

## VIETNAMESE LEGISLATION ON COMBATING DOMESTIC VIOLENCE

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**D**omestic violence of different forms occurs in all parts of the world and is considered a crime. It is an unacceptable act in a modern society, because it violates human rights and trespasses dignity of a person, jeopardizing the ethics and fine traditions and customs of a community. Hence, criticism is never ceased against domestic violence at the international level in general and national level in particular, and it needs to be eliminated.

In the world today, one in every three women is subjected to physical abuse, coerced sex or ill-treatment, and most of violence perpetrators are intimate partners or family members. In Vietnam, domestic violence is seriously taking place. Tremendous studies have been undertaken, which unveil an alarming picture of domestic violence in the country. According to findings disclosed by the National Assembly Committee for Social Affairs from a survey engaging with 2000 interviewees in 8 provinces in 2006, 2.3% of Vietnamese families had reported annually physical violence (beating), 25% with emotional violence, and 30% of married couples having coerced sex. Additionally, statistics in the Household

Survey 2006, which involved with 9,300 households, underpinned that 21.2% of families in the twelve months before the Survey had occurred one of the three forms of domestic violence (physical, verbal abuse or coerced sex) and the perpetrators were husbands. These surveys furthermore exposed an alarming concern of ill-treatment by children towards grandparents, parents or vice versa. The survey findings also disclosed that a substantial proportion of adolescent suicides was attributable to verbal abuse by parents condemning intimate relationships of their children or forced marriage.

The above-indicated domestic violence gives rigorous evidence that domestic violence is taking place at an alarming level, causing unexpected consequences, including above all gross violations of human rights such as, inter alia, the right to life, the right to respect for honour, dignity and life of a person.

Being fully aware of the pressing need to intensify the prevention of and combating domestic violence, the Communist Party and Government of Vietnam have adopted a bundle of documents that are indirectly

and directly relevant to domestic violence. In respect of international obligations, as a state party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Vietnam is undertaking an approach to gender equality in compliance with CEDAW. This is reflected by the fact that Vietnamese legal system, from the Constitution to laws, establishes the principle of equality between men and women and gender non-discrimination in all fields. At the national level, our Party and Government always express commitments to and have policies on preventing and combating domestic violence. Those policies, among others, include Directive No.49-CT/TW of 21 February 2005 of the Secretariat of the Central Committee of CPV on building Vietnamese families in the period of promoting national industrialization and modernization; Decision No.106/2005/QĐ-TTg dated 16 May 2005 of the Prime Minister on the approval of a Strategy for building Vietnamese families in the 2005-2010 period. Additionally, domestic violence is also referred to in a Resolution adopted by the National Assembly pertaining to the 5-year socio-economic development plan 2006-2010. The Resolution affirms that domestic violence prevention is one of the central tasks to be accomplished by governments and sectors at all levels in the current period.

Prior to the adoption of the Law on Domestic Violence Prevention and Control, relationships associated with domestic violence are regulated in such

various legal documents as Constitution 1992, Law on Marriage and Family Affairs, Law on the Protection, Care and Education of Children, Civil Code, Civil Procedures Code, Penal Code, Criminal Procedures Code, Ordinance on Punishments of Administrative Violations, Ordinance on the Elderly, etc. For instance, the Constitution 1992 has a separate article on the status of families in the social life, the preservation and enhancement of good practices and traditions of Vietnamese. Such fine traditions are “parental responsibility in bringing up the children to become good citizens, who are in turn obliged to pay gratitude to and take care of grandparents and parents” (Article 64), and husbands and wives mutually love, equally treat one to another without discrimination.

The above-mentioned legal documents and policies have obviously positive contributions to domestic violence prevention and control. However, the implementation of these documents is not as effective as it is expected.

With a view to making Vietnamese society civilized in a modern world, the Party and Government of Vietnam are determined to stop domestic violence because of its cruelty and divergence with fine and humane traditions of Vietnamese. To that end, the 12<sup>th</sup> National Assembly of the Socialist Republic of Vietnam overwhelmingly adopted the Law on Domestic Violence Prevention and Control, at its Second session, on 21 November 2007. The adoption of the Law is another advance in the building of a socialist rule-of-law state, continuously

improving the legal framework aimed at safeguarding human rights in Vietnam.

Within this article, the author attempts to present initial thoughts on some articles enunciated in the Law on Domestic Violence Prevention and Control, and to suggest solutions to make the Law effective in reality.

#### I. Law on Domestic Violence Prevention and Control – some relevant articles

The Law on Domestic Violence Prevention and Control (LDVPC) has six chapters with forty-six articles addressing the following essential issues:

Chapter I – the General provisions – has eight articles (Articles 1-8), proscribing the governing scope; perceived acts of domestic violence; basic principles in preventing and combating domestic violence; obligations bound on domestic violence perpetrators; rights and obligations of victims of domestic violence; relevant policies of the State; international cooperation on domestic violence prevention and control; and prohibitions.

