

13. April 26, 2022: Dạ Thảo Phương's fifth Facebook post, "The Diary—Evidence of a Crime," <https://www.facebook.com/dathaophuongvn/posts/122105497109930> (translated by Vũ Ngọc Kiều Khanh).
14. April 27, 2022: Hàm Anh's (Phan Thanh Thủy) Facebook post, "The Story of Finding Phương's Diary," [https://www.facebook.com/story.php?story\\_fbid=3070866783125247&id=100006058656127](https://www.facebook.com/story.php?story_fbid=3070866783125247&id=100006058656127) (translated by Chu Thị Thúy Linh and Peter Beamish).
15. June 25, 2022: Letter to Dạ Thảo Phương from Đỗ Bạch Mai (translated by Nguyễn Nguyệt Cầm and Peter Zinoman).

*Nguyễn Nguyệt Cầm*

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NGUYỄN THU HƯƠNG

## The Case of Dạ Thảo Phương and Sexual Violence in Vietnam over the Last Two Decades

On April 6, 2022, the Vietnamese poet Dạ Thảo Phương (née Phan Thị Thanh Thủy), who currently lives in Cyprus, posted an open letter on her Facebook page addressed to the executive committee of the Vietnam Writers' Association and the editorial board of *Văn Nghệ* [Literature and Arts] newspaper. Dạ Thảo Phương claimed that she had been raped more than twenty years ago by Lương Ngọc An, who—at the time of the accusation—served as the deputy general editor of *Văn Nghệ* newspaper.<sup>1</sup> In her open letter, Dạ Thảo Phương described in graphic detail how Lương Ngọc An attempted to rape her on April 14, 2000, and attached a handwritten report [*bản tường trình*] signed by four *Văn Nghệ* journalists and artists who witnessed this "very unusual incident," dated April 20, 2000. Dạ Thảo Phương further alleged that between July 1999 and April 2000 Lương Ngọc An manipulated and abused her and forced her to have sex with him multiple times.

In a subsequent Facebook post on April 8, 2022, Dạ Thảo Phương explained why she wanted to expose the case. In her third post, on April 11, 2022, Dạ Thảo Phương revealed her unwanted pregnancy resulting from the alleged rape and the abortion that followed. In a fourth post, on April 26,

2022, she noted that her old diary, which provided a contemporaneous account of the episode, had been found.

In response, the Vietnam Writers' Association sent Dạ Thảo Phương an official letter via email—neither signed nor stamped—on April 10, 2022, indicating that no grounds existed to proceed further with this matter and disavowing any authority to adjudicate an incident that had occurred more than twenty years ago. On April 13, 2022, another Vietnamese woman currently living in Australia, Bùi Mai Hạnh, took to Facebook to disclose her experience of an attempted rape by Lương Ngọc An twenty-five years ago.<sup>2</sup> On April 14, 2022, Lương Ngọc An responded for the first time since Dạ Thảo Phương's original rape allegation, indicating that he had reported her to the Vietnamese police for making false rape claims against him.

### The Wave of Social Media Activism

Dạ Thảo Phương's April 6, 2022, Facebook post reached tens of thousands of people over the following few days. The hashtags #dungbenphuong, #byphuong, and #standbyphuong flooded Facebook pages, surfacing in their wake a surge of personal narratives. Several celebrities and social media influencers from diverse backgrounds voiced their support for Dạ Thảo Phương, while lamenting the fact that she had to publicly recount this painful experience. Many expressed concerns about how widespread sexual violence remains in Vietnamese society today.

Dạ Thảo Phương's decision to go public with her victimization by sexual violence appears to have revived a local Vietnamese version of the #MeToo movement,<sup>3</sup> the origins of which may be traced to a few high-profile cases in 2018.<sup>4</sup> The traditional silence regarding sexual harassment and abuse against women in journalism was first broken when a young female intern accused a senior editor at *Tuổi Trẻ* [Youth] newspaper of raping her (Facebook posts starting on April 19, 2018). In a matter of days several additional women opened up about being harassed and abused while working as reporters. They tagged their posts #toasoansach [clean newsroom], #ngungimlang [stop staying silent], and #MeToo.<sup>5</sup> The accused editor at *Tuổi Trẻ* newspaper later resigned but denied the rape allegation against him. Soon after, in late April 2018, the MeToo movement [*phong trào* "Tôi cũng vậy"] snowballed into another major showbiz scandal when three women publicly

accused the popular singer Phạm Anh Khoa of sexual harassment. Two weeks later, the United Nations Population Fund Vietnam terminated its partnership with Phạm Anh Khoa—who, ironically, had been active in a campaign to prevent violence against women and girls in Vietnam since 2017.<sup>6</sup> The following day, the accused rock star issued public apologies for what he had done to the three women.<sup>7</sup>

