

Ensuring the Rights of Vulnerable Groups in the Legislative Process in Vietnam: Situation and Solutions

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Abstract

In recent years, Vietnam has actively and vigorously developed and strengthened law enforcement and facilitated access to the Law to protect human rights and legitimate interests. After formulating the Judicial Reform Strategy and implementing the Law, the State has created favourable conditions for vulnerable groups to participate in Vietnam's political, social, economic, and cultural life. However, it still faces challenges in ensuring and facilitating access to the Law and raising legal awareness. In particular, women, ethnic minorities, people with disabilities, and children are the most vulnerable groups. Therefore, this article focuses on the guarantee of the rights of vulnerable groups in the process of law-making in Vietnam today to unveil difficulties and limitations; on that basis, it makes proposals for ensuring the rights of vulnerable groups in the legislative process in the coming time.

Keywords: Human Rights, Rights of Vulnerable Groups, Law-making.



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I. INTRODUCTION

People's accessibility to information and laws in the process of law-making and law enforcement is one of the essential factors in the development of any country. When the rights and interests of the people are not protected by the Law or taken care of by the subjects in the law-making process, it will negatively impact the implementation process and social management. As a result, vulnerable groups may be left behind in the development process or be discriminated against by the interest of dominated groups. Women, children, ethnic minority communities, and the poor are directly affected. Access to justice and issues, especially legal awareness, are closely related. Some factors challenge vulnerable groups in clearly understanding legal terminology and how they can apply the advantages of laws and policies in their daily lives such as poverty, unequal access to the Law, geographical distance, different cultural customs, stigma and discrimination. When legal understanding is inadequate, it is difficult for people in society to seek justice actively and relevant support.

In recent years, Vietnam has been actively developing and strengthening law enforcement to support people accessing the Law to better protect their interests and rights. The country also has developed a strategy for judicial reform and law enforcement to create favourable conditions for disadvantaged groups to participate in Vietnam's political, social, economic and cultural life. However, Vietnam still has challenges in ensuring and implementing legal access and meeting the need to raise legal awareness. In particular, women, ethnic minorities, people with disabilities and children are the most vulnerable groups. Some people have the skills to search, exploit, look up, apply and use the Law; the number of people using information technology is increasing daily. In particular, state agencies, cadres and civil servants have made positive changes in awareness and responsibility to create conditions for people to access the Law in receiving and solving tasks. Even in the law-making process, the participation of disadvantaged groups is increasing daily, and state agencies increasingly value their voices for policies in the law project. However, people, especially disadvantaged groups, still have difficulties accessing information, including legal information, and using the Law to exercise their rights and protect themselves. Many people, especially ethnic minorities in remote, isolated and challenging areas, are unaware of the right to access information and are still afraid to ask for information. Provide information; not confident to participate in policy criticism, do not have the appropriate skills to express opinions and opinions on the content of the law project when receiving comments from state agencies.

Vietnam's law-making process undergoes various stages, from policy-making to drafting and final law review. Nevertheless, the participation of vulnerable groups is not guaranteed at all stages. Somewhere in each period, vulnerable groups' direct or indirect participation is still faint. Agencies have not respected their voices, legitimate rights and interests. Participants involved in the law-making have paid little or inadequate attention

to mechanisms to ensure the rights of vulnerable groups. The assessment of policy impacts on vulnerable groups when requesting the formulation of laws, ordinances and decrees has not been practical. Moreover, the content of the rights of vulnerable groups has not been fully conveyed or inconsistent in the process of formulating laws, ordinances and decrees; ensuring the rights of vulnerable groups have not been identified as primary and separate content of project appraisal and verification activities, so there are many open questions. This fact directly affects the effectiveness of rights assurance of vulnerable groups and harms social management; there will be disadvantaged groups left behind in the development process.

II. RIGHTS OF THE VULNERABLE GROUP AND LAW-MAKING PROCESS IN VIETNAM

2.1 *The Relation*

The vulnerable group consists of those needing scrupulous attention and solid social protection. Providing a safe environment is the best way to protect vulnerable groups. To that end, it requires cooperation from law enforcement agencies, the judiciary, and the supporting system to protect the vulnerable group and the indispensable role of the family, school, and community. However, the essential prerequisite is ensuring vulnerable groups' rights under legal provisions.

