect issues of gender equality or the protection of women's rights. This theory is an argument about how the role and perspective of women are reflected in the planning, implementation and evaluation of the law and policy. Feminist legal theorists commit to analyse law and policy from feminist perspectives and to criticize law and policy as a patriarchal institution that contributes to the subordination of women.

Feminist legal theory has some major schools: formal equality theory, dominance theory, cultural feminism, and post-modern or anti-essentialist theory. It should be noted that formal equality theory, grounded in liberal democratic thought, argues that women ought to be treated a equivalent as men. Formal equality has emerged from the contradictions, conflicts and political struggles that developed in the course of action to the implement formal equality and addressed gender discrimination. Cultural feminism emphasizes differences between women and men, based on biological differences in reproductive capacity. In addition to that, cultural feminism also encourage a shared women's culture. Post-modern theory sees reality as what individuals or social groups make it to be. It believes that knowledge is a social construction and truth-claims are political power plays, and the meaning of words is to be determined by readers not authors.

Theoretically, gender mainstreaming draws from feminist analyses of gender inequality, aiming to revise and further develop key feminist concepts and approaches⁴. Practically, gender mainstreaming is a strategy of change that aims to satisfy gender needs of policy beneficiaries.

It is interesting that, both legal feminist theory and gender mainstreaming have common features. They evolve the principles of human right standards. Feminist legal theory designed from the standpoint of women and intended to resist patriarchal hierarchies in social relationship. Feminist legal theory criticizes law and policy as patriarchal institutions that contribute to the subordination of women and the lack of gender-sensitive laws and policies. Gender mainstreaming assures that gender concerns be reflected in the conceptualization, implementation and evaluation of human rights policies, strategic planning and the setting of priorities and objectives⁵. To mainstreaming gender, it is important to do gender analysis of women's situations. Law, as an institution, at the national and international level, is examined for its role in women's oppression and for what it can contribute to addressing it. Thus, the application of legal theory along with gender mainstreaming technique can be a prolonged solution for gender-sensitive policy making.

Challenges in mainstreaming gender into policy and law

Gender mainstreaming is a radical socio-political concept for achieving gender equality. Gender mainstreaming is integral to a country's human development and sustainable development. For Sarikakis (2014), gender mainstreaming as a public policy goal and tool. Mainstreaming is not an end in itself but a means to the goal of gender equality.

There are different ways for promoting gender equality, however, gender mainstreaming can be the best and sustainable way as gender mainstreaming is putting human rights at the heart of all we do. Mainstreaming gender into public policy is a difficult technique. There are major barriers influencing the effectiveness of gender mainstreaming in public policy, including, but not limited to lack of political will, patriarchy, gender stereotyping, lack of resources, and lack of societal awareness on issues pertaining to gender.

Lack of political will is the first barrier to gender mainstreaming. Political will is the magic ingredient of human commitment to a cause which makes things work or make things happen. The effectiveness of policy and law, therefore, strongly relates to political will. In fact, it is important to establish high-level corporate leadership for gender equality. The head of any organization has to commit to treat all women and men fairly at work and at home - respect and support human rights and non-discrimination. The head also needs to mainstream gender in all relevant policies

and strategies to make sure that all activities and interventions may best satisfy the needs of their staff. Gender mainstreaming is a difficult technique and a vague, confusing term that makes its effectiveness contested. Sarikakis argues that the complexity of the term causes confusion, thereby neutralizing its potential⁶. In other words, there is a lack of clarity in definition and conceptualization, gender mainstreaming has not been satisfactorily theorized and elaborated⁴. The definition of gender mainstreaming is ambiguous. It is indicated to be a means, and an end, a strategy, that makes people confused about what exactly it is.

Gender mainstreaming, according to Daly, is problematic. In many cases, gender mainstreaming typically does not span the entire policy spectrum or hierarchy. Even, “gender mainstreaming is a highly fragmented endeavor, confined either to a small number of policy domains or to a specific program within a domain and disconnected from general governmental policy on gender” [1, pp.439].