Article 1 defines domestic violence “an act intentionally committed by a family member, which causes harm or possibly causes harm in physical, emotional and economic terms on another family member”. Notably, the governing scope of the Law is rather broad, covering any intentional act committed by a family member, including divorced couples or couples without registration but living together as husbands and wives. Its purpose is to protect all family members,

and to make sure that the perpetrators hold accountable for their violent acts.

Article 2 specifies “acts of domestic violence”. A new and progressive feature found in this article is that acts aimed at “preventing someone from fulfilling rights and duties in family relationships between grandparents and grand-children, parents and children, husbands and wives, brothers and sisters...” shall be punished.

Similar to other laws, LDVPC also provides the guiding principles for domestic violence prevention and control. Accordingly, preventive measures are principally undertaken along with the protection of life and health of the victims, preventing serious consequences from occurring with a view to building up and cementing Vietnamese families. These cross-cutting principles are denoted in all forty-six articles of the law, representing the tolerance and humanitarianism of the State and people of Vietnam.

Chapter II, prevention of domestic violence, consists of three sections and nine articles (articles 9-17) that prescribe information, communication and education of DVPC; conciliation of conflicts and disputes between family members; counselling, commenting and criticizing by resident communities on DVPC.

In this Chapter, emphasis is mainly placed on preventive measures against domestic violence, educative means at the community level, bringing the role of families into full play, early detection and handling with disputes in an attempt to prevent them from turning into conflicts

that trigger domestic violence. Disputes can be addressed by conciliatory measures, supportive measures for alcoholic addiction treatment, mental diseases. The fact shows that sixty to seventy percent of domestic violence cases are directly linked with alcoholic addiction or using alcohol as a justification for violence.

Chapter III, protection and support to victims of domestic violence, has two sections and thirteen articles (articles 18-30), which provide the detection, reporting of domestic violence; preventive and protective measures; prohibition of communication by the decision warranted by the chairman of the communal people's committee; prohibition of communication by the decision issued by the court; monitoring the enforcement of the decision on prohibition of communication; taking care of victims of domestic violence by health care centres; counselling for victims of domestic violence; assistance for emergency needs of the victims; shelters for victims of domestic violence; clinics; social security centres; supporting centres for victims of domestic violence; counselling centres for DVPC; and, community-based trusted addresses.

There are numerous domestic violence cases that trigger serious consequences, threatening the life of victims. Without viable prohibition of communication, which aims to isolate one from another, it runs a high risk that an offence may be committed or even a murder might occur. Hence, prohibition of communication is one of special and efficient solutions to protect the victims, mitigate the

consequences caused by domestic violence and minimize offences.

Chapter IV, responsibility of individuals, families, agencies and organizations in DVPC, spans over eleven articles (articles 31-41) that specify the liabilities bound on individuals, families, the Vietnam Fatherland Front and its member organizations, women's union, agencies implementing state management over DVPC, the Ministry of Culture, Sports and Tourism, the Ministry of Health, the Ministry of Labour, Invalids and Social Affairs, the Ministry of Education and Training, schools and educational institutions within the national educational system, the Ministry of Information and Communication, mass media agencies, the police, judiciary organs, procuracies, etc.

Three remarkable points in this chapter are as follows: *firstly*, there is a provision that specifically prescribes the responsibility on the Ministry of Culture, Sports and Tourism to implement the state management over DVPC (Article 35). This issue has been ignored and is very crucial to assist the Government in giving direction and arranging the implementation of DVPC in an efficient and effective manner; *secondly*, the role of women's union is reasserted (Article 34). It indicates the importance of a mass organization whose members account for fifty percent of the nation's population. In reality, DVPC is one of the targeted programmes of action being implemented by Vietnam Women's Union; *thirdly*, Article 35, paragraph 5 specifies that "the responsibility for reporting on DVPC at local level is vested with communal

people's committees". This provision is significant because DVPC has hardly drawn attention from the local authority.

Chapter V, handling of infringements on LDVPC, denunciations and complaints, has three articles (Articles 42-44), which proscribe punishment on persons who violate LDVPC; application of educative measures at commune, ward and township level; putting in educational or reformatory institutions; denunciations and complaints. As stated in this chapter, anyone who violates LDVPC, depending on the nature, extent of the breach, shall be subjected to punishment for administrative violations, discipline or prosecution for criminal liability, especially if damages occur compensation must be made in compliance with the law.

Chapter VI, implementation provisions, consists of two articles (Article 45-46), which stipulate the effectiveness and implementation guidelines.