The process of promulgating legal documents, including laws, ordinances and decrees, are all tasks that relevant state agencies, organizations and individuals must carry out in a particular order.

Law-making stages span from researching, evaluating, selecting options, drafting and promulgating a new law, ordinance, decree or amending or supplementing current legal documents. Before 2016, there was no difference between making a policy and a law. Since July 1, 2016, the Law on Promulgation of Legal Documents 2015 (herein the Law 2015), entered effect, has fundamentally renovated the process of elaborating and promulgating legal documents in the way that separates the policy formulation process from the drafting of legal documents including laws, ordinances and decrees. In general, the 2015 Law has provided general principles and processes for the participation of the vulnerable group in the legislative process.

Among the legal documents, laws, ordinances, and decrees are three documents with high legal effect, impacting the whole country and serving as a legal basis for other state agencies to issue implementation documents. In addition, there are rights of the vulnerable groups characterized as human rights and citizens' rights which are enshrined in the Constitution.

Generally speaking, at each stage of the law-making process, including the formulation of laws, ordinances and decrees, in particular, the rights of the vulnerable group are recognized, considered, and integrated by the law-drafters into specific regulations to ensure that it is the optimal legislative option for the vulnerable group. In this vein, the process of formulating laws, ordinances and decrees have the following fundamental roles in ensuring the rights of vulnerable groups:

Firstly, the legislative process contributes to that laws, ordinances and decrees are promulgated promptly to meet the requirements of ensuring the rights of vulnerable groups. In promulgating laws, ordinances and decrees, it is necessary to develop programs and plans to draft documents with priorities to meet the actual requirements of ensuring the rights of vulnerable groups. This program must be built based on scientific foundations as well as practical needs of social life, according to which the program determines the number of documents that need to be promulgated in a certain period. In case of necessity, the program must specify the expected time for submitting documents and consider and approve such documents. Because strict compliance with and application of the procedure set out in promulgating laws, ordinances and decrees will be one of the essential factors in ensuring that such documents are enacted to meet the needs of vulnerable groups in society. The "closeness" to the needs of vulnerable groups in society is reflected in the programming stage and other stages of the promulgation process, such as drafting and consultation, discussion and approval.

Secondly, the process of promulgating legal documents contributes to strengthening the responsibility of actors in ensuring the rights of vulnerable groups. In particular, the Law 2015 stipulates strict rules on the process that require entities involved in the development and enactment of legal documents to comply with the procedure and perform specific tasks. From policy proposals to drafting, appraisal, verification and signing for promulgation, if the actors always pay attention to and respect the rights of vulnerable groups, the content of their rights will undoubtedly be recognized manifestly in the provisions of laws, ordinances, and decrees. On the contrary, as long as actors neglect and disregard each stage of law-making, the rights of vulnerable groups will not be guaranteed.

Thirdly, observance of the procedure for developing laws, ordinances and decrees contribute to ensuring the quality of these legal documents and serves as a legal basis for recognizing, respecting, protecting and guaranteeing the rights of vulnerable groups. These strategies are shown most clearly through two critical stages in promulgating legal documents, which are program appraisal and verification, and drafting legal documents. In particular, the content of appraisal and verification is very clearly specified in the provisions of the 2015 Law², including the legal system's constitutionality, legality, and uniformity. Concerning the rights of vulnerable groups, appraisal and verification agencies are

² National Assembly of Vietnam, 'The Law on Promulgation of Legal Documents' (2015), Clause 3, Article 58, Article 65.

responsible for considering and assessing whether draft laws, ordinances or decrees limit the rights of vulnerable groups. If the limitation is not in four cases of Article 14 of the 2013 Constitution, the appraisal and verification agency shall request the drafting agency to amend it to be consistent with the Constitution regarding human rights, citizens' rights and obligations.³ Through the legislative process, it is imperative that appraisal and verification agencies review both the content and the formality of the laws, ordinances and decrees to ensure that the program and draft contents do not overlap or contradict higher legal norms on the same issue while ensuring compatibility with international treaties related to the rights of vulnerable groups.

