



**BỘ TƯ PHÁP**

Chính phủ Việt Nam - Chương trình Phát triển Liên hợp quốc  
Government of Viet Nam - United Nations Development Programme

*“Tăng cường tiếp cận công lý và bảo vệ quyền tại Việt Nam”  
“Strengthening Access to Justice and Protection of Rights in Viet Nam”*



*Empowered lives.  
Resilient nations.*

## **The 2<sup>nd</sup> Legal Policy Dialogue in 2013:**

**“Amending the Law on Marriage and Family  
from a Human Rights Based Perspective”**

## **Diễn đàn Đối thoại chính sách pháp luật lần thứ hai năm 2013:**

**“Đánh giá tổng quan Dự án Luật Hôn nhân và  
Gia đình (sửa đổi) dưới góc độ quyền con  
người”**

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**(Materials in English)**

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**Hà Nội, 25.11.2013**

# **The 2<sup>nd</sup> Legal Policy Dialogue in 2013:** **“Amending the Law on Marriage and Family from a Human Rights Based Perspective”**

## **AGENDA**

**Mondy, 25 November 2013**

**Venue: Sheraton Hanoi Hotel, K5 Nghi Tam, 11 Xuan Dieu Road, Tay Ho District,  
Ha Noi**

**Co-chairs:**

- Mr. Hoang The Lien – Vice Minister of Justice cum National Project Director
- Mrs. Louise Chamberlain – Country Director, UNDP Viet Nam

<b>8.00 - 8.30</b>	<b>Registration</b>
<b>8.30 - 8.40</b>	<b>Introduction</b>  Ms. Dang Hoang Oanh, General Director of the International Cooperation Department, Ministry of Justice
<b>8.40 - 9.10</b>	<b>Opening remarks by Co-chairs</b> <ul style="list-style-type: none"><li>• Mr. Hoang The Lien – Vice Minister of Justice cum National Project Director</li><li>• Mrs. Louise Chamberlain – Country Director, UNDP Viet Nam</li></ul>
<b>9.10 - 9.40</b>	<b>Draft Law on Marriage and Family (revised) and its main directions towards improving the exercise of human rights</b>  Mr. Duong Dang Hue, General Director of the Department on Civil and Economic Legislation, MOJ  <b>Q &amp; A</b>
<b>9.40 - 10.10</b>	<b>Overview of the standpoints on the development of the proposed (revised) Law on Marriage and Family and several issues regarding the proposed Law from perspective of the review agency</b>

Mrs. Nguyen Thuy Anh, Vice Chairman of the Committee for Social Affairs, National Assembly

**Q & A**

**10.10 - 10.30**

**Tea break**

**10.30 - 11.00**

**Amending the Law on Marriage and Family – from a Human Rights Based Perspective**

Mr. Lieu Anh Vu, representative of UNDP

**Q & A**

**11.00 - 11.30**

**The Draft Law on Marriage and Family from the perspective of a non-governmental organization**

Mrs. Khuat Thu Hong, Co-director of the Institute for Social Development Studies

**Q & A**

**11.30 - 12.00**

**Closing by Co-chairs**

**12:00**

**Luncheon hosted by the organizers**

# CONTRIBUTIONS AT THE LEGAL POLICY DIALOGUE

## Part 1

1. **Draft Law on Marriage and Family (revised) and its main directions towards improving the exercise of human rights** – *Duong Dang Hue, General Director of the Department on Civil and Economic Legislation, Ministry of Justice*
2. **Overview of the standpoints on the development of the proposed (revised) Law on Marriage and Family and several issues regarding the proposed Law from perspective of the review agency** – *Nguyen Thuy Anh, Vice Chairman of the Committee for Social Affairs, National Assembly*
3. **Amending the Law on Marriage and Family – from a Human Rights Based Perspective** – *Lieu Anh Vu, representative of UNDP*
4. **The Draft Law on Marriage and Family from the perspective of a non-governmental organization** – *Khuat Thu Hong, Co-director of the Institute for Social Development Studies*

## **MATERIALS FOR REFERENCE**

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## **Part 2**

- 1. Draft Law on Marriage and Family (revised)**
- 2. Joint UN Key Recommendations on the Draft Amended Law on Marriage and Family – *as of 20 October 2013***

**DRAFT LAW ON MARRIAGE AND FAMILY (REVISED)  
AND ITS MAIN DIRECTIONS TOWARDS IMPROVING THE EXERCISE  
OF HUMAN RIGHTS**

**DUONG DANG HUE**  
**General Director**  
**Department of Civil and Economic Legislation**  
**Ministry of Justice**

**I. Context of revision of the Law on Marriage and Family for better exercise of human rights**

1. The Law on Marriage and Family in Vietnam, like in other countries, always plays a very important role as it serves as a political and legal declaration and, at the same time, ensures the implementation of the law on *human* rights and citizens' rights in the marriage and family area. Those rights include the right to be equal before the law, the right against discrimination; the right against interference with one's privacy and family; right to marriage and make family regardless of their race, nationality or religion; equal of rights between men and women to get married, in spousal life and upon divorce; ownership rights of private property, matrimonial property, and property of the family; the right not to be deprived of one's property; parental rights and children's rights etc.

2. Most of the social relationships to be governed by the draft Law are very much influenced by the cultural and moral traditions, custom and practices, which have high conflict with the requirements regarding respect for and implementation of human rights, particularly gender and gender equality. In addition to the fine traditions, Vietnam is also heavily affected by the Confucianism and male privilege where women are associated with housework.

This has been existed for long in the history and continues having significant impact on the society.

3. The modern laws on marriage and family in general and the current Law on Marriage and Family of Vietnam all govern marriage and family relationships as part of private relationships where the principles of equality, self-agreement, self-determination and self-responsibility are essential. The current Law on Marriage and family, however, remains to have certain shortcomings and limitations when it comes to the implementation of human rights, specifically: (1) several provisions of the Law on human rights, particularly gender equality are too formal, not substantive or infeasible; (2) there are some marriage and family issues that are not yet touched upon or specified in the Law making it difficult for people to implement, or to have their rights protected in a timely manner, or to choose the best conduct in a particular circumstance of matrimonial or family life. Examples of those issues are settlement of implications of cohabitation of men and women as husband and wife without marriage registration; prohibition of same-sex marriage; surrogacy; separation; prenuptial agreement;

4. Vietnam is on the way to a fully market-based economy. In addition to the achievements, there have arisen new challenges to better implementation and protection of human rights and citizens' rights in civil matters in general and in marriage and family sector, in particular. The implementation of human rights, for the past time, in families and society has been quite much driven by the distinction of wealth, social status, occupation, family standing etc.

5. Together with its efforts to revise the Constitution, Vietnam has been gradually developing and improving its legal framework for implementation of human rights with specific, comprehensive and consistent requirements for the development and implementation of not only the policy but also legal normative documents on gender-sensitive social relationships including matrimonial and family relationships.

6. Vietnam has joined several major international treaties concerning human rights in the area of marriage and family including the Charter of the

United Nations (1945), the Universal Declaration of Human Rights (1948), the International Convention on Civil and Political Rights (1966), the International Convention on Economic, Social and Cultural Rights (1966), the Convention on Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of Children etc. And, it is the responsibility of a member country, including Vietnam, to integrate these treaties and conventions in the national law.

## **II. Better implementation of human rights as a goal of the development of the proposed (revised) Law on Marriage and Family**

### **1. The goals of the proposed Law**

The development of the (revised) Law on Marriage and Family is aimed at meeting the objective requirements of the new context in the matrimonial and family life of Vietnam; catching up with the reality, looking forward and providing more favorable conditions to people to voluntarily comply with the law. The proposed Law is also expected to ensure better implementation of human rights and citizens' rights as significantly revised in the draft (revised) Constitution; to inherit from and further develop the fine traditions, cultural values and customs of various nationalities of Vietnam as already acknowledged in the Laws on Marriage and family in 1959, 1986 and 2000; and to ensure the consistency and integrity of the legal system as well as its compatibility with the international treaties that Vietnam has acceded to.

### **2. Objectives of the implementation of human rights in the area of marriage and family**

On the basis of the goal to ensure better implementation and protection of human rights in the area of marriage and family, the proposed Law has set the following objectives for the implementation of human rights:

- First, to enable subjects in matrimonial and family relationships not only to enjoy their legal capacity (i.e. equality from the perspective of legal theory) but also to get access to protection of their rights and obligations on that basis human rights in the area of marriage and family are really ensured;



- Secondly, to inherit from and develop the fine cultural and moral traditions of Vietnam's family model, and at the same time to eliminate the backward and outdated customs and practice which hinder the implementation of human rights in the area of marriage and family;

- Thirdly, to develop provisions of law to promote the implementation of human rights with regard to those typical relationships deeply influenced by psychological, cultural, moral factors of the family and social prejudices;

- Fourthly, to be consistent with the proposed revisions of the 1992 Constitution and other current legislation on marriage and family particularly the 2005 Civil Code. To respect for and develop a full legal mechanism for better implementation of human rights and citizens' rights in the sectors of marriage and family; gender equality; protection of mothers, children and other vulnerable people; rights and interest of stakeholders; and benefits of the family, State and society;

- Fifthly, to ensure the compatibility of Vietnam's legislation on marriage and family with the international treaties that Vietnam is a member of, and to learn, on a selective basis, experiences of other countries on marriage and family with appropriate adaptations to fit in the context of our cultural and legal features and socio-economic conditions.

### **3. Several major directions**

#### ***3.1. To inherit from and further develop the provisions of the Laws on Marriage and Family in 1959, 1986 and 2000 that have properly ensured the implementation of human rights***

Based on the marriage and family practice, actual implementation of the Law and review of relevant provisions currently applicable, the draft Law has inherited and developed many good provisions concerning the implementation of human rights in the Law on Marriage and Family in 1959, 1986 and 2000, including the following principles:

- Voluntary, progressive and monogamous marriage in which husband and wife are equal.

- Marriage between Vietnamese citizens of different nationalities and/or different religions, between religious and non-religious people, *between people with belief and without belief*, and between Vietnamese citizens and foreigners is respected and protected by law.

- Parents, children and other family members are obliged to respect, care for, and help one another on a non-discrimination basis.

- The State, society and families have the duty to protect and support for children, the elderly, people with disability in the implementation of rights in the area of marriage and family; and to help mothers to fulfill their lofty motherhood functions.

***3.2. To amend and supplement the provisions which are not substantive or not very feasible for implementation of human rights, specifically:***

- The provision on the application of marriage and family-related customs and practices, which used to be a matter of principle providing that the customs and practices embodying the identity of each nationality and not running counter to the principles laid down in this Law are respected and promoted, has been turned into more practical provisions with more rational and specific conditions for application. Specifically, given the fact that there are provisions in the Law, the parties in a relationship are still able to apply a custom or practice embodying the identity of each nationality and not running counter to the principles of the marriage and family regime or the prohibitions in the area of marriage and family, including human rights;

- The eligible age for marriage is revised by allowing both men and women to be able to get married when they are aged full 18 or above;

- The principles of dealing with illegal marriages are revised by providing in more details for the priority protection of legitimate rights and interest of

women and children; or people doing housework and other relevant jobs to maintain the cohabitation are regarded as low income earners;

- To provide for the spousal responsibilities for sharing the housework and performance of their rights and obligations in the family. Spouses are obliged to live together unless otherwise agreed or as required by the nature of their jobs, works or as a result of study, participation on political, cultural and social activities or other legitimate reasons;

- The provisions on selection of the domicile of husband and wife has been revised by allowing them to “agree” upon rather than to “select” the place of residence;

- The provision on the spousal representation in business activities has been revised by specifying the case when only either spouse is named as the owner in the ownership certificate or the use right certificate with regard to the matrimonial property or specifying the joint liabilities of the husband and wife when only one party carries out the transaction.

- The provision on the maintenance and development of the family life has been revised by imposing an obligation on both husband and wife to ensure that all essential needs of their family are met. If husband and wife have any agreement on property, such an agreement must not violate the legitimate rights and interests of their minor children, adult children who have lost their civil conduct capacity or do not have working capacity and do not have property to support themselves; and legitimate rights and interests of third parties etc.;

- The bases for determination of personal/common property and common/personal property-related obligations, property in business and division of matrimonial property, incorporation of personal property into matrimonial property etc. have been revised;

- The provisions on registration of the right to own and the right to use matrimonial property have been revised, specifically with regard to the matrimonial property that must be registered in respect of ownership/use right

under the law, both spouses have the right to ask the competent agency to name both of them in the ownership/use right certificate; if only one person is named in the certificate, the property would automatically be assumed as matrimonial property unless any contrary evidence is provided;

- The provisions on the rights and obligations of parents and children have also been revised by designing more specific provisions on the principle and details of protection of rights and obligations of and among parents and children regardless of the marital status of the parents, and that any agreement of parents violating the legitimate rights and interests of children shall be null and void; and by specifying the rights, obligations and responsibilities of parents and children concerning personal developments, personal rights, property, work and housework sharing;

- The provisions on the parental equality in performing the rights and obligations to their children;

- The obligations of parents to support their children have been revised by not only addressing the child support obligation in case of divorces but also dealing with violations of this obligation;

- The provisions on recognition of father, mother and children has been revised by specifying that a married person is not required to ask for the approval of her/his spouse to recognize her/his child;

- The grounds for divorce have been revised by being linked to the acts of violation of their rights and obligations by either spouse, particularly those involving domestic violence or relating to their attachment putting their marriage in a serious situation, making them unable to continue cohabitation or failure to achieve the purpose of marriage. On that basis, the consequences of divorce shall be dealt with by the division of property based on the contributions and fault of each party in such a violation;

- The right to stay in the marital home after the divorce of either spouse who has difficulties in finding a domicile has been specified;

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***3.3. To add new provisions to govern the relationships relating to human rights but not yet touched upon or not specified by the Law on Marriage and Family, specifically:***

- Provisions on dealing with effects of cohabitation regarding personal matters, property and children, focusing on protection of legitimate rights and interests of women and children as one of the priorities; people doing the housework and other relevant jobs to maintain the cohabitation are regarded as low income earners; rights and obligations of children to their parents regardless of the parents' marital status;

- Provisions on dealing with implications of cohabitation of same-sex people. The State does not recognize same-sex marriage but respects for people's right to live with their gender identity, sexual orientation.

- Provisions on the right of husbands and wives to their property division/distribution: to prenup or leave it to laws; general provisions applicable to all couples regardless of whatever rules of property they choose in order to ensure equality of both parties in possessing, using and disposing their common property provisions, meeting essential needs of their families, that people doing the housework being treated as low income earners, on the liabilities of the parties committing a breach of property-related rights and obligations etc.;

- Provisions on the rights and obligations of blood aunts, aunties, uncles, nieces and nephews to one another when there is no one available under the law to perform the rights and obligations to them;

- Provisions on recognition of parentage when a child is born by way of reproductive supporting measures or surrogacy for altruistic purpose;

- Provisions on eligibility for surrogacy for altruistic purpose; rights and obligations of the parties involved;

- Provisions that allow parents or relatives to ask for settlement of divorce when either spouse is mentally ill or otherwise sick leading to loss of

consciousness and control of his/her conduct and at the same time is the victim of domestic violence caused by the other spouse, which threatens to adversely affects his/her life, physical and mental health;

- Provisions that allow husband and wife to ask the court to settle their separation by law;

- Provisions on respecting for and protecting one's privacy, personal secrets, honor, reputation and dignity during resolution of marriage and family disputes such as recognition of parentage, divorces, separation;

- Provisions on the authority of the Government to make detailed provisions for dealing with marriage and family relationships with foreign elements in order to promptly impose technical barriers or measures, when needed, to protect parties concerned particularly women and children;

...

***3.4. To ensure the consistency and uniformity of the provisions concerning the implementation of human rights contained in various relevant laws and proposed laws and in line with the international treaties that Vietnam has joined. Specifically:***

- To make specific provisions for the principles embodied in the relevant laws and international treaties. For example, domestic violence should be one of the prohibitions in the Law on Marriage and Family; the principle of equality between husband and wife should be emphasized not only in families but also other social relationships; the eligible age for marriage should be full 18 for both men and women etc.;

- The Law on Marriage and Family and other laws<sup>1</sup> closely interrelate requiring consistent and uniform provisions on several issues particularly on the implementation of human rights: for example application of practices, personal

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<sup>1</sup> Civil Code, laws governing civil status, 2003 Land Law; 2004 Law on Protection of, Care for and Education of Children; 2004 Civil Procedure Law; 2006 Law on Gender Equality; 2006 Law on the Elderly; 2007 Law on Prevention and Control of Domestic Violence; 2008 Law on the Nationality; 2010 Law on Adoption; Law on Disabled People...

rights of individuals, their representatives, guardians, ownership, transaction and inheritance etc. To ensure the consistency and uniformity, in addition to revising the Law on Marriage and Family, it is essential to consider revising relevant laws.