There has also been a debate about the patriarchal gender ideologies that shape the way policy-makers plan and implement laws and policies. Policy-makers may not intentionally create gender neutral policy, but patriarchal ideology impacts on the way how they perceive gender equality. Patriarchy, plus top-down policy-making, makes policy rigid, conservative, and difficult to meet the needs of its beneficiaries.

The lack of gender personnel, and the inadequate attention paid to mainstreaming gender in law and policy has been another challenge for a long time. Scholars of different stages frankly emphasize that there is a shortage of human resource capital which is needed for successful integration of gender mainstreaming⁷. Vietnam has a shortage of gender-bound personnel. Until 2015, the Bachelor of Gender and Development training program was opened at the Vietnam Women’s Academy. For the first time and to date, this is the only bachelor’s degree program in Vietnam. One of the main solutions mentioned in the National Strategy on Gender Equality 2021-2030 is the fulfilment of policies and laws to ensure the principles of gender equality in the different fields, and to integrate the contents of gender equality in the development of policies, laws and programs, strategies and plans for socio-economic development.

Another challenge is the rigid way of applying gender mainstreaming in different areas of life. Due to limited knowledge and skills in gender mainstreaming, gender integration in different activities, different fields are applied in an inflexible process, while gender mainstreaming needs a certain openness, and the

nature and content of the activities are different. The lack of gender-disaggregated data is also an obstacle to limiting the effectiveness of gender mainstreaming.

Another obstacle lies in the legal provisions. In Vietnam, the requirements and scope of gender equality mainstreaming in the development of legal documents are guided in Article 7 of Decree No. 48/2009/ND-CP on measures to ensure gender equality. Accordingly, gender mainstreaming is applied to draft legal documents identified “as having contents related to gender equality or gender inequality or gender discrimination within the scope of the document”. The Law on promulgation of legal documents 2015 (amended in 2020) requires dossiers of proposals for the development of laws, ordinances, written recommendations on laws and ordinances to have a report assessing the policy impacts in proposals for the development of laws and ordinances. In fact, regulatory impact assessments (RIA) include gender impact assessment (GIA). Article 64, Point d, Clause 1 of The Law on promulgation of legal documents 2015 requires the report on the integration of gender equality issues in the project, but stipulates that, “if the law project has provisions related to the issue of gender equality”. That shows a lack of strict regulations, making the mainstreaming of gender in policies and laws has not been effective, with low binding and enforcement.

RECOMMENDATIONS FOR CHANGE

Based on feminist legal theory perspective that highlights the importance of people’s participation in legal systems as well as the struggle to eliminate women’s subordination to men, this paper proposes following measures for better mainstreaming gender in policies and laws, and overcome challenges mentioned above.

- To involve all relevant stakeholders associated with policy-making in the process of integration of gender equality concerns into the planning, budgeting, implementation, monitoring and evaluation of all policies, programmes and activities;
- Integrating gender expertise into policy processes by making it a requirement for policy-makers;
- Using and promoting gender-disaggregated data and statistics;
- Making sure that a gender equality perspective is envisaged in all policy areas and at all policy levels, taking into account that policy areas, which at first sight do not seem relevant, may contain hidden aspects of gender inequality;
- Ensuring the equal presence and contribution of women and men in all programmes and activities;

- Allocating necessary funds and human resources to mainstreaming gender in policy and law.
- Mainstreaming gender in the law and policy must be mandatory, not just in case the law has gender issues. In fact, the law and policy have their target groups of people, so it all associate with gender and gender issues.
- Finally, it is critically important to pursuit the regulations of the National Strategy on Gender Equality 2021-2030 on mainstreaming gender. Specifically, we need to develop and implement programs to promote the implementation of gender equality and prevention and response to gender-based violence; push up communication to raise awareness and change behaviors on gender equality; and include gender equality content in different educational levels.