In order to have a legal basis to promote, protect and ensure human rights, Vietnam has made constant efforts to build and perfect the legal system on human rights. The international human rights treaties to which Vietnam is a member and commits to implementing and viewing them as political and legal responsibility of the State. Currently, Vietnam is one of the countries that actively participate in most of the international conventions on human rights promulgated by the United Nations and other international organizations. Compared with many countries in the region and developed countries, Vietnam is not inferior in the number of members of international conventions on human rights. As of 2021, Vietnam has ratified and acceded to seven out of nine basic conventions of the United Nations on human rights, acceded to 25 conventions of the International Labor Organization (ILO), including nine out of ten fundamental conventions.

Along with actively participating in international treaties on human rights, Vietnam has made efforts to build a national legal system that incorporates international principles and standards on human rights. It ensures the harmony between national Law and International Law. The 2013 Constitution, together with the rules and codes, has created a legal framework for respecting, promoting and protecting the rights of vulnerable groups; not only establishing a legal basis for the rights of the right-holder (individuals, citizens, vulnerable groups in society), but also imposes obligations on state agencies, state officials and civil servants, and non-state organizations (obligation-bearers) to raise social responsibility, legal responsibility to respect, protect and ensure human rights in general and the rights of vulnerable groups in particular. As a result, achievements in providing the rights of vulnerable groups in developing laws, ordinances and decrees in Vietnam are reflected in all areas of social life.

³ Article 14 of The 2013 Constitution of the Socialist Republic of Vietnam stipulates: “*Human rights and citizens' rights may not be limited unless prescribed by a law solely in case of necessity for reasons of national defense, national security, social order and safety, social morality and community well-being*”

2.2 Factors impacting the rights of vulnerable groups in Vietnam's law-making process

Party policy

In ensuring the rights of vulnerable groups in society, the attention of Party committees and authorities at all levels in this matter is considered one of the factors that significantly affect the effectiveness of government work. It can be seen that, in any matter, when there is the attention and direction of the leaders, the implementation of the work will be effective. The interests of the Party, State and heads of relevant agencies and units are reflected in the policies, viewpoints, lines, and planes that these agencies and individuals put forward to build a sustainable social security system.

Legal provisions

Law is a system of rules of conduct set by the State or recognized and guaranteed by state power in order to regulate social relations according to the purposes and orientations of the State. Thus, the provisions of the Law on ensuring the rights of vulnerable groups are the body of the State's regulations for protecting such rights. Because the Law has extraordinary power, the Law is one of the important factors affecting the protection of vulnerable people in society. A complete legal system will facilitate the protection because the Law will provide, guide and guarantee a legitimate premise to ensure in practice. However, suppose the legal system is incomplete and lacks synchronization or regulations related to ensuring the rights of vulnerable groups. In that case, those will be disadvantaged, and other social actors will easily infringe on their rights.

Social and economic conditions

Socio-economic conditions are also a vital factor affecting the protection of the rights of vulnerable groups in law-making. If a country has a developed legal system, the rights of vulnerable groups will be prioritized for development and guaranteed to be implemented in practice. In contrast, in countries with underdeveloped laws, the rights of vulnerable groups would not be guaranteed. The importance of socio-economic conditions is reflected in the fact that if people live in an institution with outdated cultural ideas, the rights of vulnerable groups can hardly be respected, and changing the whole society's thinking for them to develop toward more equality is also a huge barrier.

Organizational apparatus, human resources

Administrative apparatus and human resources are important factors contributing to the realization of the provisions of the Law into practice. They are the main force involved in activities to ensure the rights of vulnerable groups. The organizational apparatus is the totality of state agencies from the central to local levels, forming a system that is organized and operates according to cooperative principles, forming a synchronous mechanism to

perform tasks and functions to ensure the rights and interests of the vulnerable groups. The human resource here includes all the people working to ensure the rights of the vulnerable groups, regardless of the position assigned by the State. Only when there is a complete and unified organizational apparatus from the central to local levels, with abundant, qualified and responsible human resources, can the work of ensuring vulnerable groups' rights be achieved highly effectively.