For example:

(1) To be consistent with the provisions on recognition and protection of marriages between people of different religion, nationality and ethnicity as well as the provisions on the recognition and protection of parental and children's rights set out in the Law on Marriage and Family, it is necessary to consider revising relevant provisions in the 2005 Civil Code, including Article 28 which says "*In cases where the biological father and mother belong to two different ethnicities, the ethnicity of the child shall be determined as the ethnicity of the father or the ethnicity of the mother in accordance with practices or in accordance with the agreement of the biological father and mother*". This provision would undermine the objective of gender equality as whether the *ethnicity of the father or the ethnicity of the mother in accordance with practices or in accordance with the agreement of the biological father and mother* is totally depends on the discretionary decision of the competent agency. In fact, practices always prevail in these cases (where most practices determine the child's ethnicity based on his biological father's ethnicity, and only some prefer the mother's ethnicity) without taking into account the agreement of parents. To better promote equality in determination of the child's ethnicity, this provisions should be revised to read as follows "*In cases where the biological father and mother belong to two different ethnicities, the ethnicity of the child shall be determined as the ethnicity of the father or the ethnicity of the mother in accordance with the agreement of the biological father and mother, in the absence of which practices will apply*"...

(2) To be in line with the Law on Prevention and Control of Domestic Violence, a new provision has been added to the draft Law prohibiting "*domestic violence*" in marriages and families; also, the provisions of the current Law [in Article 2.6] which states "The State, society and families have the duty to protect

women and children, and help mothers to well fulfill their lofty motherhood functions” has been changed to “The State, society and families have the duty to protect *and support for children, the elderly and disabled people to implement their rights in the area of marriage and family*, and to help mothers well fulfill their lofty motherhood functions” to be compatible with the legislation on disabled and elderly people...

(3) To implement its commitments under the international treaties that Vietnam has acceded to such as CEDAW, the International Convention on Civil and Political Rights, the Convention on the Rights of Children, the provisions concerning the eligible age for marriage, prohibition of same-sex marriage etc. have been reviewed and revised from perspective of the human rights embodied in the above conventions.

***3.5. To review and study to ensure that all the provisions concerning human rights in marriage and family found in other laws and regulations or any marriage- and family-related policies are respectively incorporated or addressed in the Law***

To accommodate the diversity of marriage and family relationships, to ensure the feasibility and stability of the Law, and make it easy for people to get access to human rights and citizens’ rights, in parallel with revising the Law on Marriage and Family, special attention should be paid to incorporation of the provisions on human rights in marriage and family into other relevant documents by specifying such provisions in implementing documents of the Law and during the development and implementation of socio-economic and cultural development policy.

While drafting this Law, the drafting agency has not only considered proposed additions or revisions of the Law, but also studies provisions of other laws, regulations and policies concerning human rights, particularly gender and gender equality issue, specifically:

(1) The issues to be addressed in other relevant laws:



As personal matters and property-related relationships in the area of marriage and family are closely associated with other laws, the draft Law has opted to address the typical relationships by making reference to their underlying specialized law, specifically:

- The principle of application of the Civil Code in dealing with marriage and family relationships has been changed to the application of the Civil Code and other relevant laws;

- The civil status procedures relating to marriage or recognition of parentage shall comply with the legislation on the civil status;

- Specific provisions have been added on the application of the Civil Code and relevant laws in the following matters: obligation-based and contractual relationships of cohabitants and between cohabitants and third parties; representation of husband and wife; determination of bona fide third parties in the spousal property-related relationship; general provisions on the validity of a prenuptial agreement; forms of spousal property-related transactions; joint and several property-related obligations of husband and wife; disposition of matrimonial property in case either spouse dies; matrimonial property in business; surrogacy for altruistic purpose; obligations and rights of adoptive parents and adopted children; parentage recognition jurisdictions; marriage and family relationships with foreign elements...

(2) The issues to be detailed in implementing regulations:

- The draft Law vested power on the Government to make detailed provisions for the application of customs in marriage and family; eligibility for surrogacy for altruistic purpose; settlement of marriages and families with foreign elements to ensure the legitimate rights and interests of the parties involved..;

- The draft Law assigns the Supreme People's Court to provide guidelines, in coordination with the Supreme People's Procuracy and MOJ, for how to deal with illegal marriages, dispose of property of cohabitating couples without

marriage registration, or determine the common property-related obligations of husband and wife;

(3) After the Law is promulgated, the implementation of human rights in the area of marriage and family shall be mainstreamed in the development and implementation of socio-economic and cultural development policy:

As revealed by the actual implementation of the Law on Marriage and Family, many progressive provisions of the Law did not find their place in reality. This is attributed to the failure of competent agencies and organizations to take prompt actions in setting up an appropriate mechanism to recognize and enforce people's rights and obligations in the area of marriage and family. Thus, to improve the sense of responsibility of competent agencies, a new provision has been added to the Draft law as follows "*The Government is responsible for organizing the implementation of the Law on Marriage and Family; for State management of family-related work; development and implementation of family-related policies and laws; recognition and implementation of rights and obligations of family members; proactively fight and control domestic violence and manifestations of other social evils in families in order to build a model of prosperous, progressive and happy family; shall coordinate with the Fatherland Front of Vietnam, Vietnam's Women Union and other socio-political organizations in the family-related work*".

On that basis, after the Law on Marriage and Family is promulgated, the Government shall develop implementing provisions and do whatever relevant and necessary to promptly recognize and facilitate the implementation of people's rights and obligations in the area of marriage and family including their human rights.

Stemming from the nature of the marriage and family relationship which is significantly affected and influenced by the public awareness, attitude, psychology, practices and social prejudices particularly reflected in the family-related functions, spousal psychophysiology and conduct among family members and in order to ensure the feasibility of the Law, the Government, socio-political

agencies/organizations and stakeholders need to implement and people must be given the right to get access to the following solutions:

- To improve the system of policies on the implementation of human rights, to mainstream the issue of human rights in the area of marriage and family into other policies, laws, programs and strategies;

- To promote communication, dissemination and legal education to improve the awareness on human rights in general and human rights in the area of marriage and family in particular for public servants, State employees and the public;

- To improve the quality and efficiency of the service delivery system to facilitate people to exercise their rights in marriage and family;

- To set up a mechanism for leveraging social resources and State budget funds for the implementation of human rights in the area of marriage and family;

- To promote relevant researches into human rights in general and human rights in the area of marriage and family in particular for the evidenced-based planning, policy- and law-making activities in the area of marriage and family;

- To enhance international cooperation either through bilateral, multilateral or non-governmental channel and to improve the integration efficiency to boost up people's access to their human rights including in the area of marriage and family;

- To build institutional capacity for implementing human rights in marriage and family.

#### **IV. Anticipated impact of the provisions on better implementation of the human rights in the proposed Law after adoption**

- By way of more specific provisions on the marriage- and family- related rights and obligations, application of more practical standards of conduct and better protection of the vulnerable subjects and victims of gender-equality

violation, the public particularly women, children and other vulnerable groups might make the most suitable choice to themselves, children and families;

- By way of harmonious provisions respecting personal autonomy and right to develop and agree, the family stability, children's benefits, social order and cultural traditions and moral values, the public particularly women, children and other vulnerable groups might have better chance to access to and exercise their marriage- and family-related rights and obligations while being able to properly fulfill their duties to the family and society;

- By way of harmonious provisions dealing with both marriage/family relationships and other relevant social relationships, the public particularly women, children and other vulnerable groups might be able to participate in studying, occupational, business and other socio-economic and political activities of their choice while being able to properly fulfill their family duties and obligations;

- By way of flexible and practical provisions, [the proposed Law] not only properly reflects the State standpoint not to recognize illegal relationships but also facilitates people's reference to the justice system to settle the consequences of such relationships, eliminate the discrimination against them, be recognized and for better implement and protection of their legitimate rights and interest, particularly of women, children and other vulnerable groups;

- By way of favorable procedures, [the proposed Law] enables the public particularly women, children and other vulnerable groups to get better access to the right to appeal and right to have their appeals heard by the competent agency in order to implement and protect the marriage- and family-related rights;

- The proposed Law provides more evidenced-based and favorable procedures to the State competent agency to implement the Law on Marriage and Family.

**OVERVIES OF THE STANDPOINTS ON THE DEVELOPMENT OF  
THE PROPOSED (REVISED) LAW ON MARRIAGE AND FAMILY  
AND SEVERAL ISSUES REGARDING THE PROPOSED LAW  
FROM PERSPECTIVE OF THE REVIEW AGENCY**

**NGUYEN THUY ANH**  
Vice Chairman  
Committee for Social Affairs of the National Assembly

## Outline

- Preparation for the Review
- Standpoints on the development of the proposed Law
- Several issues regarding the proposed Law from perspectives of the review agency

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## Preparation for Review

- The Committee for Social Affairs was assigned by the NA Standing Committee to take lead in the reviews (the Law on Marriage and Family was previously reviewed by the Law Committee), the Committee for Nationality, the Law Committee and other Committees coordinate in those reviews.
- Study of the development of the Law on Marriage and Family, particularly the current Law; relevant documents and materials
- 2 Workshops, 7 Seminars with experts
- 3 regional workshops to seek for comments
- Monitor the implementation of the law on marriage and family and seek for public comments at 7 localities.

3

## Standpoints on the development of the proposed Law (1)

- To agree with the Drafting Committee
- To add 2 more principles (already incorporated by Drafting Committee):
  - To harmonize the relationship between maintenance and development of cultural values, moral standards and fine traditions of the Vietnamese family model and the evolution of the modern family model and social life

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## **Standpoints on the development of the proposed Law (2)**

- To learn from selected international experiences with appropriate adaptations to fit in with Vietnam's cultural and legal features and the current state of socio-economic development.
- At the same time, to emphasize that the positive achievements of the implementation of the 2000 Law on Marriage and Family will be maintained, strengthened and further developed.

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## **Several issues from perspectives of the review agency**

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## Application of custom (1)

- Current Law: the custom and practices that are not contrary to the principles set out by the law shall be "*respected and further developed*" in the marriage and family relationships
- A new definition of "*marriage and family practice*" has been added to the Draft Law (Article 7.2), and so have the conditions on which practices shall be applied in the marriage and family relationships (Article 6).

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## Application of custom (2)

- To agree with the direction to further apply practices regarding marriage and family
- To hereby request the Drafting Committee to continue consider the following issues:
  - Whether to allow practices to prevail over the law
  - The conformity with Article 3 of the Civil Code.
  - Conditions and the authority to recognize "*custom*" as "*customary laws*", and procedures for application of customary laws in the marriage and family.

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## **Eligibility for marriage (1)**

- Eligible age for marriage:
  - There are different opinions on this: while some agree with the proposed draft; others tend to stick with the current provisions of the Law plus one addition “aged full 18 or above”; and the rest satisfy with the current law
  - To agree with the provisions of the proposed Law.

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## **Eligibility for marriage (2)**

- Conditions regarding civil conduct capacity:
  - To agree with this proposed amendment, it is important, however, not to cause any new and burdensome procedures for people during marriage registration.
  - The Drafting Committee should make clear in the Law how to implement the new provision and how to resolve the disputes that might arise from the provision on Eligibility for marriage, whereby it is not required to produce a certificate of civil conduct capacity upon marriage registration.

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### **Eligibility for marriage (3)**

- Provisions on dealing with consequences of cohabitation of same-sex people (Article 16)
- The Draft Law has removed the prohibition on same-sex marriages, and at the same time, affirms that the State does not recognize same-sex marriage and contains additional provisions on how to deal with consequences of cohabitation of same-sex people in terms of property relationship, recognition of parentage, children and their respective rights etc.....

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### **Eligibility for marriage (4)**

- Provisions on dealing with consequences of cohabitation of same-sex people (Article 16)
- 2 groups of opinions:
  - To agree with the proposed draft Law, as there have been changes in the public perceptions and awareness, human rights, settlement of consequences
  - To retain the prohibition of same-sex marriage as marriage is defined as the establishment of the matrimonial relationship between a man and a woman; social morality, habits, custom and traditions of the Vietnamese family; functions to maintain biological descents

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## **Eligibility for marriage (5)**

- Provisions on dealing with consequences of cohabitation of same-sex people (Article 16)
- The Committee agrees with the Draft and hereby requests the drafting agency to fully evaluate the implementation of the prohibition of same-sex marriage; to study the reality and experiences of other jurisdictions in the region and countries with cultural similarity with Vietnam; to assess the social, cultural and psychological impact of this proposed provision given Vietnam's current context.

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## **Cohabitation of men and women as husbands and wives without marriage registration**

- Current law says: "Man and woman who fail to register their marriage but cohabit as husband and wife shall not be recognized by law as husband and wife", NA Resolution 35 and implementation reality
- The Draft says "There is not a matrimonial relationship between a man and a woman who fail to register their marriage but live together as husband and wife", Articles 13, 14 and 15 are good provisions as they are consistent with the old law and the new policy.
- Definition of "cohabitation as husband and wife" 14

## **Provisions on matrimonial property (1)**

- General provisions on the matrimonial property: to agree with the proposed revisions, however it is necessary to further study and clarify the following issues arising from the actual implementation of the Law including disposition of the matrimonial property of big value, third parties' right to request for division of the matrimonial property, division of matrimonial property to evade performance of personal obligations, legal procedures including being named as co-owners or authorizing others to be the owner during the establishment of the ownership rights, right to business, right to transactions etc..

15

## **Provisions on matrimonial property (2)**

- The provisions on prenuptial agreement: the Committee agrees with the newly added provisions on prenuptial agreement also covering property issues
- With regard to the matrimonial property, this should be in conformity with the conditions and context of the family and spouses. However, there are two different opinions:

16

## **Provisions on matrimonial property (3)**

- To agree with the addition of provisions on prenuptial agreement:
  - + Property right is one of the basic rights, people would have more choices and it causes no obstacles to the implementation of the mandatory property regime
  - + To ensure better exercise of the ownership right, freedom to agreement, freedom to dispose and self-responsibility for property.
  - + Competent agencies have a more flexible, more feasible and less expensive basis for resolution of disputes arising from the settlement of the property in the marriage and family cases.

17

## **Provisions on matrimonial property (4)**

- Not to agree with the addition of provisions on prenuptial agreement:
  - + Matrimonial is a very special relationship which is different from that between 2 ordinary people, a prenuptial agreement does not fit in with Vietnam's traditions, culture and spousal moral standards, their responsibilities for children;
  - + Matrimonial relationship is based on sentiments/emotions, the introduction of a contract-like agreement in would prejudice the meaning of marriage...;
  - + This provision might be abused through acts of corruption, frauds, disperse of property.

18

## **Provisions on separation (1)**

- These provisions are very necessary as they meet the actual needs of several families (where spouses no longer love each other but do not want to divorce or are considering divorce), provide couples with more choices to consider their matrimonial state, ensure legitimate interests of parties involved and, serve as the legal basis to dispose matrimonial property, obligations to parents and children and support obligations... This does not hinder the choice of the couple to actually live separately.

19

## **Provisions on separation (2)**

- Further considerations are needed since this is not yet practically feasible.
  - Separation is a social phenomenon that has been existing in reality, given the cultural tradition of Vietnam, however, few people want to make it public.
  - Separation is a private agreement that does not need any interference from the court.
  - When it comes to the disposition of the matrimonial property, there are provisions in the Law that provide for the division of property and the right not to consolidate personal property into the matrimonial property during marriage.
  - Separation might be abused and turn into "suspended marriage" leaving women and children at disadvantage

20

### **Provisions on separation (3)**

- **Comments of the Committee:** These provisions can possibly be added to the Draft:
  - Provided, however, that the provisions on separation would not affect the actual separation, but should provide couples with more choices and considerations. Separation should not be treated as a step towards divorce.

21

### **Provisions on separation (4)**

- The court shall only step in if so requested by the couple, in which case, the Court shall determine the responsibilities of each spouse to children and the transparency of the property disposition. Court certification of the separation status might help to protect the victim of domestic violence, and prevent serious consequences from happening in case of continuous cohabitation.
- Mediation should be a compulsory step during the court processing of a request for separation. Mediation provides a chance for couples to heal their matrimonial relationship.

22

## Provisions on separation (5)

- The Committee hereby requests the Drafting agency to clarify:
  - The nature of separation and the practical grounds on which provisions on separation are proposed to be added to the Law;
  - Rationale of similar treatment of separation and divorce, procedures to deal with a request for separation;
  - The conformity of the provision “*when separation is terminated, the [decision on] the division of property made upon separation remains valid*”;

23

## Provisions on separation (6)

- How the court proceeds and deals with cases when a spouse wants to divorce and the other requests for separation;
  - Children born during the period of separation;
  - How to deal with circumstances when this provision is abused to evade performance of common obligations of husband and wife;
  - Clarify the provision requiring husband and wife “*to have obligation to live together*”.

24



## **Surrogacy for altruistic purpose (1)**

- Arguments of those who support for surrogacy for altruistic purpose:
  - To meet the aspirations and legitimate needs of couples that are unable to have kids even when support by technical measures fail, to help protect family happiness.
  - To avoid short term and long term implications arising from the failure of laws to catch up with and govern this reality given the context that domestic medical advance has made this possible and many people want to take their chance.
  - Therefore, these provisions should be added to the Law and designed in a strict and specific manner.

