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Responses to Information Requests

Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's [Refworld](#) website. Please note that some RIRs have attachments which are not electronically accessible. To obtain a PDF copy of an RIR attachment, please email the [Knowledge and Information Management Unit](#).

11 February 2016

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Viet Nam: Divorce, including availability of divorce to women, associated costs, support services available to divorced women and single mothers; whether the government mandates financial support and/or child support to ex-spouses; treatment of divorced women/single mothers; custody orders, including decisions made in favour of mothers (2008-January 2016)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Overview

Sources state that divorce is common in Viet Nam (Lawyer 27 Jan. 2016; Xinhua 22 Aug. 2014). The *Financial Times* (FT) reports a "rapid increase" of divorce cases in Viet Nam between 2008 and 2010, from 65,351 cases to 88,591 cases (FT 5 Sept. 2011). Similarly, the Chinese Xinhua News Agency, citing a survey conducted by Viet Nam's Ministry of Culture, Sports and Tourism and the General Statistics Office, reports that divorce cases in Viet Nam increased from 88,591 in 2010 to 145,791 in 2013 (Xinhua 22 Aug. 2014). In correspondence with the Research Directorate, a lawyer, who heads the family and civil law desk within a Ho Chi Minh City-based international law firm, Fidal Asiattorneys, indicated that according to survey results from Viet Nam's General Statistics Office, "all-level of People's court" heard 19,960 divorce cases in 2014 (Lawyer 27 Jan. 2016).

The lawyer stated that "a woman [in Viet Nam] can request a divorce" (ibid.). The *Financial Times* notes that in 2011, "a rapidly growing number of young, professional Vietnamese women [were] filing for divorce" (5 Sept. 2011). In a 2013 article published in the *Social Sciences Information Review*, Nguyen Huu Minh, Associate Professor and Director of the Institute for Family and Gender Studies in Hanoi, indicated that, based on research conducted in 2011 and 2012, "the number of female complainants [in divorce cases was] higher than their counterparts" (Nguyen Sept. 2013). Sources report that 70 percent of divorce proceedings are brought before the courts by women (Lawyer 27 Jan. 2016; Xinhua 22 Aug. 2014). According to the *Financial Times*, women who file for divorce are "emboldened by increasing financial independence and the shifting social values that have accompanied communist Vietnam's integration into the global economy" (5 Sept. 2011).

2. Legislation

Article 3(14) of the 2014 Law No. 52/2014/QH13 on Marriage and Family defines divorce as the "termination of the husband and wife relation under a court's legally effective judgment or decision" (Viet Nam 2014, Art. 3). However, in their 2014 submission to the UN Committee on the Elimination of Discrimination Against Women (CEDAW), Vietnamese authorities state that "in some ethnic minority areas, divorce is sometimes not resolved by law but by each ethnicity's customs and practices" (ibid. 13 Dec. 2014, para. 253).

Article 51 of the 2014 Law No. 52/2014/QH13 on Marriage and Family provides the following information on who can request a divorce:

Article 51. The right to request settlement of divorce

1. Husband or wife or both has or have the right to request a court to settle their divorce.
2. A parent or another next of kin of a spouse has the right to request a court to settle a divorce when the spouse is unable to perceive and control his/her acts due to a mental disease or another disease and is concurrently a victim of domestic violence caused by his/her spouse which seriously harms his/her life, health or spirit.
3. A husband has no right to request a divorce when his wife is pregnant, gives birth or is nursing an under-12-month child. (ibid. 2014)

A complete copy of this law is attached to this Response.