III. THE CURRENT SITUATION OF ENSURING THE RIGHTS OF VULNERABLE GROUPS IN LAW-MAKING STAGES IN VIETNAM

3.1 Ensuring the rights of vulnerable groups in the drafting stage of law-making proposals

Proposing a law, ordinance, or decree is the first procedure that needs to be carried out to issue a legal document, which is implemented by most countries, including Vietnam, in the legislative process. All consider this the essential stage, focusing many resources on implementation and must be explained, absorbed and protected before many agencies. This process includes many activities, which are carried out in the sequence as follows: (1) Formulating policy content and assessing policy impacts; (2) Collecting opinions on the proposal for the formulation of legal documents; (3) Appraisal of requests for the formulation of legal documents; (4) Approving the proposal to develop legal documents. The policy-making process aims to answer the question: Why is it necessary to amend, supplement or abolish existing policies or issue new policies to ensure the rights of vulnerable groups? How will that policy be amended, supplemented, abolished or issued new? Which agency has the authority to issue policies?

This process is the stage where thorough research is required to identify needs and find suitable policy design and legal provisions so that the State can ensure the rights of vulnerable groups to be implemented in practice. Therefore, the proposal to develop laws, ordinances and decrees must be detailed, specific, precise, evidence-based, practical, and highly convincing, and the rights of the vulnerable groups will be fully guaranteed.

Firstly, about the subject of the proposal: Normally, ministries, ministerial-level agencies, and agencies attached to the Government propose to develop laws, ordinances, and decrees within the scope of their respective sectors and domains under their respective management. Accordingly, in the field of ensuring children's rights, the Ministry of Labor, War Invalids and Social Affairs is responsible for requesting the formulation of laws, ordinances and decrees; for the guarantee of women's rights will be proposed by the Central Committee of the Vietnam Women's Union and submitted a policy impact assessment report to the competent authorities for approval. In addition, agencies and organizations deputies to the National Assembly can request law/ordinance formulation. According to the provisions of Law 2015 and the 2013 Constitution, state agencies, organizations and deputies of the National Assembly have the right to submit law projects and

submit proposals on laws and ordinances to the National Assembly Standing Committee to draw up a program to develop laws and ordinances and submit them to the National Assembly for approval.

Secondly, the basis of proposing to develop laws, ordinances and decrees to guarantee vulnerable groups' rights.

- Political basis: Based on guidelines, chapters and policies of the Party; strategy for socio-economic development, national defence and security; regulations or overall socio-economic development, development of sectors and fields, the Party has issued many documents with specific views, guidelines and orientations for leadership in fields related to vulnerable groups. For example, regarding children's rights, in the past time, the Secretariat of the Party Central Committee has issued documents related to child protection issues, such as Directive 38-CT/TW, dated May 30, 1994, of the Secretariat of the Party Central Committee (term VII), the implementation of the Law on protection, care and education of children; Directive No. 55-CT/TW dated June 28, 2000, of the Politburo on strengthening the leadership of the Party committees at grassroots levels in the protection, care and education of children; Directive No. 20-CT/TW dated November 5, 2012, of the Politburo on "strengthening the Party's leadership in the care, education and protection of children in the new situation". This phase is an essential political basis for the subjects to propose developing laws, ordinances and decrees that guarantee children's rights.
- Practical basis: Based on the actual situation of socio-economic relations, analyze the need to develop laws, ordinances and decrees to guarantee vulnerable groups' rights.
- Law-based: By summarizing and evaluating the actual implementation of current legal documents, it shows the need to amend and supplement existing documents or improve the legal value of the recent document to meet the practical requirements and the requirements of perfecting the legal system. So that the actors will propose to promulgate a document to amend, supplement or replace it, many legal documents, ordinances, and decrees related to child care and protection, gender equality or ensuring the rights of people with disabilities are still limited and no longer relevant compared to other legal documents with practice. Therefore, it is required to have written amendments, supplements or replacements when deemed necessary.