25

## **Surrogacy for altruistic purpose (2)**

- Arguments of those who suggest surrogacy for any purpose would be prohibited:
  - This is too sensitive, complicated and easy to be abused as it is not compatible with Vietnam's culture.
  - It is required to assess whether surrogacy really brings permanent/sustainable happiness to families,
  - It is also necessary to consider how to deal with conflicts with law and disputes arising from surrogacy.
  - The fact that many countries in the world impose a prohibition of surrogacy.

26

### **Surrogacy for altruistic purpose (3)**

- Comments of the Committee: Surrogacy for altruistic purpose should be permitted as it illustrates the altruism and gives a chance to couples to exercise their legitimate parenting right. However, since this is a new issue on which we lack experiences, these provisions should be drafted in a strict and careful manner, specifically conditions for surrogacy and the legal form of a surrogacy agreement should be made clear in order to ensure the rights of the parties and particularly the child to be born. If not, this might deviate surrogacy to the commercial (profit-making) purpose or trafficking in children.

27

### **Surrogacy for altruistic purpose (4)**

- The Committee hereby requests the Drafting Committee to further study and clarify the following issues:
  - Details of an agreement in surrogacy;
  - Surrogacy with foreign elements;
  - Conflicts of parental rights and obligations from the time the child is born until the time the child is handed over to the “intended” parents;

28

## **Surrogacy for altruistic purpose (5)**

- Protection of the interest of mother and children, protection of the right of the surrogate in case, for example, the child is born with defects and the 'intended' parents do not want to take it, or when the surrogate is exposed to some risks as a result of the surrogacy (hemorrhage, still birth etc.) or the surrogate dies (due to or not due to surrogacy etc.);
- The issue of inheritance in the circumstance when the baby is not yet born, either intended parent dies and the surrogate refuses to hand over the baby to its intended parent;

29

## **Surrogacy for altruistic purpose (6)**

- How many times can a person surrogate (for different couples)? How many people can surrogate for a couple?
- It is necessary to foresee all the possible scenario to design provisions to strictly govern them;
- To assess the relevant impact of the provisions on surrogacy on other legal normative documents and some provisions contained in other specialized laws such as laws on healthcare or population etc..

30

## **Matrimonial relations with foreign elements (1)**

- The proposed revisions in the Draft are necessary as they create a legal framework to deal with current shortcomings in reality to protect the legitimate rights and interest of Vietnamese people particularly women and children as the most affected subjects by the provisions on marriages and families with foreign elements.
- To consider a definition of the term “Marriage and family relations with foreign elements” (Article 7.25).

31

## **Marriage and family relations with foreign elements (2)**

- It is necessary to review some issues such as: jurisdictions to deal with separation with foreign elements, application of laws in resolving disputes over personal matters, matrimonial property in a marriage with foreign elements, recognition of the right to have prenuptial agreement; settlement of the consequences of same-sex marriages with foreign elements; assurance of the consistency and compatibility of the proposed Law with the provisions on court jurisdictions as stated in the Civil Procedure Code, international treaties and agreements on judicial support in civil, marriage and family sectors.

32

## **Gender-equality mainstreaming in the proposed Law (1)**

- The provisions of the proposed Draft law uphold the principles of gender equality, namely affirmation of the right to voluntary and non-discriminated marriage, acknowledgement of monogamy; equality of husband and wife in family; housework is treated as labor; policy for protection of and support for mothers etc....

33

## **Gender-equality mainstreaming in the proposed Law (2)**

- The draft Law has addressed some issues of gender inequality found in the current Law and is in conformity with the international treaties that Vietnam has joined, for example provisions on the minimum age eligible for marriage which is full 18 years of age for both men and women; additional provisions on gender-equality-related prohibitions; settlement of consequences of cohabitation of men and women as husbands and wives without marriage registration

34

## **Gender-equality mainstreaming in the proposed Law (3)**

- Further study is required into the gender-equality aspects of the following issues:
  - Are there any risks of inequality latent if both the custom and provisions of law can be applied.
  - Several provisions on surrogacy for altruistic purpose are not strong enough to protect rights and interest of the surrogate and the child in this case.

35

## **Gender-equality mainstreaming in the proposed Law (4)**

- To reconsider the value limit of a transaction under which it is not required to consult with either spouse; the presumption that a spouse who currently does business would automatically be the representative of the other spouse (Article 25); or the provision that allows a spouse who is named as the holder of a bank account, a securities account or possessing a property not required by law to be registered, to carry out any transactions relating to that property without having to consult with the other spouse (Article 32) which might cause prejudice to the right of a spouse being the co-owner of that property etc..

36

Thank you!

37

## AMENDING THE LAW ON MARRIAGE AND FAMILY – FROM A HUMAN RIGHTS BASED PERSPECTIVE

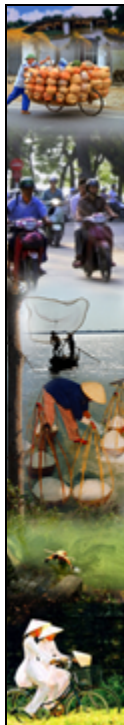
LIEU ANH VU  
Representative of UNDP



### Background

- UN comments (prepared jointly by UNDP, UN Women and UNAIDS) on the 20 October draft, sent by UN RC to the Social Affairs Committee of the National Assembly
- Comments particularly focused to strengthen **gender equality** and **equal rights principles** in coping with the changing realities of marriage and family in the Viet Nam society
- Comments based on:
  - principles and interpretation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
  - other international conventions and agreements that Viet Nam has acceded to
  - findings, jurisprudence and commentary of international treaty bodies





## General recommendation

- To avoid confusion and potential gender discrimination:

- Replace the gender-specific terms (“*husband and wife*”) with the gender-neutral terms (“*spouse*,” “*spouses*,” or “*individual*”)
- Avoid binary gender construct (“*men and women*”) that can perpetuate transgender and intersex people invisibility
- Examples
  - Article 2 (1): “Voluntary, progressive and monogamous marriage in which *two people* are equal.”
  - Article 7 (3): “Getting married” should be defined as an act whereby “*two people* establish a *spousal* relationship with each other in accordance with ...”



## Basic principles (Article 2)

- Article 2 (5)
  - On cultural and ethical traditions: add the phrase “... *provided these do not discriminate against or violate the human rights afforded to all individuals under the Constitution of Viet Nam.*”
- Article 2 (6)
  - To avoid reinforcing stereotypes of women in their reproductive role, rephrase the end of the sentence “...; *to help parents to properly perform their parental functions by helping both parents as equal partners in raising children.*”



## Definitions

- Article 7 (21):
  - the list of “**essential needs**” should be expanded to include shelter, water and sanitation and transportation
- Article 7
  - Add a definition of “**gender-based discrimination**” that includes any distinction, exclusion or restriction that does not give women and girls equal rights with men and boys in marriage and family life, access to goods and services, opportunities for education and self-advancement, rights to property and inheritance, and decision-making power
  - Add a definition of “**legitimate interests of women and children**” and define it to include sufficient material and financial resources to meet their basic human needs, and to allow for their individual and collective growth and development



## Cohabitation: Definitions

- Article 7 (5)
  - Replace the term “*living together as wife and husband*” with an internationally recognized term, such as “*de-facto union*”
  - Proposed definition: “*A de-facto union means two persons mutually agree to organize a life of living together in a stable and continuous manner and consider each other as de-facto spouse.*”
- Article 7 (16)
  - Ensure the definition of “**family**” includes men, women and children living together in de-facto unions
- Article 7 (18)
  - Ensure the definition of “**family member**” includes and applies to people bound together by cohabitation relations, thus giving rise to obligations and rights among them as stipulated in the Law



## Cohabitation: Equal rights principles

In its 1994 General Recommendation No. 21, Equality in Marriage and Family Relations, the CEDAW Committee declared that women and men living in de-facto unions "*should have equality ... in family life ... sharing of income and assets ... and care and raising of children.*"

In addition, under international human rights law, the obligation to protect individuals from discrimination on the basis of sexual orientation extends to ensuring that unmarried same-sex couples are treated in the same way and entitled to the same benefits as unmarried different-sex couples.



## Cohabitation: Recommendations

### Preferable Option 1:

- Add provisions extending to people in de-facto unions the **same substantive rights and responsibilities** as married couples in all areas of marriage, separation, divorce, and child rearing including those related to property, adoption, surrogacy, family rights and responsibilities, etc.
- The revised Law should govern de-factor unions of different sex as well as same-sex couple with the **same substantive rights and responsibilities**
- Accordingly, delete Article 13, Article 14, Article 15 and Article 16.



## Cohabitation: Recommendations

### Alternate Option 2:

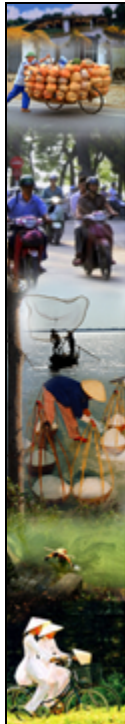
- If, however, Viet Nam provides limited rights to people living in de-facto unions, we recommend to:
  - Strengthen Article 13 to clearly describe the conditions under which common ownership of property is established among parties who do not have a property agreement
  - Ensure articles 13, 14, 15 and 16 cover key areas of **legal consequences** which can arise in de-facto unions:
    - parenting consequences,
    - material (including property, social welfare or other material benefit) consequences, and
    - other legal consequences (for example: to be protected against domestic violence, foreign partner of Vietnamese national is entitled to a residence permit, etc.)
  - Remove and revise wherever appropriate provisions that introduce legal discrepancies between different-sex cohabitation and same-sex cohabitation
  - Delete Article 16, as it will be redundant after the suggested changes above.



## Common property and personal property

CEDAW principle and General Recommendations 21 establishes:

“the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration”



## Common property and personal property

- We recommend:
  - Revise Articles 25 and 26 to ensure they do not undermine the requirement for joint decision-making on common property in Article 35
  - Article 30: Enacting specific protections for the matrimonial home is a practical and increasingly common means to protect women's access to housing during and at the dissolution of a marriage
  - Ensure the division of property for purposes of inheritance upon the death of one spouse (Article 70) is consistent with definition of common property (Article 33)
  - Provide guidance on the value of household and family work to strengthen references to the assertion that household and family work is considered as income (Articles 15, 59 (2b) and 61)



## Separation and divorce

- Ensure just and equitable division of property on divorce, and ensure that the agreement has not been obtained through fraud coercion, undue influence or domestic violence
- Allow women and children to stay in the marital home
  - before an agreement on property is reached
  - in situations of domestic violence
- Ensure that pension of a deceased individual continues to be provided to dependent spouse
- Provide further guidance on the appropriate level of child support payments; also develop measures for more effective enforcement of child support provisions



## Child rights and support

- Stipulate that fathers are obligated to contribute to the pregnancy and childbirth costs for mothers of children regardless of cohabitation or marriage
- Strengthen the requirement for provision of support to children born to single mothers
- Add provision(s) setting the principle that children should be treated equally
  - without distinction as children born to single mothers; and
  - without distinction based on the sexual orientation or the gender identity of their parents



## Marriage and Family Relations Involving Foreign Elements

- Protect a Vietnamese woman's right to retain her nationality when she marries a foreigner, or when her husband changes his nationality;
- Give foreigners married to Vietnamese citizens the same rights to residency, citizenship and employment and social security in Viet Nam;
- Protect the rights of a Vietnamese spouse and children in situations of separation or divorce when they are living overseas, or when one spouse is living overseas



## General recommendations

- National Assembly to consider a lengthier period of public discussion over the draft law's amendments, in particular with those who will be directly affected
- The revised Law to be adopted at the same time with the revisions of other laws which govern directly or indirectly family and marriage issues, such as:
  - the Law on Civil Status
  - the Law on Adoption; and
  - the Civil Code.



**THANK YOU  
FOR YOUR ATTENTION**

## **THE DRAFT LAW ON MARRIAGE AND FAMILY FROM THE PERSPECTIVE OF A NON-GOVERNMENTAL ORGANIZATION**

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In recent years, there have been lots of changes in marriage and family relationships both as a result and as a cause of major socio-economic developments in Vietnam's transition to a market economy and integration into the world. Cohabitation of opposite-sex couples, though not yet a common trend, has been on the rise. Cohabitation of same-sex couples, even with wedding ceremony, is also arousing attention from the public. More importantly, with technological advances in medically assisted reproduction, surrogacy arrangements have occurred here and there throughout the country. Being well aware of the importance of such issues to families and the society, the National Assembly and Ministry of Justice have worked with stakeholders in revising the Law on Marriage and Family 2000 in response to public concerns and social changes in the new era, which is also part of the effort to improve the legal framework for protection of human rights.

The Law on Marriage and Family has been arousing a lot of public interest from various perspectives. In my paper, I would address proposed changes in the Law from the perspective of an independent social researcher and, to a certain extent, as a voice from the community of non-governmental organizations in Vietnam.

The Law on Marriage and Family (hereinafter referred to as the Law for short) demonstrates a big improvement from the current Law on Marriage and Family (the



2000 Law for short). In addition to modifications and clarifications to a number of provisions in the 2000 Law, the Law also adds a number of new provisions to respond to increasingly diverse and complex changes in the society. Out of the new changes and/or modifications, the most notable include provisions on cohabitation, same-sex marriage and surrogacy. In addition, gender mainstreaming is another highlight of this Law. I am going to address these issues in the stated order.

### **1. Informal different-sex cohabitation**

It is necessary to make clear right from the beginning that cohabitation in this context refers to the practice where an unmarried male and female living together like spouses – both of them either have never got married or have got married but already divorced or become widowed<sup>2</sup>. These cohabitating couples can be categorized into two groups: those who cohabit prior to their marriage to see if they really have the right person for a marriage life and those who cohabit as an alternative to marriage, i.e. they have cohabitated for years, or even for life without ever getting married and having a wedding.

Cohabitation of male-female couples have been a practice in Vietnam that has never been dealt with from a legal perspective. Instead, it has usually been handled from a moral or ethical perspective with severe criticism or even sanction against unmarried cohabitants, particularly those belonging to the first category. Though the 2000 Law does not touch upon such cohabitating practices, it is stated in Resolution No. 35/2000/QH10 dated June 9, 2000 issued by the National Assembly to guide the implementation of the Law that from January 1, 2013 a male and female living together without getting married will not be recognized as spouses by the law.

Since Vietnam started to move toward a market economy and to be subject to the globalization trend, the public have become more receptive to having sex before marriage. Cohabitation of unmarried couples has been on the rise, particularly among young urban people who have never got married. So far, there has been no survey of a

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<sup>2</sup> This paper does not refer to cases where a married person cohabitates with a person rather than his or her spouse.

sufficient scale to give generalized statistics on cohabitation at the national level. But there have been a number of small-scale and qualitative studies – particularly in the media coverage<sup>34</sup> – that confirm an increasing trend among university students and workers in industrial parks to cohabit with their boy or girl friends. Such practices are often referred to as “trial of marriage life”<sup>56</sup>. These couples are lovers and really wish to get married with each other. These couples can be categorized as cohabitants with an intention to become a married couple. After some time of cohabitation, they may proceed to getting married. Or else, if they have found that they are not cut out for each other, they will split and start a new relationship.

The second category includes those couples that tend to cohabit for long without an intention to get married. Though not as prevalent as the first one, such practice has existed and is expected to grow. These couples tend to be more committed to each other, to their children (if any) and to the family of the other partner as well. In general, their relationship is very much similar to that of married couples and often recognized as spouses by their parents and other people. They do not register simply because they are not aware of the need to register, or they don't think such procedures are necessary. In certain provinces such cohabitation may be recognized by the local authorities as de-facto marriage.

No matter if their cohabitation belongs to either category, female partners in such relationship are faced with a number of downside risks. Even when the couple have a very good relationship, the female partner is subject to much more stigma than the male. Female partners in the first category are not entitled to any status in the male's family; worse still, they are treated disrespectfully, contempted or denied by their partner's family. Social studies and the media have raised a number of concerns over unhappy consequences from such relationship, especially when the female

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<sup>3</sup> “Informal cohabitation from the social and cultural perspective”. <http://vnexpress.net/tin-tuc/thoi-su/song-thu-duoi-goc-nhin-cua-cac-nha-xa-hoi-van-hoa-2003570.html>

<sup>4</sup> <http://m.tienphong.vn/Gioi-Tre/599620/Song-chung-khong-dang-ky-ket-hon-Hau-qua-kho-luong-tpol.html>

<sup>5</sup> Informal cohabitation prior to marriage among workers in industrial parks– Unhappy endings. See <http://nld.com.vn/tinh-yeu-hon-nhan/song-thu-trong-cong-nhan-nhung-ket-cuc-buon-2012041211456668.htm>

<sup>6</sup> Informal cohabitation prior to marriage among workers in industrial parks: Sad loves in workers' residential cluster. See <http://nld.com.vn/tinh-yeu-hon-nhan/song-thu-trong-cong-nhan-tinh-buon-noi-xom-tro-2012041110521578.htm>

partner gets unwanted pregnancy, or suffers from sexually transmitted diseases, her male partner just walks away, leaving her subject to a lot of bad reputation. The status of female partners in the second category is also fragile – their voice is not always respected. In case of split-up, female partners in both categories are at a disadvantage – they lose a lot in terms of honor, material and emotional benefits. In face with stigma and lack of legal status, these women resign themselves to their fate, rather than fighting for their interests (and interests of their children, if any).