More recently, a number of accusations of sexual assault have been leveled against senior officials and lecturers at universities in Hà Nội. Most notably, on March 27, 2022, V.N.H. accused L.M.T. of drugging and sexually assaulting her, turning her into a kind of sex slave.<sup>8</sup> V.N.H. is a former beauty contestant and L.M.T. is a former senior lecturer at Hà Nội Law University and former president of a private hospital in Hà Nội; their respective positions made V.N.H.'s accusations a high-profile case, and it is currently under investigation. Amid the recent uproar caused by such allegations, the #MeToo movement in Vietnam seems to be making a strong comeback with Dạ Thảo Phương's revelations. As indicated in Dạ Thảo Phương's original post, one reason she disclosed her experience of sexual violence online was to try to address a culture of misogyny, doubt, and victim-blaming apparent in recent rape claims that were widely covered in the Vietnamese media. She pursued this course of action, even though her case had no chance of being adjudicated. The statute of limitations for this case had expired since the alleged incident occurred more than two decades ago.<sup>9</sup> To put all this in proper context, it is important to look closely at the legal landscape regarding sexual violence in Vietnam as well as public narratives about sexuality and sexual relations in Vietnamese society over the past two decades.

## Understanding Sexual Violence in Vietnam in the First Decade of the 2000s

It may be instructive to consider some background information about criminal procedures used by Vietnamese courts in cases of sexual violence.<sup>10</sup> The intention here is not to engage in a legal discussion about either procedural rules or codes of sex crimes and punishable conduct; instead, it is to reflect upon how certain aspects of the legal definition of sexual violence constitute a barrier to bringing a case to trial in Vietnam and securing a conviction.

During the first decade of the 2000s, the 1999 Penal Code (Law No. 15/1999/QH10, issued December 21, 1999) was still applicable in the country, presenting an older definition of rape and corresponding punishments. At that time, rape was defined as an act committed by someone who through means of violence or threats of violence, by taking advantage of the victim's helplessness, or by any other means engages in sexual intercourse against the victim's will [*trái ý muốn của họ*].<sup>11</sup> The punishment is imprisonment for two to seven years (Article 111, item 1). The statute mentions coercive situations in which the element of force is presumed to exist. These include the actual application of physical force or the threat of using force to overcome the victim through violence. The law also addresses situations where the requisite coercion is not found but the perpetrators are judged to have taken advantage of the victim's helplessness. In this respect, the opaque element of "having taken advantage" [*lợi dụng*] may leave interpretation open to the possibility of prosecuting the alleged perpetrator for forced sex, as discussed below.

Separate from rape, the crime of "sexual relations grounded in coercion and abuse" is regulated in Article 113 of the 1999 Penal Code. This article defines the crime as follows: anyone using any available means to force any vulnerable person—whether a subordinate fellow worker or a dependent family member—to engage in sexual intercourse shall be sentenced to a prison term of six months to five years. The elements of the crime include instances when the perpetrator is aware of a state of unconsciousness of the victim or of the desperate situation of the victim such that the victim's socially fragile condition precludes the possibility of self-defense. It is clear from this definition that the scope of this legal statute is more specific than Article 111. Like rape, this crime requires the mens rea of intent,<sup>12</sup> and the doctrine of conditional intent applies here. But a guilty mind must be accompanied by, or expressed in, an act of culpability; it is only a guilty act that can be prosecuted.

Here the victim's behavior is a vital factor in drawing the distinction between rape and forced sex. In a rape, the absence of consent [*trái ý muốn*] is a primary element, while references to reluctance [*miễn cưỡng*] often appear in cases of forced sex. It is for the jury to distinguish the two crimes by looking at the nature of the perpetrator's behavior. In the first instance, the perpetrator, either through means of violence or through threat of violence, takes

advantage of the victim's helplessness or uses other means to force the victim to have sexual intercourse against her will. In the second instance, a defendant may be found guilty if he uses any available means to force a dependent or a person in a desperate situation to engage in sexual intercourse.