Thirdly, the proposal's content is to develop laws, ordinances and decrees to guarantee vulnerable groups' rights. After having a sufficient basis for the proposal to develop a law, ordinance or decree that guarantees the rights of vulnerable groups, the content of the proposed document should reflect the requirements of state management, the need to adjust the Law;

the tentative name of the drafting agency, specifically the agencies responsible for managing children, women and people with disabilities; estimated time for submission of draft documents; budget for the promulgation of laws, ordinances and decrees with the guarantee of rights of vulnerable groups. Once the request has been sent to the promulgating agency, it shall consider the necessity for promulgation, the basic policy of the proposed document and the procedures for approving the proposed document.

Fourth, the procedures for making proposals for developing laws, ordinances and decrees guarantee the rights of vulnerable groups. Depending on the request made by different actors, the procedure for requesting the formulation of a law, ordinance or decree with the guarantee of the rights of vulnerable groups will be different.

3.2 *Ensuring the rights of vulnerable groups during the drafting stage of the law*

Firstly, establish a drafting committee: The establishment of a drafting committee should be based on the nature and content of the draft law, ordinance or decree. As for ensuring the rights of vulnerable groups, the composition of the drafting committee requires agencies and individuals with extensive experience in protecting and ensuring the rights of vulnerable groups. The composition of the drafting committee includes the head of the committee, the head of the agency in charge of the drafting and other members who are representatives of relevant agencies and organizations, experts and scientists. Directly responsible for the editorial team. To ensure the quality of the editorial team, they are experts with legal, and scientific knowledge about children, women or people with disabilities, have experience in law-making and have lexical knowledge in the field of children, children or people with disabilities, rights of vulnerable groups.

Secondly, the drafting board drafts an outline: During the drafting process, the drafting committee reviews and approves a draft outline and compiles and revises the draft. The outline should define the scope of regulation, main contents, basic principles and chapters and sections required in the draft for the protection of the rights of vulnerable groups. The outline will be the foundation for a further detailed outline which will delve into each specific content and provision and serve as the basis for developing draft laws, ordinances and decrees to guarantee vulnerable groups' rights.

Thirdly, organize the document's drafting: After the competent authority approves the outline, the drafting board proceeds to organize the document's drafting. The drafting committee will discuss the basic policy and issues under the draft content, discuss the draft document; collect comments on the draft document; discuss the contents of the draft, the report, and the explanation, and receive opinions from agencies, organizations and individuals; ensure the constitutionality, legitimacy and consistency of the draft for the legal system; ensure the feasibility of the document. As a result of the drafting phase, the agency in charge of the drafting will have a draft law, ordinance or decree with a relatively complete guarantee of the rights of the vulnerable groups.

3.3 *Ensuring the rights of vulnerable groups during the appraisal and examination of law projects*

In this period, the guarantee of the rights of vulnerable groups is most clearly shown through the content of appraisal and verification activities. According to the provisions of the Law 2015, the appraisal content focuses on the following:

- a) *The conformity of the draft document with purposes, requirements, scope, and proposed policies in the request for law/ordinance formulation, which was approved;*
- b) *The constitutionality, legitimacy, and consistency of the draft document concerning the legal system; the compatibility of the draft document with relevant international agreements to which the Socialist Republic of Vietnam is a signatory;*
- c) *Necessity, reasonability, and costs of administrative procedures (if any) in the draft document;*
- d) *Necessary human resources and financial resources to ensure implementation of the legislative document;*
- e) *Integration of gender equality in the draft document (if any);*
- f) *Language, format, and drafting process of the document.*

*If necessary, the appraising agency shall request the drafting agency to report the issues related to the project or draft document.*⁴

During the appraisal and verification process, if the content of a law project, ordinance or decree does not guarantee the rights of the vulnerable groups, the appraisal and verification agencies will evaluate, raise their opinions and request the agency presiding over the drafting must edit and complete to ensure the rights of the vulnerable groups in the most optimal way.