Therefore, the Law can be seen as a significant improvement in setting a better legal framework for protecting women in such cases as it touches upon cohabitation and sets forth provisions for dealing with consequences arising out of such cohabitation. Neutral phrases are used in the definition of cohabitation in Article 7, Clause 5, which says: “cohabitation is the practice of a man and a woman agreeing to live together and recognizing each other as spouses”. This is useful in reducing prejudice and stigma against cohabitants. The Law goes even further by treating cohabitation as a practice that “does not give rise to a marital relationship” in Article 13, Clause 1, rather than a practice that is “not recognized as a spousal relationship” as stated in Resolution 35/2000/QH10. Clearly, the Law adopts a less judgemental approach toward cohabitation.

Furthermore, Articles 14 and 15 of the Law attempt to regulate rights and obligations of cohabitating couples in relation to their children as well as the issues of property, obligation and contract arising in connection with their cohabitation. Particularly, Article 16 Clause 3 emphasizes the interests of women and children and treats housework and other domestic responsibilities as income-generating work. This is a progressive approach that takes into consideration of women’s and children’s vulnerabilities and emphasizes gender equality. If the Law is adopted and supported by practical, implementable regulations, it will help reduce the disadvantages faced by women in cohabitation.

For those couples that cohabit on a sustained basis and even have children, they are virtually no different from legally married couples. Still, they are not entitled

to a number of rights exclusively granted to married couples. Many important rights are not available to cohabitating couples, such as the right to act as next-of-kin of the other partner, to represent the other partner in a business relation, the right to stay in the matrimonial home after split-up, the right to inheritance when the other partner passes away without leaving any will... In case of infertility, these couples are not allowed to engage in a surrogacy arrangement because they are not legally married. Also, Article 8, Clause 3 of the Law on Adoption does not grant them with the right to adopt a child. In a society like Vietnam where a child has both material and emotional values, inavailability of such rights is a disadvantage to these cohabitating couples and may undermine their relationship.

## 2. Same-sex marriage

As of 31 September, 2013, same-sex marriage has been legalized in 16 countries and 17 territories; and different forms of same-sex partnership have been recognized in over 32 jurisdictions. Such changes in legal systems reflect findings from numerous scientific studies which assert that concerns about same-sex marriage are unfounded. Homosexual marriage neither leads to population deterioration<sup>7</sup>, nor erodes values of heterosexual marriage<sup>8</sup>, nor leaves adverse impacts on children

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<sup>7</sup> Civil union of same-sex couples was first recognized in Denmark in 1989. Same-sex marriage was first recognized in the world 12 years later, in the Netherlands in 2001. Official statistics show that by end of 2009 about 100,000 same-sex couples throughout the world have registered their marriage. In European countries, the number of same-sex marriage registrations accounts for 2-3% of total registrations and has stayed at that level during the past ten years. Divorce rates in European countries did not change between 2000 – 2010. Divorce rates were stable in Nordic countries, and even declined in Denmark between 1989, when the law started to allow civil union of same-sex couples, and the year in which same-sex marriage was legalized. Therefore, the proportion of homosexual people and their marriage rate were very insignificant in relation to the whole population. So far, legal recognition of various forms of same-sex partnership has hardly left any impact on demographic features of those jurisdictions that provide such recognition. In Denmark, population growth rate fell sharply between 1970 and 1980, but then rose again and levelled off since 1980. Thus, during 23 years of recognizing civil union of same-sex couples and their legitimate interests, Denmark's population growth maintained at a stable level. Similarly for the Netherlands, where the general population growth rate declined in 1970s and has stabilized ever since. Decline in population growth is a common trend witnessed by many continents and countries across the world together with their socio-economic development. Vietnam is not an exception. However, the size of population keeps growing in those countries with legal recognition of same-sex relationship.

<sup>8</sup> Demographic statistics on decreasing rates of marriage in European countries revealed no association with legal recognition of registered partnership for same-sex couples. A prospective study conducted for a time frame of three years in Vermont, the US on quality of marital life of registered same-sex partners and married

raised by homosexual couples<sup>9</sup>. In those countries where legal recognition is given to registered partnership, despite differences in how such relationship is labelled in each legal system, rights and obligations conferred to registered same-sex partners are essentially the same as those of different-sex couples<sup>10</sup>. In other words, same-sex couples have legal protection for their cohabitation in these 65 jurisdictions<sup>11</sup>.

The 2000 Law prohibits same-sex marriage. However, in the last two decades, cohabitation has emerged as a trend among same-sex couples, much similar to what has happened with different-sex partners. Some same-sex couples even have their wedding ceremony witnessed by their families and friends. In some provinces, same-sex couples are faced with obstruction from local authorities, who try to prevent such weddings and cohabitation from taking place. Some couples split up after cohabitation but cannot resolve their common property and other issues. Local offices of justice, given a lack of legal instruments, have no idea about how to deal with such issues and thus cannot provide any help. These couples get stuck and struggle to start

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different-sex couples reveals that registered same-sex couples tend to have more harmonious relationship, greater intimacy and less conflict than heterosexual couples (Balsam et al 2008). Another prospective study in the gay cohort in Massachusetts throughout 12 months as of legalization of same-sex marriage showed a statistically significant reduction in health care visits (no reduction in regular check-ups), in visits for mental examination, and thus significant reduction in health care costs (Hatzenbuehler et al 2010). Notably, such improvement was observed not only among cohabitating couples but also in the general gay cohort, as the decision to get married or not has become a personal choice, but not related to the right to get married. Thus, legal provisions on marriage also have effect on public health (King and Bartlett (2006) and have cost implications for social welfare (Portelli, 2004).

<sup>9</sup> A number of countries, before giving recognition to same-sex marriage, conducted studies to compare development outcomes of children in conventional family settings and other non-conventional types of family. The American Academy of Pediatrics (2002) and the American Society for Reproductive Medicine (2006) found that there was no evidence suggesting any risk to children's development when they were raised by homosexual parents. In fact, the vast majority of family studies in the last 40 years in those jurisdictions that recognize some form of same-sex cohabitation confirmed that children's development and well-being were largely dependent on their interactions with adults in the family, level of openness and discussion between children and their family members, mental health, harmonization and collaboration among adults in the family, and independent of family structures – irregard of whether parents are heterosexual or homosexual or single parent (Millbank 2003; Tasker 2005; Fitzgerald 1999; Flood 2003; Chan et al 1998; Lipman et al 2002). Some studies even suggested that kids born by a lesbian and raised by lesbian couples even tend to outperform kids from conventional families (Goldberg 2010). Similarly, studies on parenting capacity of gay couples reveal that gay fathers outperform heterosexual fathers in parenting ability when gay fathers are capable of raising a kid as mothers do (Hicks 2006).

<sup>10</sup> UK Civil Partnership Act 2004 sets forth the same rights and obligations for homosexual couples under civil partnership as those for heterosexual couples in marriage. Or the Family Act of California (the US) allows same-sex couples to have "registered domestic partnership." In Section 297.5(a) the Act states that "parties to a registered domestic partnership have full rights, protection, interests, responsibilities, obligations and duties as set forth hereinunder."

<sup>11</sup> An excerpt from CSOs' Open Statement to National Assembly Members on the issue same-sex marriage, dated 17 June, 2013.

over. One of the fundamental human rights for these people is thus not recognized and implemented due to a lack of legal instruments.

Recent social changes have pointed to the need for formally discussing and handling these issues. Since late 1990s, people in Vietnam – through efforts to prevent and control HIV/AIDS – have started to know more about homosexuality. Efforts to reduce prejudice and stigma against men who have sex with men (MSM) have contributed to positive changes in social attitudes toward lesbians, gays, bisexuals and transgenders (LGBT<sup>12</sup>). The more receptive attitude of the public has encouraged many LGBT to come out and actively take part in efforts to change the society's perception on LGBT and to protect their human rights. More and more organizations and individuals have become vocal for the LGBT's right to marriage and married life.

In such context, the removal of prohibition of same-sex marriage (Article 10, Clause 5 of the 2000 Law) is seen as an important improvement in the Law to bridge the gap between heterosexual people and the LGBT community. Under the Law, same-sex couples can cohabit without being seen as violating the law – similar to heterosexual couples living together without registration. Local authorities should not interfere with their weddings or cohabitation.

The Law goes even farther by adding some provisions on dealing with issues arising in connection with same-sex cohabitation. Issues of property, obligation and contract arising out of same-sex cohabitation should be dealt with in the same manner as those between the different-sex partners as indicated in Article 16, Clause 2, Point a, . Similarly for the parents-children relationship of same-sex couples indicated in Point b of the same Article and Clause. These changes will form the legal basis for protecting certain rights of LGBT people.

Though the Law no longer prohibits same-sex marriage, it does not recognize such marriage, either – as indicated in Article 16, Clause 1. This may confuse the

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<sup>12</sup> LGBT is short for “Lesbian, Gay, Bisexual and Transgender”. For convenience, I use the English acronym in place of Vietnamese expression.

public and local authorities, including local justice officers. Local officers, for the “safety” sake of their own, may still hassle same-sex cohabitants. Such confusing message from the Law may make it hard for local justice officers in protecting legitimate rights and interests of same-sex couples. LGBT people themselves may not be certain if they are allowed to live with their beloved partner. Their families may use such non-recognition as an excuse to stop them from living with each other. In a broader context of the whole society, stigma and discrimination against LGBT people will surely continue given such non-recognition of same-sex marriage.

Some argue that non-recognition of same-sex marriage while removing prohibition is an essential transition toward legal recognition of such relationship. Assuming that such a cautious move is essential, the question here is whether it is really necessary to include the text of Clause 1 Article 19 in the Law? Why doesn't the Law just treat informal cohabitation of homosexual couples the same as that of heterosexual couples – because they are essentially the same. Isn't it better to adopt the same approach in treating informal cohabitation regardless of its homosexual or heterosexual characteristic? For example, instead of stating “does not recognize marital relationship between same-sex partners” it may be better to say “cohabitation of same-sex partners does not give rise to a marital relationship” - i.e. using the same text as in provisions on heterosexual cohabitation. This approach would help reduce stigma and discrimination against same-sex couples.

Another problem is, apart from provisions on property, obligation and contract issues in Article 16, the Law does not touch on other rights that may arise from cohabitation – for example the right to act as next-of-kin or the right to inheritance if the other partner passes away without leaving a will. The Law does not allow same-sex couples to enter into a surrogacy arrangement in order to have a child. Even when the baby is born with sperm from one partner of the gay couple, that man is not recognized as the child's biological father. Also, under Article 8 Clause 3 of the Law on Adoption 2000, if a same-sex couple raise an adopted child, only one of them is recognized as the adopted parent though both of them take part in bringing up the

child. Such provisions may jeopardize the child's interests and restrict the other partner's responsibility and obligation. If the adopted parent dies, the surviving partner has to initiate adoption procedures for the child whom he or she has been taking care of for long.

### 3. Surrogacy

Surrogacy has occurred in 1080s when in vitro fertilisation became available. However, only few countries so far have legalized surrogacy, mainly for altruistic purposes. Some other countries have not legalized surrogacy but do not prohibit such arrangement. In those countries that legalize surrogacy, such arrangements are allowed only under certain circumstances. India, Russia, Gruzia, Thailand and Ukraine are notable exceptions where commercial surrogacy is also allowed and homosexual individuals and couples may enter into surrogacy arrangements. It is estimated that surrogacy services in India annually earn about 2.3 Lawion dollars. The most recent Law on Surrogacy in India does not allow homosexual couples to use surrogacy services<sup>13</sup>.

In Vietnam, this is the first time ever a law attempts to address surrogacy. But surrogacy practices have existed at least since early 2000 with rapid advances in medically assisted reproduction. Media discussions and public rumor indicate an emerging market for surrogacy services in some big cities<sup>14, 15, 16, 17</sup>. To get around this prohibition and to ensure privacy, some people with better economic means prefer to seek such services abroad. So commercial surrogacy has indeed existed in Vietnam or has been used by some Vietnamese people. This is also expected to grow over time.

The inclusion of provisions on altruistic surrogacy will enable couples with fertility problems to have children via technically assisted reproduction and will form

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<sup>13</sup> <http://surrogacymumbai.wordpress.com/surrogacy-bill-india/>

<sup>14</sup> <http://vietbao.vn/Xa-hoi/Nhuc-nhoi-nghe-de-thue/10720384/157/>

<sup>15</sup> <http://www.thanhnien.com.vn/pages/20120301/bi-kich-de-thue.aspx>

<sup>16</sup> <http://hn.24h.com.vn/tin-tuc-trong-ngay/dich-vu-de-thue-he-luy-kho-luong-c46a432762.html>

<sup>17</sup> <http://vntimes.com.vn/phong-su-ghi-chep/ky-su/8526-de-thue-nhung-die-khong-the-tin-noi.html>



the legal basis for regulating surrogacy, which has well existed in practice. However, the Law only allows gestational surrogacy – that is, where pregnancy and delivery are impossible for the wife and the surrogate carries an embryo previously created via IVF with the wife’s egg and the husband’s sperm. The surrogate must have relative relationship with either of the commissioning parents. These provisions imply that surrogacy is not possible where one or both of the couple are infertile, or when no relative is able or accepts to be the surrogate mother.

Such strict restrictions, in theory, would help eliminate commercialization of surrogacy. However, given the fact that a market for this service is emerging – though illegally – the question here is whether provisions in the current Law (Article 95) are strong enough to regulate surrogacy? My concern is the market for surrogacy may rise very fast as our social and cultural beliefs still attach great significance to having a child and technical advances in medically assisted reproduction have made this possible. Are the proposed provisions strong enough to stop those people who want a child but do not meet eligibility criteria set forth by the law from entering into a surrogacy arrangement?

If we fail to regulate the market for surrogacy, women will be abused and exploited for commercial surrogacy. Worse still, such failure may give rise to crime rings that make money on women’s “uterus”. Then impoverished women will be the most vulnerable. And people who want to have a child but do not meet eligibility criteria defined by the law will be taken advantage of. They will have to pay huge amount of money and will be involved in law violations.

#### **4. Gender mainstreaming in the Law**

The Law has demonstrated numerous efforts in gender mainstreaming in the law-making process. A number of provisions have been modified, revised or added to ensure better equality between men and women. This is an important step toward the goal of gender equality set forth by the (Communist) Party and the State.

In Chapter I on general provisions, the Law continues progressive principles on gender from the 2000 Law. It also adds a number of new provisions to further promote gender equality. For example, equality between husband and wife embedded in the 2000 Law continues to be maintained as one of the first and foremost principles stated in Clause 2, Article 1 of the Law. Also in Clause 4 of the same Article, the Law adds a new provision on non-discrimination among family members. In Clause 6, it further emphasizes the assistance to mothers in exercising their function.

In addition, Clause 3 of the Law sets forth responsibilities of the State in proactively preventing domestic violence. In addition to provisions in Article 4 on prohibition of premature marriage, forced marriage, forced divorce and separation inherited from the 2000 Law, the Law also adds prohibition of domestic violence, human trafficking, labor exploitation, sexual abuse, or commercial exploitation of women via technology of medically assisted reproduction, commercial surrogacy or baby gender selection. These provisions demonstrate high level of awareness of women's vulnerabilities.

Chapter II on marriage also include a number of new provisions aimed to promote gender equality. Article 8 on eligibility for marriage allows both men and women to get married when they are aged full 18 in Clause 1. This takes into account changes in physical maturity of young people these days and aims to ensure equality among men and women in terms of marriage age. Clause 2 emphasizes voluntariness of men and women in deciding to get married to preclude forced or coercive marriage, particularly those women in far-flung areas.

As indicated in the first part, Articles 13 to 15 of the Law address informal cohabitation of heterosexual couples. Despite some weaknesses, these provisions are helpful in providing legal protection for female partners, particularly in case of split-up, as women are more vulnerable.

Chapter III on husband-and-wife relationship contains a number of provisions aimed to further promote equality between the husband and the wife as well as

protection of women. New provisions on spouse behavior are included in Articles 19 to 23. New provisions to allow spouses to represent each other in civil and business transactions can be seen as an important step toward promotion of gender equality. N The most notable change in this regard involves provisions on property. This forms an important legal basis for promoting gender equality in family settings as well as protecting women in a predominantly patriarchal culture like Vietnam.

In Chapter IV on divorce, the Law demonstrates huge efforts in ensuring greater specificity, clarity and gender-sensitivity in its provisions on distribution of property and land use right. The most notable improvement is seen in Article 59 Clause 2 Point b, which asserts that housework provided by one spouse is regarded as income-generating labor. This can be seen as huge progress as it recognizes contribution from the spouse responsible for housework. However, it will be a great challenge to measure the contribution level of each spouse in determining property distribution. Even when a marital relationship is going well, housework should also be seen as income-generating work in order to promote more equal division of work in a family. The right to stay in the matrimonial home after divorce is another important improvement in protecting women in a context where patriarchal family and patrilocal residence are still prevalent in Vietnam.