CONCLUSION

Gender mainstreaming is a strategic solution to achieving gender equality. In fact, gender mainstreaming is a difficult technique. It is necessary to discuss, share experiences, identify and analyze difficulties in gender mainstreaming generally, and gender mainstreaming in policies and laws particularly to come up with appropriate solutions is necessary, both in terms of theoretical and piratical meaning. From the perspective of feminist legal theory, gender mainstreaming in policy law should promote the participation of relevant stakeholders, especially women and the vulnerable in the policy cycle, from planning, to implementation, and to policy monitoring and evaluation, to meet the gender needs of beneficiaries, contributing to changing unequal gender relationships, and changing women's subordination to men. This paper calls for more discussions and research on gender mainstreaming in law and policy, for gender mainstreaming to become a comprehensive and effective strategy in promoting gender equality in Vietnam, and in the world - for a world with "no one left behind".

DECLARATION OF COMPETING INTEREST

The authors declare that they have no conflicts of interest.

AUTHORS' CONTRIBUTION

- Author **Kim Anh Duong** is responsible for the content: All the paper's contents.
- Author **Van Tuan Luong** is responsible for giving general comments.

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Thách thức của việc lồng ghép giới trong chính sách và pháp luật

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TÓM TẮT

Lồng ghép giới đã trở thành một công cụ quốc tế với mục đích thực hiện bình đẳng giới và giảm bớt những trở ngại đối với bình đẳng giới. Lồng ghép giới trong chính sách và pháp luật vừa là yêu cầu của quốc gia vừa là yêu cầu quốc tế để thúc đẩy bình đẳng giới. Lồng ghép giới bao gồm việc lồng ghép quan điểm về giới vào các giai đoạn khác nhau của chu trình chính sách (bao gồm hoạch định chính sách, thực thi chính sách, giám sát và đánh giá chính sách) để thúc đẩy bình đẳng giới và xóa bỏ phân biệt đối xử về giới. Tại sao lồng ghép giới lại quan trọng trong mối quan hệ với luật pháp và chính sách? Đó là bởi vì lồng ghép giới không chỉ giải quyết hiệu quả các vấn đề chính sách mà còn đảm bảo rằng công tác hoạch định chính sách và lập pháp có chất lượng cao và phù hợp nhiều với xã hội.

Tuy nhiên, lồng ghép giới là một kỹ thuật khó, trên thực tế thì hiệu quả của việc lồng ghép giới vào chính sách và luật pháp vẫn còn thấp. Thông qua việc áp dụng các lý thuyết pháp lý nữ quyền về chỉ trích luật pháp và chính sách như chỉ trích thể chế gia trưởng đã góp phần tạo nên sự phụ thuộc của phụ nữ và sự thiếu sót luật và chính sách nhạy cảm về giới, nghiên cứu này trình bày chi tiết những thách thức của việc lồng ghép giới trong luật pháp và chính sách. Những thách thức này bao gồm, nhưng không giới hạn đối với, tư tưởng gia trưởng về giới định hình cách các nhà hoạch định chính sách hoạch định và thực hiện luật và chính sách, sự thiếu kiến thức và kỹ năng về lồng ghép giới, hoặc cách áp dụng lồng ghép giới một cách cứng nhắc trong các lĩnh vực khác nhau của cuộc sống, sự thiếu hiểu biết về giới trong xây dựng luật pháp và chính sách, thiếu cán bộ về giới và việc lồng ghép giới trong luật pháp và chính sách chưa được quan tâm đúng mức.

Bài nghiên cứu cũng đề xuất các giải pháp lồng ghép giới một cách hiệu quả trong luật pháp và chính sách. Ngoài ra, bài báo này kêu gọi thảo luận và nghiên cứu nhiều hơn về lồng ghép giới trong luật pháp và chính sách, để lồng ghép giới trở thành một chiến lược toàn diện trong thúc đẩy bình đẳng giới ở Việt Nam.

Từ khoá: Lồng ghép giới, chính sách, luật pháp, những thách thức, lý thuyết pháp lý nữ quyền

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