3.4 *Ensuring the rights of vulnerable groups in the process of submitting, approving, and promulgating legal documents*

After the draft law, ordinance or decree is revised and completed; the lead agency will prepare a complete dossier according to the provisions of the Law for submission to the competent authority for promulgation (the National Assembly, the Standing Committee of the National Assembly, the Government). If the Law, ordinance, or decree project has ensured the quality, recognition, respect, protected and guaranteed the rights of the vulnerable groups, the National Assembly, the National Assembly's Standing Committee and the Government will pass the Law, ordinances, decrees subject to each body's competence. This phase is the final stage of formulating laws, ordinances and decrees.

⁴ National Assembly of Vietnam, 'The Law on Promulgation of Legal Documents' (2015), Article 58 (3).

IV. ACTUAL SITUATION OF ENSURING THE RIGHTS OF VULNERABLE GROUPS IN LAW-MAKING

Over the years, Vietnam has continuously built and strengthened a comprehensive legal system for ensuring and promoting human rights; the system of law inspection, supervision and implementation with the participation of the people is constantly being renewed according to the principle of the rule of Law; citizen rights are promoted in all aspects, from civil, political to economic, social, and cultural. Specifically, the Constitution of the Socialist Republic of Vietnam has been amended to ensure citizens' many rights and legitimate interests. In a short time, many laws were introduced and amended to fulfil the commitments of the International Conventions on Human Rights to ensure the rights of the people, especially the rights of vulnerable groups such as women, children, people with disabilities, and people with special needs. Over the years, the development of laws, ordinances and decrees related to the rights of vulnerable groups have been paid attention to by agencies and organizations and achieved specific results.

According to statistics, from the beginning of the 13th National Assembly term to June 2017, the National Assembly passed 111 laws and ordinances (100 sets of laws, laws and 11 ordinances), of which the Government submitted 95 laws and ordinances—accounting for 85.6%) including 87 laws and 08 ordinances. According to the statistics of the 111 laws and ordinances mentioned above, there are more than 40 laws and ordinances related to gender equality that the drafting agency has assessed in accordance with regulated provisions of the Law on Gender Equality . In legal documents, women's issues in various fields have received significant attention in recent years, and Vietnam clearly state issues related to the implementation and protection of women's rights.

In particular, the legal field of prevention and control violence against women and children is of great interest and focus in Vietnam. With the responsibility of a member state, Vietnam has incorporated international conventions which recognize human rights, gender equality, prevention and response to gender-based violence (GBV), and violence against women (VAW) in the relevant legal system and policies including the 2006 Law on Gender Equality, the Law on Domestic Violence Prevention and Control 2007, the Law on Human Trafficking Prevention and Control 2011. It can be said that Vietnam's efforts in responding to GBV and EAW through the promulgation of legal documents and mobilizing the participation of all ministries and agencies from central to local, domestic and international organizations step by step created positive changes in the implementation of gender equality, minimizing GBV, VAW, contributing to the implementation of sustainable development goals.

In the Labor Code 2019, the National Assembly has dedicated Chapter X with separate regulations for female employees and ensuring gender equality in employment. These are measures to remove barriers to support women's access to jobs and income and to

improve women's economic status. Agencies in this bill also assess the content of ensuring women's rights.

From 2017 to 2020, there were 71 proposals to develop laws⁵, including some proposals to develop laws related to children's rights, such as the Children's Law, the Labor Code, the Youth Law, and the Law on Prevention of Domestic Violence. In terms of content, the dossiers of proposals for Laws related to children have the content of impact assessment on gender, age and impact on children's rights. The reports mainly use qualitative assessment methods, typically projects on the social sector (developed by the Ministry of Labor, War Invalids and Social Affairs), and many data when evaluating, contributing to increasing the persuasion and proof of the report. For example, in the Impact Assessment Report of the Law on Child Protection, Care and Education (later renamed the Law on Children), six new policies of the Draft Law were evaluated, including raising young age children from 16 years old to 18 years old; specifying the child protection system; stipulate principles of child protection in civil and criminal proceedings and handling of administrative violations; stipulating human resources for child protection and care; establish the National Committee on Children; ensure the implementation of children's right to participation.⁶

Regarding the appraisal of law-making proposals in 2020, the Ministry of Justice has evaluated 28 proposals.⁷ Concerning proposals for law-making related to guaranteeing the rights of vulnerable groups, through policy appraisal, the Ministry of Justice discovered and promptly proposed amendments to the proposal for law-making in order to protect and implement the rights of vulnerable groups.