Section 3, Chapter IV provides fairly detailed and specific provisions on separation. Some suggest that provisions on separation will help reduce the rate of divorce. I am not supportive of that argument. In my view, separation allows spouses opportunities to rethink their relationship, change their behaviour or agree with each other on new terms and conditions of their living together and, in certain cases, protect women from violence. However, separation may also put women – particularly vulnerable women – at a disadvantage. If the law does not prohibit separating spouses to live with a third person during separation, it is more likely that separation will be abused by the husband to have quasi-marital relationship with a third woman.

Chapter V, Section 2 on parents-children relationship also contains provisions to protect women – such as Article 92 Clause 1. Provisions on surrogacy are helpful to couples wishing to have their own children when pregnancy or delivery is impossible due to the wife’s health concerns. They are also meaningful in strengthening the status of women in marital life because, in the current context of Vietnam, women without children are faced with more stigma and disadvantage than men. However, as earlier indicated, the Law only allows gestational surrogacy. Surrogacy is not allowed in cases where either or both partners are infertile – i.e. couples are not allowed to use donated egg, or sperm, or embryo for surrogacy.

The rights and responsibilities of a surrogate mother are set forth in Article 96; but I think there is inadequate protection for the surrogate. Even when the surrogacy arrangement is for altruistic purpose and the surrogate is closely related to either spouse, the law should require medical insurance for the surrogate, starting from endocrine therapy prior to pregnancy, throughout pregnancy and till the handover of the child to the commissioning parents. In addition, a surrogate should be entitled to medical, material and emotional support to get over any postnatal effects after the child is handed over to the commissioning parents.

### **Conclusion**

The Law demonstrates important reforms in improving the legal framework for marriage and family. The Law is built on successes of the 2000 Law and includes positive changes that reflect better recognition of human rights and gender equality. The Law is a major improvement from the 2000 Law as it addresses marriage and family issues in a more comprehensive manner with greater clarity and responsiveness to new changes in modern family and society. If adopted and put into implementation, it will serve as an important legal instrument to provide better protection of human rights and promotion of gender equality.

However, as discussed earlier, heterosexual and homosexual couples that cohabit are not entitled to as many rights as available to legally married couples.

This is a weakness of the Law because it fails to guarantee same level protection of human rights for all citizens. In my view, the Law should be revised to allow those heterosexual couples that cohabit on a sustained basis with a high level of commitment as well as property and emotional attachment to each other to have the same rights and obligations conferred to legally married couples, such as the right to have a child via surrogacy, the right to inherit from the other partner, or to represent the other partner in civil and business transactions.

The Law has removed prohibition of same-sex marriage in Clause 5 Article 10 but explicitly states that it does not recognize their marriage, which may result in confusion and inconsistency in interpretation of the provision among the public as well as local justice officers. Such a provision would sustain the existing gap between the LGBT community and heterosexual people as well as stigma and discrimination against LGBT people. I would suggest to allow a form of registered partnership for same-sex couples and to confer registered partners with the same rights and obligations as granted to legally married couples.

Provisions on altruistic surrogacy will form the legal basis for supporting those couples that wish to have a child but cannot do so in a natural way. However, as the Law only allows gestational surrogacy, it restricts opportunities for those people who wish to have a child but do not satisfy the defined criteria. Also, it is necessary to include in the Law the requirement of medical coverage for the surrogate, starting from endocrine therapy prior to pregnancy, throughout pregnancy and till the handover of the child to the commissioning parents. It is also essential to include a requirement of medical, material and emotional support to the surrogate mother to help her get over any postnatal effects after the child is handed over to the commissioning parents.

Furthermore, as a market for surrogacy service is already emerging, proposed restrictions in the Law may not be strong enough to stop illegal surrogacy and to protect impoverished women with inadequate awareness from being abused or exploited for commercial surrogacy. It is also suggested that the Law, on the one hand,

should relax its eligibility for the surrogate and commissioning parents. On the other hand, once the law is enacted, specific and detailed regulations should follow to guide its implementation with strict sanctions on violation to minimize any downside risk on these vulnerable women.

## MATERIALS FOR REFERENCE

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## Part 2

1. **Draft Law on Marriage and Family (revised)**
2. **Joint UN Key Recommendations on the Draft Amended Law on Marriage and Family – *as of 20 October 2013***

## DRAFT LAW ON MARRIAGE AND FAMILY (REVISED)

*Draft 20 Oct*

**NATIONAL ASSEMBLY**

Law number: ..../20../QH13

**THE SOCIALIST REPUBLIC OF  
VIETNAM**

**Independence - Freedom - Happiness**

### **DRAFT LAW**

### **ON MARRIAGE AND FAMILY (AMENDED)<sup>18</sup>**

*Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, as amended and supplemented by Resolution No. 51/2001/QH10;*

*The National Assembly promulgates the Law on Marriage and Family (amended)*

### **Chapter I**

#### **GENERAL PROVISIONS**

##### **Article 1. Scope of adjustment**

*This law regulates the marriage and family life regime in Vietnam; legal standards for behaviors between family members; responsibility of individuals, organizations, state and society in building, strengthening the marriage and family regime.*

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<sup>18</sup> The italic words are amended contents.



## **Article 2. Basic principles of marriage and family life regime**

1. Voluntary, progressive and monogamous marriage in which husband and wife are equal.

2. Marriages between Vietnamese citizens of various ethnicities and religions, between religious and non-religious persons, *between persons who have faith and persons who do not have faith*, and between Vietnamese citizens and foreigners are respected and protected by law.

3. Husband and wife have the *responsibility* to implement the population and family planning policy.

4. *Parents, children and other family members shall have the obligation to respect, look after, care for and help one another without discriminating against any members.*

5. *To inherit and promote Vietnam's cultural and ethical traditions in marriage and family life.*

6. The state, society and families shall have the responsibility to protect and support children, senior persons, persons with disabilities to exercise their rights to marriage and family life; and to help mothers perform their noble motherhood role well.”

## **Article 3. Responsibilities of the State and society toward marriage and family life**

1. The State adopts policies and measures to facilitate conditions for male and female citizens to establish voluntary and progressive marriages and for families to fulfill all of their functions; to strengthen communication of and disseminating information on the law on marriage and family; to mobilize people to abolish backward customs and practices in marriage and family life, promoting the fine traditions, customs and practices of each ethnicity; to develop progressive marriage and family relations.

*The government shall have the obligation to enforce the Law on marriage and family; to carry out the state management of family life; to develop and organize the implementation of policies, legislations on marriage and family; to guarantee the rights and responsibilities of family members; to actively prevent and combat domestic violence and social evils that penetrate the family in order to develop prosperous, progressive, happy families; to coordinate with the Vietnam Fatherland Front, Vietnam Women's Union and other socio-political organizations working on family matters.*

2. Agencies and organizations shall have the responsibility to educate and mobilize their officials, employees and members as well as every citizen in developing a cultured family; resolve family disputes and protect the legal rights and interests of family members in a timely manner. Schools shall coordinate with families in educating, communicating and disseminating information on law on marriage and family to the younger generation.”

#### **Article 4. Protection of the marriage and family regime**

1. Marriage and family relations that are *established* and conformed to this Law are respected and protected by the law.

2. *Prohibit the following acts:*

- a) Fraudulent marriage, fraudulent divorce, *fraudulent separation*
- b) Under-age marriage, forced marriage, *obstruction of marriage*
- c) A married person to marry or live with another person as wife or husband or an unmarried person to marry or live with a married person as wife or husband.
- d) *Marriage between people of direct bloodline; marriage between relatives within three generations; marriage between adoptive parents and adopted children; marriage between formerly adoptive parents and adopted children, fathers in law and daughters in law, mothers in law and sons in law, step parents and step children;*
- d) *Demand of assets in wedding ceremonies*

e) Forced divorce, *obstruction of divorce*;

g) *Giving birth to children using assisted reproductive technology for commercial purposes, surrogacy for commercial purposes, sex-selection, asexual reproduction, child trafficking*;

h) *Domestic violence*

k) *Trafficking, labor exploitation, sexual assault or other acts whose aim is to seek profits.*

3. All violations against the law on marriage and family must be dealt with in a *strict and fair manner and in accordance with the law.*

Agencies, organizations and individuals shall have the right to request the Court or other competent authorities to take timely measure to stop and *deal* with those who commit acts of violation against the marriage and family law.

4. *In resolving marriage and family cases, the parties involved in a marriage and family and relevant parties are respected, their privacy, honor, dignity and reputation are protected.*

#### **Article 5. Application of the provisions of the Civil Code and other related laws**

*The provisions of the Civil Code and other laws related to marriage and family relations shall be applicable to marriage and family relations in cases where the marriage and family legislation has no relevant provisions.”*

#### **Article 6. Application of customary practices in marriage and family life**

1. *Good customary practices expressing characteristics of each ethnicity which do not go against the basic principles of the marriage and family life regime stipulated in Article 2 of this Law and do not violate prohibited provisions of this Law shall be applicable in the following cases:*

a) *Where the law provides no regulation and parties have no agreement*

b) *Where legal provisions already exist but parties voluntarily realize their*

*rights and responsibilities to marriage and family life according to customary practices.*

*2. The Government shall provide detailed regulations on application of customary practices and on measures to advocate and mobilize citizens to abolish backward customs and practices in marriage and family life.*

#### ***Article 7. Interpretation of terms***

In this Law, the following terms are construed as follows:

1. The marriage and family regime means the entire law provisions on marriage, divorce, obligations and rights between wives and husbands, parents and children, and among other family members, support, identification of parents and children, marriage and family relations involving foreign elements and other matters related to marriage and family life;

*2. Customary practices in marriage and family life is a rule of conduct which has been repeated for a long time and is widely acknowledged in one locality, region, or community with clear content, and has been applied to determine rights and obligations of parties in marriage and family relations;*

3. Getting married is an act whereby a man and a woman establish a husband and wife relationship with each other in accordance with provisions of *this Law* regarding conditions for getting married and marriage registration;

4. Illegal marriage means a *marriage registered with competent government authorities but either party or both parties violate one of the conditions for getting married as regulated in this Law;*

*5. Living together as wife and husband means a man and a woman agree to organize a life of living together and consider each other as de facto wife or husband.*

6. Under-age marriage is the act of getting married when one or both partners have not reached the marriage age as prescribed by Law;

7. *Forced marriage or divorce means using measures such as torture, abuse, mental intimidation, demand of assets or other tricks to force marriage or divorce upon others against their will;*

8. *Fraudulent marriage is the act of getting married for the purpose of emigration and immigration; to obtain Vietnamese citizenship or foreign countries' citizenship in order to enjoy governments' preferential treatment or to achieve other illegal purposes;*

9. *Demand of assets for the act of marriage is when excessive, dictatorial demands of material means are seen as the prerequisites for getting marriage which aim to obstruct a voluntary marriage between a man and a woman;*

10. *Obstruction of marriage and divorce is the use of tricks to prevent marriages between people who have met the conditions of a legal marriage or acts that aim to prevent others to maintain their marriages or force them to end their marriages;*

11. *Marriage is the relationship between wife and husband after getting married;*

12. *Marriage period is the duration of time in which the wife-husband relationship exists, effective from the date of marriage registration until the date of marriage termination;*

13. *Divorce is the termination of a marriage, which is recognized by the court upon request of either spouse or both;*

14. *Separation is a situation whereby wife and husband have no obligation to live together which is recognized by the court upon request of either spouse or both;*

15. *Fraudulent divorce and fraudulent separation mean taking advantage of divorce and separation to avoid property obligation, to violate policy and legislation on population, or to achieve other illegal purposes;*

16. Family is a group of people closely bounded together by marriage, bloodline or nurture relations, thus giving rise to obligations and rights among them as stipulated in this Law;

*17. Relatives include those who have relations due to marriage, nurture, direct bloodline or bloodline within three generations;*

*18. Family members include wife, husband; parents (including natural parents, adoptive parents, step parents, parents in law); children (including natural children, adopted children, step children, children in law); siblings (including: brothers, sisters, half brothers, half sisters, brothers in law, sisters in law, half brothers in law, half sisters in law); paternal grandparents, maternal grandparents; paternal grandchildren, maternal grandchildren; aunts, uncles, nephews and nieces;*

*19. People of the same direct bloodline are those with direct blood relations, in which one is a direct descendant of the other;*

20. Relatives within three generations are people born of the same bloodline: parents constituting the first generation; siblings of the same parents, of the same father but different mothers, of the same mother but different fathers constituting the second generation; children of uncles and aunts constituting the third generation;

*21. Essential needs are daily needs for eating, dressing, living, education, healthcare, and other indispensable needs in the life of each person and each family;*

*22. Surrogacy for humanitarian purposes is an act whereby a woman voluntarily helps to gestate on behalf of a couple whose wife cannot gestate and deliver the child even with the application of assisted reproductive technology by taking the wife's ova and the husband's sperm to perform vitro fertilization, then transferring the resulting embryo to the uterus of the voluntary surrogate woman to enable this woman to gestate and deliver the child;*

*23. Surrogacy for commercial purposes is an act whereby women gestate for another person by using assisted reproductive technology in order to gain economic benefits or other profit-seeking purposes;*

24. Support is an act whereby a person has obligations to contribute money or other kinds of property to meet the essential needs of another person who does not live in the same house but has marriage, bloodline or nurture relations in cases where the latter is a minor or an adult who has no working capacity and no property to support himself/herself, who is in economic difficulty and in need of money, as prescribed in this Law;

25. Family and marriage relations involving foreign elements mean *at least one of the involved parties is a foreigner or an overseas Vietnamese or all the involved parties are Vietnamese but the bases for establishing, changing or terminating such relations are governed by foreign laws, take place in foreign countries or the property related to such relations is located abroad.*

## **CHAPTER II**

### **MARRIAGE ACT**

#### **Article 8. Conditions for getting married**

A man and a woman wishing to get married must satisfy the following conditions:

- 1. The man and the woman have reached the age of eighteen or older;*
- 2. The marriage is voluntarily decided by the man and the woman;*
- 3. The man and the woman do not lose their capacity for civil acts;*
- 4. The marriage does not fall into one of the circumstances where marriage is forbidden as stipulated in point a, b, c and d in Clause 2 Article 4 of this Law.”*

#### **Article 9. Marriage registration**

- 1. Marriages shall be registered at the civil status registry as prescribed by the law on civil status registration.*
- 2. Divorced husband and wife wishing to remarry each other must also register their remarriage.*

**Article 10. Persons who have the right to request the annulment of illegal marriages**

1. The partner who is forced to or deceived into marriage *shall have the right, as regulated by the Civil Litigation Law, to make a request himself or herself or to ask individuals or organizations regulated in clause 2 of this Article to make a request to the Court to annul the illegal marriage due to its violation of provisions stipulated in clause 2 Article 8 of this Law.*

2. *The following individuals, agencies and organizations, in accordance with the Civil Litigation Law, shall have the right to make a request to the court to annul an illegal marriage due to its violation of provision stipulated in clauses 1, 3 and 4 Articles 8 of this Law:*

a) *The spouse of a married person who gets married to or lives together as wife and husband with another person; parents, children, and guardians of partners in illegal marriage;*

b) *The state management agency on family;*

c) *The state management agency on children;*

d) *The Women's Union.*

**Article 11. Settlement of illegal marriages**

1. *The settlement of illegal marriages shall be handled by the Court as prescribed by this Law and the Civil Litigation Law.*

2. *In the case when the Court deals with the request for the annulment of an illegal marriage while both parties of the marriage have satisfied conditions for a marriage act as stipulated in Article 8 of this Law, the Court shall recognize the marriage as legal.*

3. *The decision of the Court on the annulment of illegal marriages must be sent to the organization that performed the marriage registration as prescribed by the civil status registry legislation; the two partners of the illegal marriage; concerned*



*individuals, organizations and agencies as regulated by the Civil Litigation Law.*

*4. The Supreme People's Court shall coordinate with the Supreme People's Procuracy and the Ministry of Justice to provide guidance for implementation of the provisions regulated in this Article.*

#### **Article 12. Legal consequences of illegal marriage annulment**

1. When an illegal marriage is annulled, the two involved parties must terminate their relationship as husband and wife.

2. *Rights and obligations of parents and children shall be settled in accordance with regulations on rights, obligations of parents and children upon divorce.*

3. *Property relations between parties shall be settled in accordance with Article 15 of this Law.*

#### **Article 13. Dealing with consequences of the undertaking in which a man and a woman live together as husband and wife without registration**

1. *A man and a woman who live together as husband and wife without registration shall not give rise to the establishment of a marriage relation.*

2. *In the case where a man and a woman live together as husband and wife without registration but later register their marriage at the civil status registry, the marriage relation shall be recognized from the date of the marriage registration.*