3. Divorce Procedures

3.1 Procedures for Filing a Divorce

Sources indicate that two different streams of procedures for filing a divorce exist in Viet Nam, depending on whether there are conflicting issues or not (Vu Cong Giao and Tran Kien June 2012, 138; Lawyer 27 Jan. 2016). The lawyer specified that divorce cases fell either under article 27 (Marriage and family-related disputes) or article 28 (Marriage and family-related request) of the 2004 Law on Civil Procedure (ibid.). According to the same source, the procedure for divorce cases under article 27 is more "complicated and time consuming" than the one under article 28 (ibid.). He provided the following description of the procedures for marriage and family-related disputes [as per Article 27]:

- First, the wife shall lodge her petition to the competent People's Court;
- Second, the court will review her petition and enclosed documents and evidences and shall proceed with the proceeding and accept the case if it falls in their jurisdiction;
- Third, the court shall conduct conciliation;
- Fourth, if parties fail to conciliate, a first-instance court session shall be held and decide to accept or decline the divorce;
- Fifth, if any parties are unsatisf[ied] with the first-instance court session's decision, such party may appeal and the Appellate Trial shall be conducted to decide the final and enforceable decision. (ibid.)

The same source listed the following procedures for marriage and family-related requests [as per Article 28]:

- First, the wife shall lodge her petition to the competent People's Court;
- Second, the competent People's Court shall conduct a hearing and decide whether or not to approve the request;
- Third, appellate trial may be conducted if the wife so requests. (ibid.)

However, in a 2012 article on child support under the 2000 Family and Marriage Law published in *Kyungpook National University Law Journal*, two academics affiliated with the Viet Nam National University Hanoi's School of Law, Vu Cong Giao and Tran Kien, indicated that when only one person, the husband or wife, files for divorce, "the case [is] deemed a dispute" (Vu Cong Giao and Tran Kien June 2012, 127).

Article 56 (Divorce at the request of one spouse) of the 2014 Law No. 52/2014/QH13 on Marriage and Family states the following:

1. When a spouse requests a divorce and the conciliation at a court fails, the court shall permit the divorce if it has grounds to believe that a spouse commits domestic violence or seriously infringes upon the rights and obligations of the husband or wife, which seriously deteriorates the marriage and makes their common life no longer impossible and the marriage purposes unachievable.
2. When the spouse of a person who is declared missing by a court requests a divorce, the court shall permit the divorce.
3. For request for a divorce under Clause 2, Article 51 of this Law, a court shall permit the divorce if it has grounds to believe that the domestic violence committed by one spouse seriously harms the life, health or spirit of the other. (Viet Nam 2014, Art. 56)

Additional information on procedures for filing a divorce in Viet Nam could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3.2 Associated Costs

The lawyer stated that

[t]he actual financial cost [of a divorce] shall vary on [a] case-by-case basis. However, the fee for first-instance civil court cost applicable to cases involving marriage and family with no monetary value shall be 200.000 VND [Vietnamese Dong] (approximately 10 US\$); and the fee for appellate trial shall be 200.000 VND (approximately 10 US\$). (Lawyer 27 Jan. 2016)

Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4. Custody Orders

Article 81 of the 2014 Law No. 52/2014/QH13 on Marriage and Family provides the following information on custody issues:

Article 81. Looking after, care for, raising and education of children after divorce

1. After a divorce, parents still have rights and obligations to look after, care for, raise and educate minor children or adult children who have lost their civil act capacity or have no working capacity and no property to support themselves in accordance with this Law, the Civil Code and other relevant laws.
2. Husband and wife shall reach agreement on the person who directly raises their children and on his and her obligations and rights toward their children after divorce. If they fail to reach agreement, the court shall appoint either of them to directly raise the children, taking into account the children's benefits in all aspects. If a child is full 7 years or older, his/ her desire shall be considered.
3. A child under 36 months of age shall be directly raised by the mother, unless the mother cannot afford to directly look after, care for, raise and educate the child or otherwise agreed by the parents in the interests of the child. (Viet Nam 2014, Art. 81)

Further to explaining the content of Article 81 of the 2014 Law No. 52/2014/QH13 on Marriage and Family, without specifically naming it, the lawyer concluded that "[t]herefore, a child is very often under the custody of the mother for his/her whole childhood" (ibid.).

Additional information on custody orders under the 2014 Law No. 52/2014/QH13 on Marriage and Family could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

5. Financial Support Available to Divorced Women

5.1 Child Support

According to article 82, clause 2 of the 2014 Law No. 52/2014/QH13 on Marriage and Family, "the parent who does not directly raise a child shall support this child" (Viet Nam 2014, Art. 82).