This brings us to the other central dimension of sexual assault definitions as stipulated in the 1999 Penal Code. Specifically, the designation of the crime of rape requires that the perpetrator has had sexual intercourse with the victim but does not require the act of sexual intercourse to have been completed physiologically (ejaculation).<sup>13</sup> Nevertheless, in actual criminal procedure, focus is placed on the word *giao cấu* [coitus], which is often interpreted as the most important determination of the act of rape. This tends to overlook the second part of the above definition of rape (i.e., whether the act has been completed physiologically or not). In cases of forced sex, the completion of sexual activity (ejaculation) is both a necessary and sufficient determination of the crime. As such, the only possible way to prove penetration and ejaculation is through examination of the vagina and detection of sperm. However, there is no way to prove penetration in a sexually experienced woman unless she is examined shortly after intercourse. Also, what if the alleged perpetrator does not ejaculate or if there is an absence of sperm but there has been vaginal penetration? Indeed, such emphasis reveals an aspect of the prescriptive, normative nature of the French Roman law tradition, vestiges of colonial French influence on Vietnamese law.<sup>14</sup>

A probably much more widespread idea is that the severity of the crime is always made dependent on evidence of bodily injuries on the part of the female victim, in particular, the loss of her virginity—which affects her marriageability. The explicit basis of such logic appears to have led many reports of rape involving sexually experienced women to be dismissed without prosecution or to result in an unjust judgment. The incident that Dạ Thảo Phương alleged on April 14, 2000, is not an exception to this interpretation as it was called merely a “fight” [*vụ xô xát*] at that time.<sup>15</sup>

Indeed, to understand the way people initially reacted to the rape allegation of Dạ Thảo Phương, it is also necessary to note that until recently, sex has not been a subject for public discussion in Vietnamese culture. It is easy to make sex-related jokes in daily conversation, but most people shy away from discussing problems such as sexual violence in a serious manner.<sup>16</sup> The

reporting of sensational news, in particular sex crimes, in the Vietnamese media is seen as a deliberate effort to boost sales.<sup>17</sup> For rape survivors, the larger context of sexual culture serves to reduce their willingness to speak about their experiences. This reflects the lack of gender and sex education among the general public.

Research has indicated that in some cases a decision to remain silent is linked to anxiety about the loss of one's virginity, considered a mark of dishonor in a patriarchal society like Vietnam in the 2000s.<sup>18</sup> In the case of rape, a blame-the-victim attitude is not directed at the survivor alone but at her parents as well, who are considered to have failed in their task of educating their child properly. The fear of social disgrace following public disclosure of a rape can be so extreme that the survivor's family often shows reluctance to contact the authorities and may try to treat the incident as a private matter. Moreover, the official discourse on "social evils,"<sup>19</sup> which is supposed to protect "innocent" citizens, has the effect of associating the survivor with the "evil" they experienced. As a consequence, rape survivors themselves may become associated with the stigma of a so-called "social evil." Two decades ago, there were few social service provisions supporting rape survivors in the country.

## An Update to Legal and Cultural Norms Regarding Sexual Violence in Vietnam in 2022

Returning to the present, there have been many progressive changes regarding the legal definition of sexual assault and public awareness about the subject over the past two decades. Concerning the crime of rape, a number of changes have been introduced to the current Penal Code of 2015 (amended in 2017). As can be seen from the new and more precise definitions, the statutes are expanded to include "other sexual acts" involving other forms of penetration *inter alia*.<sup>20</sup> Most notably, there has been concrete guidance provided by the Supreme Court on the adjudication of sexual abuse cases with persons under 18 as victims; this guidance regards the interpretation of various types of "other sexual acts" as well as "other means."<sup>21</sup> In cases involving a victim under the age of 10, the grounds for a conviction do not require the act of penetration to have occurred (Article 3, item 1). While the definition of "sexual acts" has been broadened, the law has continued to prosecute forced

sex as a separate crime that carries a significantly lower maximum prison sentence than rape. This fails to do justice to the victims of sexual assault.

It is also interesting to note that the legal recognition of forced sex within marriage as regulated in the Law on Domestic Violence Prevention, Control No. 02/2007/QH12, dated November 21, 2007 (Article 2, item 1d), has been part of an attempt to address with greater sensitivity the prevalence of such behavior. However, the term *hiếp dâm* [rape] is not used in this new law, which is placed under the jurisdiction of civil law, thus excluding coercive (and violent) sexual acts from the general rape provisions. This is an important point because if one is prepared to acknowledge that a wife can be raped by her husband or vice versa, then one must consider how the criminal legal code should label and adjudicate such experiences. In other words, the legal system has been reluctant to consider this form of sexual violence within the scope of criminal law, and this reluctance can be partially explained in terms of popular perceptions about “natural” entitlement to sexual intercourse within marriage.<sup>22</sup> It is clear that on the basis of the current legislation, nonconsensual sex is not always classed as rape. Legal definitions of sexual assault have not moved away from stereotypes yet.