#### **Article 14. Rights and obligations between cohabitating parties and children**

*Rights and obligations between cohabitating parties and children shall be dealt with in accordance with the provisions of this Law on rights and obligations between parents and children; except for cases of surrogacy for humanitarian purpose.*

#### **Article 15. Settlement of property, obligations, and contracts between men and women living together as husband and wife without marriage**

## **registration**

1. *In the case where parties have a property agreement, the ownership and usage of that property shall be in compliance with that agreement.*

2. *In the case where parties do not have a property agreement or the agreement has been invalidated by the Court, the property of the two parties shall be settled in compliance with the provisions of the Civil Code.*

3. *The settlement of property shall ensure the legitimate rights and interests of women and children; housework or other work relating to the maintenance of the cohabitation shall be considered the same as income generating work.*

4. *The obligatory or contractual relations between the cohabitating partners or between these partners and a third party shall be dealt with in accordance with regulations stipulated in the Civil Code and other related laws.*

5. *The Supreme People's Court shall coordinate with the Supreme People's Procuracy and the Ministry of Justice to provide guidance for implementation of the provisions regulated in this Article."*

## **Article 16. Dealing with the consequences of the undertaking in which same sex partners live together as husband and wife**

1. *The State shall not recognize marriages between people of the same sex.*

2. *The cohabitation between people of the same sex shall be dealt with as follows:*

a) *The property, obligatory and contractual relations shall be dealt with in accordance with provisions in Article 15 of this Law;*

b) *The partner giving birth to the child shall be the mother; partners adopting children shall be the adoptive mother or father of the children. Rights and obligations of parents and children shall be dealt with in accordance with this Law.*

## **CHAPTER III**

# RELATIONSHIP BETWEEN HUSBAND AND WIFE

## Section 1

### Rights and Obligations of Persons

#### **Article 17. Equality of rights and obligations between husband and wife**

Husband and wife are equal to each other, have equal obligations and rights in all aspects of their family *and in performing the rights and obligations of citizens as prescribed by the Constitution and other related laws.*

#### **Article 18. Protection of rights and obligations of persons who are wives and husbands**

*1. Rights and obligations of persons who are wives and husbands as prescribed in this Law, the Civil Code and relevant laws are respected and protected.*

*2. The government provides detailed regulations for this Article.*

#### **Article 19. Husband and wife attachment**

*1. Husband and wife shall have the obligation to be faithful to, care for, look after, help each other, share and perform work in the family together.*

*2. Husband and wife shall have the obligation to live together, except otherwise agreed by husband and wife or due to requirements of profession, work, study, participation in political, economic, cultural, and social activities and other legitimate reasons.”*

#### **Article 20. Selection of the domicile of husband and wife**

The domicile of husband and wife *is agreed* by themselves without being bounded by customs, practices and administrative boundaries.

#### **Article 21. Respect the honor, dignity and reputation of husband and wife**

Husband and wife *shall have the obligation* to respect each other, preserve *and protect* each other's honor, dignity and reputation.”

**Article 22. Respect the right to freedom of religion and faith of husband and wife**

*Husband and wife respect and provide enabling conditions for each other to perform his/her right to freedom of faith and religion, do not force or obstruct each other to follow or not follow any faith or religion.*

**Article 23. Rights and obligations with regard to study, work and participation in political, cultural and social activities**

*In accordance with the wishes and capability of each person, husband and wife shall have the right and obligation to create favorable conditions and help each other choose profession; study and improve levels of education, profession, and expertise; participate in political, economic, cultural and social activities.*

**Section 2**

**Representation between husband and wife**

**Article 24. Bases for establishment of representation between husband and wife**

*1. The representation between wife and husband in entering into, implementation, and termination of transactions are prescribed in this Law, the Civil Code and other related laws.*

*2. Wife and husband may authorize each other to enter into, implement, and terminate transactions which require consent of both spouses as regulated by this Law, the Civil Code and other related laws.*

*3. Spouses may represent each other when either of them has lost his/her civil act capacity while the other is eligible to act as the guardian or when either of them is limited in his/her civil act capacity while the other is designated by the Court to act as the legal representative for his/her partner, except in cases when it is prescribed by the law then the person must perform the related rights and obligations him/herself.”*

**Article 25. Representation between wife and husband in business transactions**

*The wife or husband who is directly involved in business transactions shall be the legal representative for the other spouse in these business transactions, unless otherwise agreed by the spouses before entering into the business or provided for by law.”*

**Article 26. Representation between wife and husband in cases where the property ownership certificate and land use right certificate are for common property but are in the name of either wife or husband only**

*1. The representation between wife and husband in entering into, implementation and termination of transactions concerning common property with the name of either spouse on the property ownership certificate and land use right certificate shall be performed in accordance with provisions in Article 24 and Article 25 of this Law.*

*2. In cases where a spouse, whose name is on the property ownership certificate and land use right certificate, himself or herself enters into, implements or terminates a transaction with a third party which is in contradiction with the regulations on representation between wife and husband of this Law, the transaction shall be invalid, unless there are sufficient grounds to believe that the third party is bona fide as regulated by the Civil Code.*

**Article 27. Joint liability of wife and husband**

*1. Wife and husband shall be jointly responsible for legal civil transactions conducted by the other spouse as regulated in Article 30 of this Law or other transactions in accordance to provisions on representation stated in articles 24, 25 and 26 of this Law.*

*2. Wife and husband shall be jointly responsible for obligations regulated in Article 37 of this Law.*

### Section 3

#### Property regime between husband and wife

##### Sub-section 1

##### General provision

#### **“Article 28. Application of the property regime of wife and husband**

- 1. Wife and husband shall have the right to apply the property regime based on law or the property regime based on agreement.*
- 2. Provisions in Article 29 to Article 32 of this Law shall be applied, regardless of the property regime selected by the spouses.*
- 3. The government provides detailed regulations on the application of the property regime of husband and wife.*

#### **Article 29. General principles on the property regime of wife and husband**

*The established property regime of wife and husband must conform to the following principles:*

- 1. Wife and husband shall have equal rights and obligations in the establishment, possession, use and disposal of common property;*
- 2. Wife and husband shall have the obligations to provide the conditions for meeting the essential needs of the family;*
- 3. Work in the family is considered as income generating work;*
- 4. The realization of property rights and obligations of wife and husband must not affect the legitimate rights and interests of a bona fide third party;*
- 5. One spouse, wife or husband, who violates the property regime of the spouses which results in damage to the family or the other spouse, shall have to provide compensation.*

#### **Article 30. Rights and obligations of wife and husband in meeting family’s essential needs**

1. *In the case where wife and husband do not have common property or the common property is not sufficient to meet the family's essential needs, wife and husband shall have the obligation to contribute personal property based on their economic capacity.*

2. *Wife or husband shall have the right and obligation to execute transactions in order to meet the essential needs of the family.*

### **Article 31. Transactions related to the domicile of wife and husband**

*Entering into, implementation and termination of transactions related to the house, which is the common property of wife and husband or private property of one spouse but serves as the only domicile of wife and husband, shall require agreement of wife and husband.*

### **Article 32. Transactions related to bank accounts, securities accounts and other property which, as provided for by law, is not subject to ownership and user's right registration**

*In transactions with a bona fide third party person, wife or husband, whose name is on the bank account, securities account or owner of a property, which is not subject to ownership or user's right registration according to the law, shall be considered to have the right to execute transactions related to such property.*

## **Sub-section 2**

### **Property regime of husband and wife as stipulated by law**

#### **Article 33. Common property of wife and husband**

1. *Common property of wife and husband includes property created by wife or husband, income generated from labor, production and business activities and other legal income of husband and wife during the marriage period; property jointly*

inherited by or given to both, and other property agreed upon by husband and wife as common property.

*The land use right obtained by wife or husband after getting married is their common property, unless the land use right was given to, inherited by the wife or husband as her/his personal property or obtained through transactions using his/her personal property.*

2. *Common property of husband and wife is held in an integrated common ownership, and shall be used to ensure the needs of the family and to realize common obligations of wife and husband.*

3. Where there is no evidence proving that a property in dispute between husband and wife is his/her personal property, such property shall be recognized as the common property.

#### **Article 34. Ownership and user's right registration of common property of wife and husband**

*In the case where a property under the common ownership of husband and wife is required by law to be registered for ownership, user's rights, wife and husband shall have the right to ask competent authorities to inscribe names of both wife and husband on the Certificate of ownership, and Certificate of user's rights; where a Certificate of ownership, or Certificate of user's rights only inscribes the name of either wife or husband, the settlement of property in dispute shall comply with Article 33 of this Law. Transactions related to this property shall be executed according to provisions in Article 26 of this Law."*

#### **Article 35. Possession, use and dictation of common property**

1. *The possession, use and dictation of common property shall require agreement of wife and husband in the following cases:*

a) *Real estate, property, which is required by law to be registered for ownership, user's rights;*



b) *Property which serves as the major income generating source for the family;*

c) *Property which is used for business purposes, except otherwise regulated in Article 25 of this Law.*

2. *Agreement related to the dictation of property in Clause 1 of this Article of which the law stipulates for follow certain formats, then this agreement shall meet the required formats.*

### **Article 36. Common property used for business purposes**

*In cases where wife and husband have agreed that one partner can use the common property for business purposes, this partner shall have the right to carry out transactions related to this common property in business activities himself or herself, unless otherwise regulated by law.*

### **Article 37. Common property obligations of wife and husband**

1. *Common property obligations of wife and husband include:*

a) *Obligations jointly established by wife and husband; obligations for compensation of damages, which are jointly responsible for by wife and husband as regulated by law;*

b) *Obligations performed by wife or husband in order to meet the needs of the family;*

c) *Obligations resulting from the possession, use and dictation of common property;*

d) *Obligations resulting from the use of personal property in order to maintain, develop the common property;*

đ) *Obligations to compensate for damages caused by children, which according to law is the responsibility of the parents;*

e) *Other obligations as regulated by other related laws.*

2. *The Supreme People's Court shall coordinate with the Supreme People's Procuracy and the Ministry of Justice to provide guidance for implementation of the provisions regulated in this Article.*

**Article 38. Division of common property during marriage period**

1. *During the marriage period, wife and husband shall have the right to agree or request the Court to divide one part or all of their common property if the division does not fall into cases regulated by Article 42 of this Law.*

2. *Agreements on division of common property, which must follow specific procedures as prescribed by law, shall have to satisfy such requirements.*

3. *If wife and husband make the request, the division of the common property shall comply with Article 59 of this Law.*

**Article 39. The time that the division of property between wife and husband during the marriage period takes effect**

1. *When the property being divided is required by law to follow specific procedures, the agreement for the division of property of wife and husband shall take effect on the date that the realization of specific procedures prescribed by law is done.*

*For other property, the time that the division of property takes effect shall be specified in the document, if the document does not specify the effective date, the effective date shall be the date of making such documentation.*

2. *When the Court divides the common property of husband and wife, the division of property shall take effect on the date that the sentence or decision of the court takes legal effect.*

3. *Property rights and obligations occurred before the effective date regulated in this clause shall still be effective, except otherwise agreed by parties.*

**Article 40. The consequences of the division of common property between wife and husband during the marriage period**

In the case when the common property of wife and husband is being divided, the divided property and the yields and profits gained from the divided property shall belong to the personal property of each partner, *except otherwise agreed by wife and husband*; the undivided part of common property shall belong to the common property of wife and husband.

#### **Article 41. Restoring the property regime of wife and husband**

*1. Wife and husband shall have the right to agree on restoring the property regime of wife and husband. The form for such agreement shall comply with provisions stipulated in clause 2 Article 38 of this Law.*

*2. From the date that the agreement to restore the property regime of wife and husband takes effect, the property of wife and husband shall be determined by provisions stated in Article 33 and Article 43 of this Law.*

*3. Rights and obligations incurred before this date shall remain valid, unless otherwise agreed by the parties.*

*4. In the case when the division of common property during the marriage period was made by the Court's sentence or decision, the agreement to restore the property regime of wife and husband shall have to be recognized by the Court.*

#### **Article 42. Circumstances where the division of common property during marriage period is invalid**

*The division of common property during the marriage is invalid in the following circumstances:*

*1. The division of common property seriously affects the interests of the family; legitimate rights and interests of minor children; adult children who have lost his/her civil act capacity; children who have no working capacity and no property to support himself or herself.*

*2. The division of property is for the purpose of evading the following obligations:*

- a) *Obligations to nurture, support;*
- b) *Obligations to compensate for damages;*
- c) *Obligations for payment when being declared bankrupt in businesses;*
- d) *Obligations to repay debts to others;*
- d) *Obligations to pay taxes or other financial duties to the State;*
- e) *Other property obligations as provided for by this Law, the Civil Code, and other related Laws.*

#### **Article 43. Personal property of wife, husband**

Personal property of wife or husband includes property owned by each spouse before their marriage; property inherited and/or given to either spouse separately during their marriage period; *property that a spouse earned during the marriage period through transactions of his/her personal property*; property separately divided to husband or wife under Article 38, 39 and 40 of this Law; *personal belongings and jewelry serving the essential needs of wife or husband.*

#### **Article 44. Possession, use and dictation of personal property**

1. Wife, husband shall have the right to possession, use and dictate their personal property, except for cases regulated in clause 2 and clause 5 of this Article. *Wife, husband shall have the right to merge or not merge their personal property into the common property.*

2. In cases where wife or husband is not able to manage his/her personal property himself or herself and does not authorize another person to manage it, the other partner has the right to manage this property.

3. Property obligations of each partner shall be settled using his/her personal property.

4. *In cases where the yields and profits gained from the personal property of a spouse are the family's sole source of income for living, the dictation of that property shall require agreement of both spouses.*

#### **Article 45. Obligations of wife, husband toward personal property**

*Wife and husband shall have the following obligations toward personal property:*

- 1. Obligations of each spouse are incurred before marriage or attached to the rights to inheritance of property of each spouse during the marriage period;*
- 2. Arising obligations from the possession, use and dictation of personal property, except for cases regulated in clause 4, Article 44 of this Law;*
- 3. Arising obligations from transactions conducted and carried out by one partner not for meeting the needs of the family;*
- 4. Arising obligations from legal violations committed by wife or husband.*

#### **Article 46. Merging personal property of wife, husband into common property**

*1. The merging of personal property of wife, husband into the common property shall be conducted based on agreement of wife and husband and shall take effect from the date of the agreement.*

*When a personal property of one partner, which was put into common use in a continuous and open manner for 10 years with movable property and 30 years with real estate property and the owner does not declare his/her ownership, such property shall be common property, unless otherwise agreed.*

*2. For property that becomes common property and the law stipulates that transactions related to this property must follow specific requirements, then the agreement on such property must satisfy those requirements.*

*3. Unless otherwise agreed by husband and wife, obligations related to the personal property being merged into the common property shall be settled by the common property.*

#### **Sub-section 3**

## **Property regime of husband and wife based on agreement**

### **Article 47. Agreement to establish property regime of wife and husband**

*An agreement on the property regime of wife and husband must be established before the marriage registration is notarized or authenticated and shall take effect from the marriage registration date.*

### **Article 48. Basic content of the property regime based on agreement**

*1. Wife, husband shall have the right to agree on:*

*a) Components of personal property, common property; property required to meet the family's needs;*

*b) Rights, obligations of wife, husband with regard to common property, personal property and related transactions;*

*c) Settlement of payment and division of property at the termination of the property regime;*

*d) Other related matters.*

*2. In cases where an agreement on the property regime of wife and husband has no provision or has unclear provisions, provisions from Article 29 to Article 32 of this Law and other corresponding provisions of the property regime shall be applied.*

### **Article 49. Amendment and supplement of the property regime of wife, husband based on agreement**

*1. Wife, husband shall have the right to amend, supplement the property regime based on agreement.*

*2. The way to amend and supplement the property regime of wife, husband based on agreement shall follow provisions stipulated in Article 47 of this Law.*

### **Article 50. Invalidation of agreement on the property regime of wife and husband**

*Agreement of wife and husband on the property regime shall be declared invalid by the Court in the following circumstances:*

- 1. Does not follow the conditions for transactions as regulated by the Civil Code and other related laws.*
- 2. Violates provisions stipulated in Article 29 to Article 32 of this Law.*
- 3. Content of the agreement seriously violate the right to be taken care of, right to inherit, and other legitimate rights and interests of father, mother, children and other members of the family.*
- 4. The Supreme People's Court shall coordinate with the Supreme People's Procuracy and the Ministry of Justice to provide guidance for implementation of this Article.*

## **CHAPTER IV**

### **TERMINATION OF MARRIAGE**

#### **Section 1**

#### **Divorce**

#### **Sub-section 1**

#### **General provision**

#### **Article 51. The right to request the settlement of divorce**

- 1. Wife, husband or both spouses shall have the right to request the Court to settle their divorce*
- 2. Father, mother, other relatives shall have the right to request the Court to settle a divorce when a partner, a wife or husband, is mentally ill or has other diseases which make them unable to acknowledge and control their actions and at the same time is the victim of domestic violence caused by the other partner which seriously affect their life, health and minds.*

3. In cases when the wife is pregnant or is taking care of a child under 12 months old, the husband does not have the right to *file for divorce*.