Information on the enforcement of child support obligations under the 2014 Law No. 52/2014/QH13 on Marriage and Family in Viet Nam could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

5.2 Spousal Support

Article 115 of the 2014 Law No. 52/2014/QH13 on Marriage and Family prescribes that

[w]hen divorced, if the party facing financial difficulties requests maintenance for plausible reasons, the other party has the obligation to provide maintenance according to his/her ability. (Viet Nam 2014, Art. 115)

On the level of support, Article 116 of the same law reads as follows:

1. The support level shall be agreed upon by the person with the support obligation and the supported person or the latter's guardian on the basis of the actual income and ability of the person with the support obligation and the essential needs of the supported person; if they fail to reach agreement, they may request a court to settle it.
2. When there is a plausible reason, the support level may change. The change of the support level shall be agreed upon by the parties; if they fail to reach agreement, they may request a court to settle it. (ibid., Art. 116)

Information on the enforcement of spousal support obligations under the 2014 Law No. 52/2014/QH13 on Marriage and Family could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. However, in their article, Vu Cong Giao and Tran Kien note that there is "not an effective mechanism for implementing the related provisions in the laws of Vietnam. Consequently, many divorce cases [result] in a child receiving no or little support from his/her mother or father" (Vu Cong Giao and Tran Kien June 2012, 138). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

A 2015 article published by *Thanh Nien News*, the English online edition of a Vietnamese newspaper (*Thanh Nien News* n.d.), states that

[m]ost women in rural Vietnam only receive a small sum of money as compensation from their ex-husbands after a divorce. Houses are often built on land passed down from the men's ancestors, which makes property division very complicated. Local authorities cannot sell the house and split the money between the couple because the husband's family would do everything to scare off potential buyers. (7 Aug. 2015)

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

6. Treatment of Divorced Women/Single Mothers

Information on the treatment of divorced women and single mothers was scarce among the sources consulted by the Research Directorate within the time constraints of this Response. In a 2014 article, *Tuoi Tre News*, the English online edition of a Vietnamese newspaper (*Tuoi Tre News* n.d.), reports on "social stigmas against unmarried or divorced mothers" (8 Sept. 2014). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

7. Support Services

Information on support services available to divorced women, including divorced mothers, was scarce among the sources consulted by the Research Directorate within the time constraints of this Response. The lawyer stated that

[t]he Federation of Women of Viet Nam, which belongs to the authorized associations in Viet Nam, is responsible for protecting and promoting the rights of women in the country. A branch of that Federation is empowered to take care and inform the women who want to start a divorce proceeding and know their rights. In every middle-size or big cit[y] of Viet Nam, a Center for women and development – Peace House Shelter is available for the woman looking for information and support. (27 Jan. 2016)

In its 2013 submission to Viet Nam's Universal Periodic Review under the auspices of the Office of the UN High Commissioner for Human Rights, the Vietnam Women's Union (VWU) presents itself as a socio-political organization, representing the legal and legitimate rights and interests of Vietnamese women across all levels of society. [...] The VWU was founded in 1930 and operates throughout Vietnam at [the] central, provincial, district and commune [levels]. (VWU 13 June 2013)

Further, in a 2013 article, the Center for Women and Development (CWD), which is "directly subordinated to the VWU" (CWD n.d.), refers to the "Peace House Shelter Project," a joint initiative between CWD and the Spanish Cooperation Agency to provide assistance to women and children victims of human trafficking and gender-based violence (ibid. 3 Apr. 2013). However, information on specific services offered to divorced women by either the VWU or CWD's Peace House Shelter Project could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Tuoi Tre News reports on the existence of online self-support groups for women to assist single mothers, including those who are divorced, "to help them overcome financial difficulties, provide them with access to better child care, and stand firm against social stigmas" (*Tuoi Tre News* 8 Sept. 2014). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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Attachment

Viet Nam. 2014. Law No. 52/2014/QH13 on Marriage and Family. English translation of the *Official Gazette* of Viet Nam sent to the Research Directorate by the US Library of Congress on 22 January 2016.

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