For legal documents related to people with disabilities, right in the stage of making proposals for the formulation of laws, ordinances, and decrees to ensure the rights of people with disabilities, the activity of collecting opinions of the subjects directly affected by the policy is posed as an important requirement. The reason is that this is the object within the scope of the proposed documents, ensuring practical feasibility. The Law 2015 - the fulcrum in the development of specialized legal documents, has stipulated one of the principles of law-making in Article 5 as follows: "*Ensure publicity and democracy in receipt of and response to opinions, complaints of agencies, organizations, and individuals during the process of formulating and promulgating legislative documents*" and concretizing the consultation rule in Article 6 of this Law.

⁵ Ministry of Justice of Vietnam, 'Report 01/BC-BTP Dated January 1, 2021 Summarizing Judicial Work in 2020, Term 2016 - 2020, Orientation for Term 2021 - 2025 and Tasks and Solutions Mainly Working in 2021', 2021, 01.

⁶ Ministry of Labour, Invalids and Social Affairs of Vietnam, 'Impact Assessment Report on Law on Children', n.d.

⁷ Ministry of Justice of Vietnam, 'Report 01/BC-BTP Dated January 1, 2021 Summarizing Judicial Work in 2020, Term 2016 - 2020, Orientation for Term 2021 - 2025 and Tasks and Solutions Mainly Working in 2021'.

However, the process of ensuring the rights of vulnerable groups in law-making in Vietnam in the recent time has certain limitations, such as:

- The assessment of policy impacts on vulnerable groups at the stage of requesting the formulation of laws, ordinances and decrees is still ineffective: For women's rights, there are still some phenomena that the drafting agency is slow to implement gender mainstreaming in the development of legal documents by the Law on Gender Equality because of its limited capacity and the lack of attention from the leadership. Therefore, several newly promulgated, amended, or supplemented specialized laws and policies have not yet ensured the strict implementation of gender mainstreaming processes and procedures in developing legal documents. In addition, Vietnam has no guidance on integrating the contents of the Law on Domestic Violence Prevention and Control and the Law on Gender Equality into the Criminal Procedure Code and Civil Procedure Code in divorce, property division, and child custody cases. In addition, many provisions do not consider gender factors (differences between men and women), so they are insensitive to gender, leading to inequality between men and women when applying and enforcing the Law. As for children's rights, according to a general opinion, most reports on assessing the impact of policies on the proposal for law-making in the early 2017 to August 2020 period are still sketchy; many reports have not paid much attention to ensuring the rights of vulnerable groups in society (including children), have not shown inadequacies about abuse against children, have not focused on those who suffer the policy's influence is on children. The evaluation method is still traditional, the data is not clear, and the reports are mainly or only qualitative assessments, so the argument is not sufficiently convincing.

-There are some limitations to the appraisal and verification of law-making proposals: When appraising and verifying law-making proposals, the appraising agencies and National Assembly deputies do not adequately consider the impact assessment report of the policy, the content of policy appraisal and verification is not comprehensive with low quality. Some drafts are not in-depth yet for ensuring children's rights and even omit many policy contents.

-The content of the rights of vulnerable groups has not been fully realized or is inconsistent in the law-making procedure; ensuring the rights of vulnerable groups has not been identified as an important and separate content of project appraisal and verification activities, so many open questions remain.

-The activity of collecting comments for draft laws, ordinances and decrees are still ineffective: The most salient limitation is the formalistic nature of the right to be consulted of vulnerable groups, opinions of vulnerable groups have not been fully absorbed, and subjective thinking of the agency in charge of developing the document is still heavy but lacks a scientific, comprehensive and objective analysis, calculation and forecast.