*If the child is born and dies, the husband also only has the right to file for divorce 12 months after the delivery of the child.*

#### **Article 52. Encourage of conciliation at home**

The state and society encourage conciliation efforts at home when wife or husband wants to file for divorce. Conciliation efforts are carried out in accordance with the law on conciliation at home.

#### **“Article 53. Handling divorce petitions**

The Court shall handle divorce petitions in accordance with provisions of the Civil Litigation Law.

When a couple files for divorce but they have not previously registered their marriage, the Court shall handle the case and declare non-recognition of husband-wife relationship according to clause 1, Article 13, clause 1 Article 16 of this Law; any requests related to children and property shall be processed in accordance with Article 14 and Article 15 of this Law.

#### **Article 54. Conciliation in Court**

After handling divorce petitions, the Court shall proceed with conciliation efforts in accordance with the Civil Litigation Law.

#### **Article 55. Divorce by consent**

In cases where both husband and wife *jointly file for divorce; if it deems that* the two parties are truly voluntary and have agreed on property division, the custody of children, the nurturing, supporting, and educating of their children, the Court shall recognize the consensual divorce and the agreement on property division and children on the basis of protecting the legitimate rights of the wife and children; the Court shall decide where there is no agreement or the agreement does not protect the legitimate rights of the wife and children.



## **Article 56. Divorce at the request of one party**

1. When one party, wife or husband, files for divorce and the conciliation at the court is not successful, the Court *shall decide to recognize the divorce based on one of the following grounds:*

*a) Wife or husband commits domestic violence acts or seriously violates other rights and obligations of husband and wife;*

*b) Wife or husband is declared missing by the Court;*

*c) Other grounds that make the marriage be in serious trouble, the life together can no longer be continued, and the marriage purposes cannot be achieved.*

2. *In cases where there is a request for divorce as regulated in clause 2 Article 51 of this Law, the Court shall recognize the divorce if there is evidence of domestic violence caused by the husband or the wife which seriously affects the life, health and minds of the other partner.*

## **Article 57. The termination date of marriage and the responsibility to send the decision acknowledging the divorce**

1. *The marriage terminates on the date that the Court's decision recognizing the divorce takes legal effect.*

2. *The Court that handled the divorce case shall have to send the legally effective decision recognizing the divorce to the agencies which performed the marriage registration for notation as regulated by the legislation on civil status registration; the two divorced parties; concerned individuals, agencies and organizations as provided for by the Civil Procedure Law and other related laws.*

### **Sub-section 2**

#### **Legal consequences of divorces**

## **Article 58. Rights and obligations of parents and children after divorce**

*The nursing, caring, nurturing, education of children after divorce shall*

*comply with Article 85 to 88 of this Law.*

***Article 59. Principles for property division upon divorce***

*1. In the case where the property regime of wife and husband is based on law, the division of property shall be agreed upon by the parties; if they fail to reach an agreement, the Court shall, based on the request of either or both spouses, settle in accordance with provisions regulated in clauses 2, 3, 4 and 5 of this Article and from Article 60 to Article 64 of this Law.*

*In cases where the property regime of wife and husband is based on agreement, the division of property shall follow such agreement.*

*2. The common property of husband and wife is divided into two halves, taking into account the following factors:*

*a) The situation of the family and of wife, husband;*

*b) Contribution of wife, husband in the creation, maintenance and development of the common property. The housework in the family by the wife, husband shall be considered as income-generating labor.*

*c) Legitimate rights and interests of wife, husband in their production, business and career activities so that each party is provided with conditions to continue income-generating work.*

*d) The fault of each party in the violation of rights and obligations in the role of wife and husband.*

*3. The common property of husband and wife is divided in kind, if it is not possible to do so the division will be based on values; the party, who receives his/her portion in kind which is of greater value than he/she is entitled to, must pay the difference in value to the other party.*

*4. Personal property of each party belongs to the possession of that party, except when the personal property had been merged into the common property according to this Law.*

*In the case where wife, husband used common property to upgrade, improve, repair personal property of one spouse, if the other spouse makes request, he or she will be reimbursed with his part of value from the used common property.*

*In the case where wife, husband used his/her property to upgrade, improve, repair personal property of the other spouse, if he/she makes request, he or she will be reimbursed with the used part of value from the property.*

*5. Protecting the legitimate rights and interests of the wife, minor children, adult children who have lost their civil act capacity or have no working capacity and no property to support themselves.*

*6. The Supreme People's Court shall coordinate with the Supreme People's Procuratorate and the Ministry of Justice to provide guidance for implementation of this Article.*

#### **Article 60. Exercising property obligations of wife and husband upon divorce**

*1. Rights and obligations toward a third party incur during the marriage period shall remain effective, except otherwise agreed by wife, husband, and the third party.*

*In cases where there are disputes over exercising property obligations, provisions stated in Articles 27, 37 and 45 of this Law and provisions of the Civil Code shall be applied.*

*2. In cases where there is a need to impose temporary urgent measures to realize the support obligations as regulated by the Civil Litigation Law, the Court shall take a part of the common property of wife and husband to exercise the obligations.*

#### **Article 61. Division of property in cases where a couple is living with their extended family**

*1. In cases where a couple who are living with their extended family files for divorce, if the personal property of wife and husband in the common property cannot*

be determined, wife or husband shall be divided a part of the common property of the family based on the contribution of wife, husband to the creation, maintenance, development of the common property of the family as well as to the common life of the family. The division of one part of the common property shall be agreed upon by the couple and the family; if they fail to do so they shall ask the Court to settle.

2. In cases where a couple who is living with their extended family and the property of wife and husband in the common property of the family can be determined in portions, upon divorce, the property of wife and husband shall be extracted from the common property of the family for division as regulated in Article 59 of this Law.

#### **Article 62. Division of the husband's and wife's land use right upon divorce**

1. The land use right solely owned by one party shall still belong to such party after divorce.

2. The divorced couple's common land use right is divided as follows:

a/ For agricultural land under annual crops or aquaculture, if both parties have the need and conditions to directly use the land, the land use right shall be divided according to their agreement; if they fail to reach an agreement thereon, they may request the Court to settle it according to the provisions in Article 59 of this Law.

Where only one party has the need and conditions to directly use the land, such party may continue to use the land but must pay to the other party the portion of the land use right value the latter is entitled to;

b/ Where husband and wife share the right to use agricultural land under annual crops or aquaculture with the whole household, when they divorce the couple's share of such land use right shall be separated for division according to the provisions at Point a of this Clause;

c/ For agricultural land under perennial trees, forestry land for forestation or residential land, the land use right is divided according to the provisions in Article 59 of this Law;

d/ The division of the right to use other categories of land shall comply with provisions of the land and civil legislation.

3. Where husband and wife live with the whole family and share no land use right with the whole household, when they divorce the interests of the party who does not have the land use right and does not continue to live with the family shall be settled according to the provisions in Article 61 of this Law.

**Article 63. The right to stay in the matrimonial house by one partner upon divorce**

*In the case where the matrimonial house under the private ownership of one party has been put to common use, when the couple is divorced, such house shall continue to be the personal property of the owner. In the case where the partner who does not own the house is in serious difficulty with regard to housing, he or she shall have the right to stay in the house for a period of 6 months, unless otherwise agreed by the parties.*

**Article 64. Division of common property of wife and husband in businesses**

*Where the legislation on business does not regulate otherwise, the spouse, who is conducting business activities related to common property, shall have the right to ownership of that business property. The other spouse who is not conducting business activities shall be paid according to his/her asset value.*

**Sub-section 3**

**Separation**

**Article 65. Handling separation petitions of wife, husband**

1. *A wife, husband or both shall have the right to ask the Court to handle a separation petition.*

2. *In the case of consensual separation, if the Court deems the separation to be voluntary, then the Court shall recognize the consensual separation.*

3. *In the case where one party files a separation petition and the conciliation effort at the Court is not successful, the Court shall recognize the separation with grounds as regulated in points a and c of Clause 1 Article 56 of this Law.*

4. *If there are requests on the settlement of children, property, and alimony, the Court shall decide on these issues in accordance with Article 66 of this Law.*

5. *The jurisdiction and procedures to handle separation cases shall comply with Article 66 of this Law and provisions of the Civil Litigation Law on divorce.*

6. *The Court that handled separation cases shall have to send the legally effective decision recognizing the separation to agencies, organizations and individuals regulated in clause 2 Article 57 of this Law.*

7. *The Supreme People's Court shall coordinate with the Supreme People's Procuracy and the Ministry of Justice to provide guidance for implementation of this Article.*

#### **Article 66. The consequences of separation**

1. *Separation shall not terminate the wife-husband relationship but wife and husband shall not have the obligation to live together.*

2. *If there are requests on the settlement of children, property, and alimony, the Court shall decide on these issues as follows:*

a) *The nursing, caring, nurturing, education of children after divorce shall comply with Article 85 to 88 of this Law.*

b) *The division of property of husband and wife shall comply with Articles 59, 60, 61, 62 and 64 of this Law.*

*From the effective date of separation, wife and husband shall have the right to personal ownership of property acquired by each party and shall be personally responsible for obligations that they have established and performed.*

*c) Alimony between husband and wife shall comply with Article 117 of this Law.*

*3. Wife, husband shall still have the right to inherit property of each other as provided for by the Civil Code.*

*4. Transactions with a third party which had been established before the separation date shall remain effective, unless otherwise agreed by parties.*

#### **Article 67. Completion of separation**

*1. The separation shall be completed based on agreement of wife and husband and must be recognized by the Court which handles the separation case.*

*The completion of separation shall take effect from the Court's recognition date.*

*2. When the separation concludes, the property regime during the separation shall remain effective. Property gained after the completion of separation shall follow the property regime selected by wife, husband before the separation.*

*3. Transactions with a third party established during the separation period shall still be effective, unless otherwise agreed by the parties.*

*4. The Court that handles the separation case shall have to send the effective decision recognizing the separation to agencies, organizations, individuals as regulated in clause 2 Article 57 of this Law.*

#### **Article 68. Handling divorce petitions during separation period**

*1. During the separation period, wife and/or husband shall have the right to file for a divorce. The Court shall handle the divorce petition based on general regulations.*

*2. Rights and obligations of parents toward children, property, and alimony that had been handled in accordance with Clause 2 Article 66 of this Law shall remain effective, unless there is sufficient ground for change of custodial parent and alimony in accordance with Article 88, Article 112 and Article 117 of this Law.*

## **Section 2**

### **Termination of marriage in cases when one party is deceased or declared dead by the Court**

#### **Article 69. Time of marriage termination**

The marriage shall be terminated starting at the death of the husband or wife. In cases where the Court declares one spouse to be dead, then the date of the marriage termination shall be the date recorded as the date of death in the Court's sentence.

#### **Article 70. Handling of property of wife and husband in cases where one spouse is dead or declared dead by the Court**

1. When a spouse is dead or declared dead by the Court, the living partner shall manage the common property of the spouses, except for cases where another person is designated in the will to manage the inheritance or the inheritors agree to designate another person to manage the inheritance.

*2. When there are requests for division of the inheritance, the common property of wife and husband shall be divided into two halves. The property belonging to the deceased spouse or the spouse declared dead by the Court shall be divided in accordance with the provisions of inheritance laws.*

*3. In cases where the division of the inheritance seriously affects the life of the living partner and the family, the living partner shall have the right to request the Court to impose restrictions on the division of property as regulated by the Civil Code.*

*4. The property of the husband and wife in businesses shall be resolved in accordance with Clause 1, 2 and 3 of this Article, unless laws on business have*



*different regulations.*

**Article 71. Marriage and property relations when a partner returns after being declared dead**

1. When the Court issues a decision abrogating a declaration that a person is dead as provided for by the Civil Code and his/her spouse has not yet married another person, *the marriage shall be reinstated from the time of marriage.* When his/her spouse has married another person, the latter marriage shall be legally valid.

2. *Property of husband and wife shall be handled as follows:*

a) *The property regime of wife and husband shall be terminated from the time that the court's decision, which declared that a person is dead, takes effect*

b) *Property owned before the effective date of the court's decision, which declared that a person is dead, that has not been divided, when the marriage is not reinstated, shall be divided similar to divorce cases upon request of wife and husband for property division;*

c) *Property gained by the wife or husband from the time that the court's decision, which declared that a person is dead takes effect, to the time that the declared dead person returns shall be the personal property of that wife or husband;*

d) The property of the declared dead person shall be settled in accordance with provisions of the Civil Code.

**CHAPTER V**

**RELATIONS BETWEEN PARENTS AND CHILDREN**

**Section 1**

***Rights and obligations between parents and children***

**Sub-section 1**

***General provisions***

## **Article 72. Protecting rights and obligations of parents and children**

*1. Children born to parents, regardless of the marital status of their parents, shall have the same rights and obligations toward their parents as provided for in this Law, the Civil Code, and other related laws.*

*2. Adopted children and adoptive parents shall have the rights and obligations as stipulated in this Law, the Law on Adoption, the Civil Code, and other related laws.*

*3. All agreement of parents, children on personal relations and property shall not violate the legitimate rights and interests of minor children or adult children who have lost their civil act capacity, who have no working capacity and no property to support themselves.*

*4. The government provides detailed regulations on this Article.*

## **Article 73. Rights and obligations of parents**

*Parents shall have the following rights and obligations:*

*1. To love their children, respect their children's opinions; attend to the studies and education of their children so as to ensure their healthy development in all physical, intellectual and moral aspects, to become pious children of the family and useful citizen of the society;*

*2. To look after, nurture, care for and protect the legitimate rights and interest of minor children and of major children who have lost their civil act capacity, have no working capacity, and no property to support themselves;*

*3. Parents shall have the right and obligation to be guardians for teenaged children who have lost their civil act capacity according to the Civil Code.*

## **Article 74. Rights and obligations of children**

*Children shall have the following rights and obligations:*

*1. To have the obligation to love, respect, show gratitude and devotion to, and support their parents, preserve the good traditions and reputation of their family;*

2. *To be respected by parents, be able to exercise legitimate rights and interests associated with their personal identities and property as provided for by law;*

3. *To have the right to live with parents as minors, or as adults who have lost civil act capacity, have no working capacity and no property to support themselves; to be loved, looked after, nurtured, and cared for by parents; to be entitled to studies and education; to be developed healthily in terms of physical, intellectual and moral aspects;*

*Minor children shall participate in family work that is suitable to their ages and is not contradictory to legal provisions on protection, caring and education of children;*

4. *Having reached adulthood, children shall have the right to freely choose their profession, location for residence, to study, to improve their education, technical and professional levels; to participate in political, economic, cultural activities according to their wish and ability. When living with parents, children shall have the obligation to participate in family work, labor, and production to generate income for the common life of the family;*

5. *To be entitled to enjoy property rights corresponding to their contribution to the family property.*

#### **Article 75. Obligations and rights for caring and nurturing**

1. *Father and mother shall have equal obligations and rights, to jointly care for and raise their minor children or adult children who are disabled, have lost their civil act capacity, have no working capacity and no property to support themselves.*

2. Children have the obligations and rights to care for and support their parents, especially when their parents fall sick, become senile or disabled; where a family has several children, the children must together care for and support their parents.

#### **Article 76. Rights and obligations to educate children**

1. Parents have the obligations and rights to educate their children, attend to and create conditions for their study.

Parents create conditions for their children to live in a happy and harmonious family environment, set good examples for their children in every aspect, work closely with the school and social organizations in educating their children.

2. Parents guide their children to select professions; respect their children's rights to select professions and participate in social activities.

3. When facing difficulties which cannot be solved by themselves, parents may request concerned agencies and organizations to assist in educating their children.

#### **Article 77. Representation for children**

1. Parents are legal representatives of their minor children or adult children who have lost their civil act capacity, except for cases where the children have other persons as their guardians or representatives at law.

*2. Parents shall have the right to perform transactions to meet essential needs of minor children, major children who have lost their civil act capacity, have no working capacity and no property to support themselves.*

*3. For transactions related to real estate or personal properties, with registration of ownership and user's right or properties which belong to minor children or major children who have lost their civil act capacity that are used for business purposes, must have agreement from parents.*

*4. Parents are jointly responsible for representing their children in establishment and performance of transactions related to their children's property as provided for in clauses 2, 3 of this Article and in cases where otherwise regulated by law.*

#### **Article 78. Compensation for damages caused by children**

Parents must pay compensation for damages caused by their minor children or adult children who have lost their civil act capacity, according to the Civil

***Article 79. The right of children to have personal property***

1. Children have the right to have personal property. Personal property of children includes property personally inherited by or given to children, income from labor of children, yields and benefits gained from personal property of children and other legal income.

*2. Children from 15 years of age and older living with parents shall have the obligation to care for the common life of the family; contribute income, if any, to pay for essential needs of the family*

*3. Adult children living with parents shall have the obligations to contribute a part of their income that is within their financial ability to meet the essential needs of the family.*

***Article 80. Management of children's personal property***

1. Children from fifteen years of age or older may manage their personal property themselves or ask their parents to manage it.