At the same time, a clear definition of sexual harassment—a taboo subject long ignored in Vietnam’s male-dominated society—has been provided in the new Labor Code (No. 45/2019/QH14, issued November 20, 2019). Accordingly, sexual harassment in the workplace is defined as any behavior of a sexual nature at a workplace that is not expected or accepted by the recipient. The workplace is any place that the employee *de facto* works according to agreement with or assignment of the employer (Article 3, item 9). The prohibition of sexual harassment in the workplace is itself an intriguing social phenomenon. However, there is not yet any mention in Vietnamese law of specific obligations on the part of employers regarding this crime.

The aforementioned progress in laws regarding sexual violence did not come from nowhere. Rather, it reflected a strong commitment of the government of Vietnam to eliminate violence against women and girls in order to meet international milestones such as the Convention on the Elimination of All Forms of Discrimination against Women, the Millennium Development Goals, and most recently the Sustainable Development Goals.<sup>23</sup> Subsequent to the issuance of the 2007 Law on Domestic Violence Prevention

and Control, which represents an important step in the prevention of violence against women, numerous pieces of legislation, policies, and programs have been issued to protect women and girls against violence. As such, the National Strategy on Gender Equality 2011–2020 and the National Strategy on Vietnam Family Development to 2020, Vision 2030 became the basis for formulating different national programs for the elimination of violence against women and girls, including the National Action Plan on Domestic Violence Prevention and Control to 2020; the National Program on Human Trafficking Prevention and Combat for the period 2016–2020; the National Project on Gender-Based Violence Prevention and Response for 2016–2020, Vision 2030; the National Action Plan on Preventing and Combating Violence and Abuse against Children for 2020–2025.<sup>24</sup>

Remarkably, in order to raise awareness and contribute to preventing and combating domestic violence, the prime minister issued Decision No. 363/QĐ-TTg, dated March 8, 2016, designating June as National Action Month for Domestic Violence Prevention and Control. Aiming to reduce the risks of and crimes related to human trafficking, Decision No. 793/QĐ-TTg was also issued on May 10, 2016—designating July 30 as the National Day against Trafficking in Persons. Since 2019, the Ministry of Labor, Invalids, and Social Affairs (MOLISA) issued Decision No. 1453/QĐ-LĐTBXH on approval of the implementation plan of the National Action Month for Gender Equality and Gender-Based Violence Prevention and Control from November 15 to December 15, 2019.

When the Law on Gender Equality entered into force in 2007, along with the subsequent Law on Domestic Violence Prevention and Control one year later, the Vietnam Women's Union was assigned the mission of educating people at the grassroots level about gender-based violence and domestic violence prevention and control. The Women's Union joined hands with the Ministry of Labor, Invalids, and Social Affairs to help women and child victims of human trafficking reintegrate into society. With respect to referrals, the Center for Women and Development, an independent subordinate unit of the Women's Union, established the Peace House Shelter as a pilot model in March 2007 with the support of the Spanish Agency for International Development Cooperation.<sup>25</sup> The work of counter-trafficking carried out by the Peace House Shelter involved the provision of a comprehensive



needs-based support package for identified female survivors of human trafficking to help facilitate their recovery and reintegration. Later, the shelter expanded their target groups to women survivors of domestic violence. According to the final evaluation of the Peace House Shelter Project commissioned in 2015, the shelter has played an important role in strengthening a system and network for referring, receiving, and providing support services and aiding in reintegration.<sup>26</sup> This model facilitates creating a network of collaboration with stakeholders from different sectors and organizations, from the central government to the grassroots.

In addition to raising social awareness about and responding to violence against women and girls, two comprehensive national studies on violence against women have been carried out with technical and financial support from international development partners over the past ten years.<sup>27</sup> Results of the 2019 National Study on Violence against Women in Vietnam indicate that the proportion of women experiencing different types of gendered violence remains high in the country: one in three women aged between 15 and 64 (32.0 percent) experienced physical and/or sexual violence in their lifetime, and nearly one in ten (8.9 percent) experienced that violence in the last twelve months. The same national study has shown that nearly one in ten (9.0 percent) women have experienced sexual violence from a non-partner after age 15, and 1.2 percent in the last twelve months.<sup>28</sup> Perpetrators were predominantly male friends or acquaintances or male strangers. Young women aged between 20 and 24 were most at risk of non-partner sexual violence after age 15 (18.0 percent). Comparing the results of the two studies, the prevalence of ever experiencing husband/partner sexual violence was higher in 2019 than in 2010 (13 percent and 10 percent, respectively). A similar pattern has been observed for sexual violence, with younger women experiencing sexual violence at a relatively higher rate in 2019 than in 2010.<sup>29</sup> This finding could be the result of social change, with women becoming more open to talking about sex and sexual violence compared with ten years ago. Recent governmentally sanctioned campaigns such as “Keeping Silent Is Dying” [*Im lặng là chết*] have also given collective voice to female survivors of violence.