## **II. Obstacles for the implementation of LDVPC**

LDVPC has entered into force for more than three months, arrangements for its implementation are undergoing. However, one can realize the enforcement of the law facing some obstacles as follows:

Firstly, the authority implementing state management over DVPC has not yet formulated the plan of action on DVPC. Furthermore, governmental decrees providing the guidelines for the implementation of the law are not yet promulgated. This is one of the difficulties for translating the law into reality. Consequently, there remain victims of

domestic violence not yet enjoying prompt protection. Thus, it is important for a law to substantively enter into reality, law-makers are recommendable to build up implementation guiding documents in parallel with the formulation of the law. Otherwise, even when a law is adopted and already enter into effect, but debates still undergo in the implementation process due to the absence of a relevant guiding document.

Secondly, though the law was adopted, there remain questions about the governing scope of the law. That Article 2, paragraph 2 defines a violent act between divorced couples or couples without registration but living together as husbands and wives an act of domestic violence naturally recognizes de facto marriages, which oppose to the Law on Marriage and Family Affairs. Additionally, a large deal of targets subject to the law's governing scope is beyond the family ambit. Thus, when the law protects couples without registration but living together as husbands and wives, it causes difficulty for relevant authorities to implement the law in practice because it is challenging for them to distinguish violent cases that occur either in family or society in order to take appropriate handling measures.

Thirdly, some provisions enunciated in the law are of general nature. For instance, Article 2, paragraph 1, item d recognizes "coercive or forced sex" as an act of domestic violence. However, sexual violence may occurs in family, but it is considered a private matter and, thus, very difficult for authorities to investigate and

handle. Moreover, it is hard to obtain evidence to prove that a person commits sexual violence in family. Hence, sexual violence should be considered a form of physical or emotional violence.

Fourthly, the recent organizational restructuring and merging part of the Committee for Population, Family and Children Affairs – a ministerial body responsible for family affairs in the past – in the cultural, sports and tourism sector has created a vacuum in the domain of state management over family affairs. In many localities, family affairs are under the oversight of a small unit within the cultural, sports and tourism sector. Furthermore, there is a lack of specialized personnel or if any their knowledge on family affairs is very poor. Functions and mission are not clearly delineated, or even not yet provided, causing a situation where a case takes place, but none takes responsibility. The unsustainability of organizational structure and inadequacy of personnel certainly affects the implementation and oversight of the law in practice.

### **III. Some solutions to viable implementation of LDVPC**

Bearing on the prevalence of domestic violence as well as obstacles for the implementation of LDVPC in practice as discussed above, in order for the law to be translated into reality and the prevention and control over DVPC to be effective, the author of this article would propose the following solutions:

- One, it is critically important to intensively perfectionate a legal

framework on DVPC, including the formulation and Government's approval of two decrees on providing details and guidelines for the implementation of some articles of LDVPC, and on administrative punishment in the field of DVPC. At the same time, the Ministry of Culture, Sports and Tourism needs to build up and promulgate a guiding circular on the implementation of LDVPC, on the other hand to formulate and submit a national programme of action on DVPC to the Prime Minister for his approval. Additionally, the state management executing agency is suggested to review and re-examine the existing legal documents in the field with a view to supplementing, denouncing or promulgating new legal documents, if necessary, that are compatible with LDVPC and international human rights treaties to which Vietnam is a signatory.

- Two, it is imperative to actively promote advocacy in a bid to raise public awareness on LDVPC, which would help to change public behaviour towards DVPC. In specific terms, trainings on policies and laws on DVPC are to be conducted not only for policy makers, leaders of mass organizations and sectors as well as highly prestigious people in communities, but also for ordinary people, especially those from families that used to have disputes and conflicts. To make the behaviour change communication campaigns effective is to develop communication materials and to work out vigorous advocacy plans, including forms, means and ways of communication, incorporation of advocacy on DVPC in

Vietnamese Day of Family, International Day of Children, etc. And, advocacy on DVPC can be even integrated in citizenship training programmes in primary and tertiary education.

- Three, it is required to swiftly consolidate and perfectionate the organizational structure, arrange sufficient personnel and marshal clear division of responsibility and management function in relation to family affairs in general and DVPC in particular.

- Four, it is crucial to raise awareness of personnel in the cultural, sports and tourism sector at all levels on DVPC by developing training manuals and conducting trainings.

- Five, it is necessary to strengthen and expand a network to support victims of domestic violence. Specifically, it is important to marshal cooperation with relevant ministries and sectors to make DVPC effective. For instance, the cultural, sports and tourism sector needs to work closely with the Ministry of Labour, Invalids and Social Affairs to consolidate social security centres in provinces and cities; to cooperate with the Ministry of Health to build capacity of health care centres; to work with the Ministry of Justice to intensify grassroots conciliation, expand the family and DVPC counselling network in communities. Additionally, it is recommendable to establish shelters for victims of domestic violence, put in place trusted addresses in communities, and to regularly monitor and even conduct surprised supervision missions on DVPC in localities.

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