According to the authors, the cause for such limitations comes from several reasons: (i) the awareness of the community, family and vulnerable groups about their rights is still

incorrect and incomplete. Propaganda and education on human rights, citizens' rights, gender equality, disability and children in Vietnam is still modest, affecting the awareness of communities and social associations, as well as individuals; (ii) the organization of the formulation of laws, ordinances and decrees lacks adequate investment; (iii) professional qualifications of the contingent of cadres and civil servants involved in the formulation of laws, ordinances and decrees regulating content related to the rights of vulnerable groups have not yet met the requirements; (iv) the coordination between actors in the process of formulating laws, ordinances, decrees as well as practical implementation with the content of ensuring the rights of vulnerable groups has not been timely and synchronous; (v) there are also obstacles from objective factors of socio-economic conditions.

The above law-making process leads to the fact that implementing many provisions of the Law has not been effective in practice; it can be mentioned as a typical policy for women. Several policies and measures to promote gender equality have been promulgated but have not been effective, such as The Law on Equality providing "priority" in some areas of family life. However, it creates barriers to women's equal participation in social activities. For example, the regulation "Enterprises employing a lot of female employees are entitled to tax, and financial incentives as prescribed by law" (point a clause 2, Article 12) is a measure to promote gender equality in the economy sector. Still, in practice, most enterprises employing many female workers do not benefit. The reason is that the processes and procedures to enjoy tax incentives for businesses are pretty complicated, and the amount of tax reduction has not yet offset the costs when applying incentives for employees. Therefore, companies often fear or do not want to access this preferential policy. While policies to support and protect female employers are still lacking and not specific, current policies to protect female workers are relatively adequate, thus not encouraging enterprises to employ female workers.

Although there are regulations, applying the Law is still complex in practice. Some regulations ensure gender equality from the perspective of the Law but do not guarantee actual gender equality in practice due to the lack of guaranteed conditions. For example, "Men and women are equal in terms of professional standards and age when they are promoted or appointed to the same management and leadership positions of agencies and organizations" (Clause 4, Article 11 of the Law on Gender Equality). It is worth noting here that the issue of regulating the retirement age of women and men is five years different. In comparison, the "equality" regulation calculating the management term (5 years) is unreasonable.

-Some regulations are still qualitative and difficult to quantify (appropriate proportion of female National Assembly deputies; the appropriate proportion of women in the appointment of titles in state agencies); regulations on financial sources for gender equality activities.

- Gender stereotypes still exist quite commonly in social life in the name of traditional values, customs and habits. Therefore, implementing the Law on gender equality, ensuring women who enjoy legal rights face many difficulties in practice, especially in rural and economic areas.

III. CONCLUSION

The vulnerable groups are the group that suffers many disadvantages in society and often encounter barriers to exercising their rights and accessing essential services. Even in developing laws, ordinances, and decrees, vulnerable groups face certain barriers in directly participating in making these documents. However, Vietnam has been continuously improving its institutions, taking many measures to promote the guarantee of the rights of vulnerable groups in the law-making process.

In order to overcome these limitations and at the same time better ensure the rights of vulnerable groups in Vietnam in the law-making process, the authors propose several solutions such as:

Firstly, perfecting the Law on the promulgation of legal documents to ensure the rights of vulnerable groups is one of the important contents that should be emphasized in each stage of the document development process.

Secondly, review, amend and supplement current legal provisions in the field related to the rights of vulnerable groups.

Thirdly, on organizational structure and human resources to ensure women's rights in law-making:

- Strengthen capacity building for staff working in supervision and social criticism of the Vietnam Fatherland Front and its member organizations, especially the Vietnam Women's Union;
- Invest resources to have female investigators, prosecutors and judges receive and handle cases related to women and gender-based violence.

Fourthly, regarding the organizational structure and human resources to ensure children's rights in law-making,

- Capacity building for staff working on developing laws, ordinances, and decrees on children's rights.
- Consolidate the organization and human resources system in charge of child protection.
- Maintain and improve the operational efficiency of the Steering Committee, Executive Board, and interdisciplinary working group on child protection in the provinces, districts, and communes to ensure the provisions of laws, ordinances, and decrees on children's rights are implemented in practice in a substantive manner.

Finally, strengthen education, propaganda, and dissemination of legal provisions on vulnerable groups and rights of vulnerable groups; To increase the state budget for investment, research, and development of laws, ordinances, and decrees to ensure the rights of vulnerable groups.

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