Still concerning, however, is that half (49.6 percent) the women who experienced physical or sexual violence by a husband or partner had never told anyone about it (before being interviewed) and most women survivors

(90.4 percent) did not seek help from formal services or authorities. Available evidence also suggests that most service providers in all sectors are unaware of how to handle issues related to gender-based violence in a professional way.<sup>30</sup> Conversely, there have been a number of challenges to the current victim referral mechanism and related governing laws and policies.<sup>31</sup> On top of that, research shows many rape survivors, particularly in cases of acquaintance rape, face derision and victim-blaming upon disclosing their assaults.<sup>32</sup> Indeed, victim-blaming is a part of rape culture, which reinforces the idea that women are supposed to take the primary responsibility for problems in their relationships with men. This kind of discourse often has a negative effect on rape survivors, creating a phenomenon often referred to as a second assault or social rape.<sup>33</sup> The case of Dạ Thảo Phương was not exempted from this second wave of trauma—as will be illustrated further below.

### Victim-Blaming Attitudes

Paralleling their widespread visibility, Dạ Thảo Phương's posts have been met with a swift backlash and criticism on online platforms, where some commentators sided with the alleged perpetrator, citing the presumption of innocence [*nguyên tắc suy đoán vô tội*]. Worse still are the negative sentiments toward Dạ Thảo Phương that seek to vilify and cast doubt on her story. These responses may simply be a defense mechanism rooted in a belief of the “just-world” hypothesis in the face of a bad event. The belief that the world is just seems to “provide people [with] psychological buffers against the harsh realities of the world as well as personal control over one’s own destiny. It is a way of eliminating injustice by victim derogation.”<sup>34</sup> As indicated by the recently alleged case of V.N.H., it appears that if a woman is raped by an acquaintance, she is not usually considered by the public or the criminal justice system to be a victim. There is a widespread belief that rape is something that occurs only between strangers and is only prevalent among the poor and less educated. Whereas perpetrators are often depicted as criminals or bad elements, poorly educated, alcohol and drug abusers, gamblers, or sexual perverts,<sup>35</sup> the alleged perpetrators in both cases of Dạ Thảo Phương and V.N.H. are married, educated, and senior officials. It has been observed elsewhere that disparities in social class are frequently a determining factor in rape cases where the accused is senior and respectable and the victim is in a lower position,

especially if she is very young. Both Dạ Thảo Phương and V.N.H. were in their twenties at the time of the incidents, while the accused was a man who held an important position in the bureaucracy (in the case of V.N.H.) or an administrative officer assisting a senior official (in the case of Dạ Thảo Phương). As the old story goes: a young girl is unreliable and capable of making things up; her word is not to be taken seriously. Indeed, it seems that this backlash discourages young women from reporting abuse.

At the time of writing this essay, nearly two months have passed since the revelations of Dạ Thảo Phương. The momentum has dissipated on social media. Nevertheless, looking on the bright side, Dạ Thảo Phương's decision to go public about her sexual violence experience may pave the way for the public disclosure of rape incidents, no matter how long ago an assault occurred. In addition, amendments to two major laws on gender-related issues—including the Law on Gender Equality (No. 73/2006/QH11) and the Law on Domestic Violence Prevention and Control (No. 02/2007/QH12)—are still ongoing. There is hope that an institutional change in existing provisions related to the elimination of violence against women and girls may still be possible in the near future.

NGUYỄN THU HƯƠNG is associate professor in the Department of Anthropology, University of Social Sciences and Humanities, Vietnam National University, Hà Nội. This essay has benefited from the editorial advice of Van Nguyen-Marshall, Martha Lincoln, and Peter Zinoman. The author is solely responsible for any mistakes and shortcomings that may exist.

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#### 1. DẠ THẢO PHƯƠNG

*Translated by Trần Thảo Uyên*

**My Rapist Is Now the Deputy Editor in Chief of *Văn Nghệ* Newspaper**

**O** riginally posted on Facebook by Dạ Thảo Phương on April 6, 2022, <https://www.facebook.com/dathaophuongvn/posts/115695031084310>.

April 3 is my birthday, the date that my parents brought me into the world.