2. Personal property of children who are under fifteen years of age or have lost their civil act capacity shall be managed by their parents. Parents may authorize others to manage their children's personal property.

*3. Parents shall not manage their children's personal property in cases where the children are under the guardianship of others according to the Civil Code; the giver or bequeather of the property has designated other persons to manage such property or in other circumstances regulated by law.*

4. Children's property managed by parents shall be given back to the children to manage when they have had full civil act capacity, except when parents and children from fifteen years of age or older have a different agreement.

5. In cases where children are still minors or are adults but have lost their civil act capacity and are under the guardianship of others, the property managed by the parents shall be given to the guardians to manage.

***Article 81. Dictation of personal property of minor children, adult children who have lost their civil act capacity***

*1. When parents manage property of children under 15 years of age, they shall have the right to dictate that property for the interest of the children, taking into account the wishes of children if they are 9 years of age or older.*

*2. Children from 15 years of age to under 18 years of age shall have the right to dictate their personal property; except when the property being dictated is real estate or movable property with ownership registration, or business investment property, the dictation shall require written consent of their parents.*

*3. In cases where adult children have lost legal act capacity, the dictation of the children's property shall be performed by the children's guardians.*

**Article 82. Rights and obligations of adoptive parents and adopted children**

*1. Adoptive parents and adopted children shall have the rights and obligations of parents and children as regulated in this Law from the time that the adoption relationship is established in accordance with the law on adoption; and the obligations and rights of parents and children shall be terminated as regulated in this Law from the time that the Court's decision on the termination of the adoption takes effect.*

*2. Obligations and rights of natural parents and children who have been adopted by others shall be regulated by the Law on Adoption.*

*3. Rights and obligations between natural parents and natural children shall be reinstated from the time that the adoption relationship is legally terminated. In cases where, the natural father and/or natural mother are deceased or do not have necessary conditions to nurture minor children, adult children who have lost their civil act capacity, the Court shall impose the decision for the termination of adoption and appoint guardians for the children as regulated by the Civil Code.*

**Article 83. Rights and obligations of stepparents and stepchildren**

1. Stepparents shall have the rights and obligations to look after, nurture, care for, and educate children of the other spouse who live together with him or her as regulated by provisions in articles 73, 75 and 76 of this Law.

2. Stepchildren shall have the obligations and rights to care for and support stepparents who live with him or her as regulated by provisions in Article 74 and Article 75 of this Law.

3. *Stepparents and stepchildren shall be entitled to property inheritance from each other in accordance with the Civil Code.*

#### **Article 84. Obligations and rights of children in law and parents in law**

1. *In cases where children in law are living with parents in law, all parties shall have rights and obligations of parents and children as regulated from Article 73 to Article 77 of this Law.*

2. *In the case of living together, children in law and parents in law shall have the obligation to contribute income to meet general needs of the family; to participate in family work, labor, production with the capacity of themselves and of their families; shall enjoy property rights corresponding to the contributions made to the family property.*

### **Sub-section 2**

#### **Rights and obligations of parents and children after divorce**

#### **Article 85. The nursing, care for, nurture and education of children after divorce**

1. *After divorces, parents shall still have rights and obligations toward their minor children, adult children who have lost their civil act capacity, children who have no working capacity and no property to support themselves as regulated by Articles 73 to Article 82 of this Law, the Civil Code and other related laws.*

2. Husband and wife shall agree upon who shall have custody of the children, the rights and obligations of each party toward their children after divorce; if they fail to reach an agreement, the Court shall decide to assign one party to be the custodial parent, on the basis of the children's interests in every aspect; if the children are nine years of age or older, their wishes must be taken into consideration.

3. *Children under 3 years of age shall be given to the mother for custody, unless the parents have a different agreement that is more suitable to the interests of the children or if the mother doesn't have the necessary conditions to directly look after, care for, nurture and educate the children while the father does have these conditions.*

#### **Article 86. Rights and obligations of custodial parents**

1. *Custodial father or mother who directly takes care of the children shall have the right to request the non-custodial parent to fulfill obligations provided for in Article 87 of this Law.*

2. *The custodial parents together with other family members must not obstruct the non-custodial parents from visiting, caring for, nurturing and educating the children.*

#### **Article 87. Rights and obligations of non-custodial parents**

1. *Non-custodial mother or father shall have the obligation to respect the right of children to live with the custodial parent.*

2. *Non-custodial father, mother shall have the obligation to support the children.*

3. *After divorce, the non-custodial parent shall have the right and obligation to visit children; nobody is allowed to obstruct such person to exercise this right.*

In cases where the non-custodial parent abuses his/her visits to obstruct or cause bad influence on the nursing, care for, education and nurture of the children, the custodial parent has the right to request the Court to restrict the right of that person to visit the children.



### **Article 88. Change of custodial parent after divorce**

*1. The change of custodial parent after divorce shall be decided by the Court.*

*2. The change of custodial parent shall be applied in the following circumstances:*

*a) Parents have an agreement on change of custodial parent suitable to the interests of children;*

*b) The custodial parent no longer has the necessary conditions to nurture children.*

*3. The change of custodial parent must take into account the aspiration of children from full 9 years of age and older.*

*4. Father or mother shall have the right to request the Court to change custodial parent.*

*5. In cases where there is sufficient ground to change the custodial parent as regulated in point b clause 2 of this Article, based on the interests of the children, the following individuals and organizations shall have the right to make request on changes of custodial parent:*

*a) Relatives;*

*b) The state management agency on family*

*c) The state management agency on children;*

*d) The Women's Union.*

*6. In cases where there are requests made in accordance with clauses 4 and 5 of this Article, if deeming that both parents do not have necessary conditions to nurture the children, the Court shall assign the children to guardians as regulated by the Civil Code.*

### **Sub-section 3**

## **Restriction of parents' rights toward minor children**

### **Article 89. Restriction on parents' rights toward minor children**

1. Parents' rights toward minor children are restricted in the following cases:

a) When fathers and/or mothers are sentenced for one of the crimes of deliberately infringing upon the health, dignity or honor of their children or commit acts of seriously breaching their obligations to look after, care for, rear and educate their children;

b) Dissipate property of their children;

c) Lead a debauched life; incite or force their children to act against law or social morality,

Depending on a case-by-case basis, the Court may make decisions by itself or at the request of the individuals, agencies or organizations prescribed in Article 90 of this Law, to disallow such parents to look after, care for and educate their children or manage the personal property of their children or act as their children's representatives at law for a time limit of between one and five years. The Court may also consider to shorten this time limit.

### ***Article 90. People entitled to request the Court to restrict parents' rights toward their minor children***

*1. Parents, guardians of minor children shall have the right, in accordance with the Civil Litigation Law, to request the Court to restrict some rights of parents toward their minor children.*

*2. The following individuals, agencies, organizations shall have the right, in accordance with the Civil Litigation Law, to request the Court to restrict some rights of parents toward their minor children:*

*a) Relatives;*

*b) State management agency on family;*

*c) State management agency on children;*

*d) The Women's Union.*

***Article 91. Legal consequences of the restriction on parents' rights toward their minor children***

1. In cases where either parent has his/her rights toward their minor children restricted by the Court, the other parent shall exercise the rights to look after, nurture, care for, and educate children, to manage children's personal property and act as their representative before law.

*2. The rights to look after, nurture, care for, and educate children and to manage the personal property of children shall be given to guardians as provided for by the Civil Code and this Law in the following circumstances:*

*a) Both father and mother have their rights toward their minor children restricted by the Court;*

*b) The rights of one parent are not restricted toward his/her minor children but he/she does not have suitable conditions to perform the rights and obligations toward his/her children;*

*c) The remaining parent of the minor children has not been identified.*

3. Fathers, mothers who have their rights toward their minor children restricted by the Court are still required to perform the obligations to nurture their children.

## **Section 2**

### **Determination of father, mother, and child**

#### **Article 92. Determination of fathers, mothers**

1. Child born or conceived by the wife during the marriage period are common child of the husband and wife. *Child born within 300 days from the marriage termination, are considered as child conceived by the wife during the marriage period.*

Children born before the marriage registration date and recognized by their parents are also common children of the husband and wife.

2. When father, mother does not recognize the child, evidence is required and the issue must be determined by the Court.

**Article 93. Determination of father, mother in cases where the child is born with assisted reproductive technology**

*1. In cases where the mother gestates and delivers children using assisted reproductive technology, provisions stated in Article 92 of this Law shall be applied for the determination of father, mother.*

*2. In cases where a single woman gestates and delivers the child using assisted reproductive technology, the woman shall be the mother of the delivered child*

*3. The delivery of child using assisted reproductive technology shall not give rise to parent-children relations between the donors of sperm, ova, embryos and the delivered children.*

*4. The government provides detailed regulations of this Article and Article 94, 95, 96, 97 of this Law.*

**Article 94. Determination of father, mother in cases of surrogacy for humanitarian purpose**

*Childborn in case of surrogacy for humanitarian purposes is the child of the wife and husband who asked for the surrogacy, effective from the birth of the child.*

*In cases where the surrogacy does not comply with regulations in Article 95 of this Law, the woman who gestates for the couple shall be the mother of the born children*

**Article 95. Conditions for surrogacy for humanitarian purpose**

*1. The surrogacy for humanitarian purposes must be voluntary and made in writing.*

*2. Wife, husband shall have the right to ask another woman to perform surrogacy when the following conditions are met:*

a) *Have certification of competent health care agency on the fact that the wife cannot gestate and deliver babies even with application of assisted reproductive technology;*

b) *Wife and husband have yet to have any common child;*

c) *The surrogacy must be performed through in vitro fertilization using the ova of the wife and sperm of the husband.*

d) *The person who is asked to gestate for a couple must be the relative at the same level in the family tree with the couple, who has given birth before and is allowed to perform surrogacy once;*

đ) *In cases where the woman who agrees to gestate is married, written agreement of her husband, consenting to his wife's surrogacy for the couple, shall be required.*

3. *The surrogacy for humanitarian purposes must not violate legal regulations on giving birth to children using assisted reproductive technology.*

4. *The government provides detailed regulations for implementation of this Article.*

### **Article 96. Rights and responsibilities of surrogate mother for humanitarian purpose**

1. *A surrogate mother, spouse of surrogate mother (hereinafter referred to as the surrogate) shall have the same rights and responsibilities as the legal parents of the to-be-born child from the start of pregnancy until the transfer of the child to the intended parents.*

2. *The surrogate is entitled to reproductive health care regime as provided for by the law to pregnant women in general. In cases where there are legitimate reasons related to the life, health and development of the child in the womb, which comply with regulations of the Ministry of Health in reproductive health care, the surrogate shall have the right to decide on whether to continue the pregnancy.*

**Article 97. Rights and responsibilities of the party asking for surrogacy for humanitarian purpose**

*1. The intended parents shall have the obligations to provide support to ensure reproductive health for the surrogate mother during the period of pregnancy and child delivery.*

*2. The intended parents and the child born from surrogacy shall have all rights and obligations of parents and child.*

*3. In cases where the intended parents refuse to receive the born child or violate the obligation to nurture, care for, they they shall have to provide support to the child.*

**Article 98. Handling of disputes related to child delivery using assisted reproductive technology, surrogacy for humanitarian purpose**

*1. The Court is the competent authority to decide on disputes related to the birth of child using assisted reproductive technology, surrogacy.*

*2. In cases where the intended parents are not alive and the surrogate does not voluntarily accept the child, the Court shall appoint a guardian for the child as regulated by the Civil Code.*

*In cases where the intended parents refuse to receive the child and the surrogate does not voluntarily take care of and raise the child, the Court shall appoint a guardian for the child. As requested by the guardian, the intended parents shall perform the obligation of supporting the child.*

*3. The Supreme People's Court shall coordinate with the Supreme People's Procuracy and the Ministry of Justice to provide guidance for the implementation of this Article.*

**Article 99. Determination of child**

A person who is not recognized as father or mother of another person may request the Court to determine if s/he is indeed the father or mother of that person.

A person who is recognized as father or mother of another person may request the Court to determine such person is not his/her child.

**Article 100. Right to recognize father, mother**

1. *Children have the right to recognize their fathers, mothers, even in cases where the fathers and/or mothers have died.*

2. *Adult children may recognize their fathers, without the consent of their mothers; may recognize their mothers without the consent of their fathers.*

**Article 101. Right to recognize child**

1. *Fathers, mothers have the right to recognize their child even in cases where their child has died.*

2. *In cases where the person wishing to recognize his/her child is married, the recognition of his/her child does not require the consent of his/her spouse.*

**Article 102. Recognition of father, mother, and children in cases where the person who makes the request has died**

1. *In cases where a child, who makes the request to recognize his/her father, mother, dies and if the father, mother does not voluntarily accept the child, the close relatives of the child shall have the right to request the recognition of father, mother for the deceased child.*

2. *In cases where father, mother, who makes the request to recognize a child, dies, if the child does not voluntarily accept the father, mother, the close relatives of the father, mother shall have the right to request the recognition of the child for the deceased person.*

**Article 103. Jurisdiction for handling the recognition of father, mother, and child**

1. *The Civil Status Registry shall have the jurisdiction to recognize father, mother, and child as regulated by the legislation on civil status registration in cases where there are no disputes involved.*

2. *The Court shall have jurisdiction to determine father, mother, children in cases where father, mother are regulated in Clause 2 Article 92 of this Law, cases regulated in Articles 93, Clause 1 Article 100, Clause 1 Article 101 and Article 102 of this Law; other cases where disputes are involved.*

*Court decisions on the determination of father, mother, and child must be sent to the civil status registry for notation as required by the legislation on civil status registration; involved parties in the determination of father, mother, child; concerned individuals, agencies, organizations as regulated by the Civil Litigation Law.*

**Article 104. People entitled to request civil registration office and the Court to recognize their father, mother and child**

1. *Father, mother, adult child, who have not lost civil act capacity, shall have the right to request or through his/her legal representative to request the Civil registration office to determine their child, father, mother, for cases regulated in Clause 1 Article 103 of this Law.*

2. *Father, mother, child, as provided for by the Civil Litigation Law, shall have the right to request the Court to determine their child, father, mother, for cases regulated in clause 2 Article 103 of this Law.*

3. *The following individuals, agencies, organizations shall have the right, as regulated by the Civil Litigation Law, to request the Court to determine their fathers, mothers for minor children and adult children who have lost their civil act capacity for cases regulated in clause 2 Article 103 of this Law;*

- a) Fathers, mothers, guardians;*
- b) The state management agencies on family;*
- c) The state management agencies on children;*
- d) The Women's Union.*

**CHAPTER VI**



## RELATIONS BETWEEN OTHER FAMILY MEMBERS

### **Article 105. Rights and obligations between other family members**

*1. Family members have the right and obligation to look after, care for and support one another. The legitimate rights and interests of family members and their properties regulated by this Law, the Civil Code and relevant laws must be respected and protected by law.*

*2. Family members have the obligation to preserve family's honor and fine traditions.*

*3. Family members living together are obliged to participate in family work, labor and production, to generate income or contribute labor, money and other property to maintain the family life in accordance with their actual income and capability.*

*4. The State, through policies and laws, creates favorable conditions for different generations in the family to look after, care for and support one another in order to preserve and promote fine traditions of the Vietnamese family. The government encourages individuals and organizations in society to unifyingly participate in preserving and promoting the fine traditions of Vietnamese family.*

### **Article 106. Rights and obligations of paternal and maternal grandparents and grandchildren**

1. Paternal and maternal grandparents have the obligations and rights to look after, care for and educate their grandchildren, lead an exemplary life and set good examples for their grandchildren. Where the grandchildren are minor or adult but are disabled, have lost their civil act capacity, have no working capacity and no property to support themselves while having no one to support them as prescribed in Article 107 of this Law, their paternal and maternal grandparents shall be obliged to rear them.

2. Grandchildren have the duty to respect, care for and support their paternal and maternal grandparents.

**Article 107. Rights and obligations of siblings**

Siblings have the duty to love, care for and help one another; have the obligations and rights to help, protect as well as support one another in cases where they no longer have parents or their parents have no conditions to look after, rear, care for and educate their children.

**Article 108. Rights and obligations of aunts, uncles, nieces and nephews**

*Aunts, uncles, nieces and nephews shall have the duties to love, care for, help one another; have the obligations and rights to protect, help and nurture one another in circumstances where nieces and nephews have lost parents, children, and other people regulated Article 106 and 107 of this Law or still have these people but they do not have sufficient conditions to look after, care for, educate.*

**CHAPTER VII**

**SUPPORT**

**Article 109. Obligations to support**

1. Obligations to support shall be performed between parents and children, among siblings, between paternal, maternal parents and grandchildren, *between uncles, aunts and nieces, nephews*, and between wife and husband as regulated by provisions in this Law.

Obligations to support cannot be replaced by other obligations and cannot be transferred to other people.

2. In cases where people with obligation to nurture have evaded such obligation, they shall have to perform the obligation to support as regulated in this Law.

### **Article 110. One person supports several persons**

Where a person supports several persons, the supporting person and the supported persons shall agree mutually upon the mode and extent of support appropriate to the actual income and capability of the supporting person and the essential needs of the supported persons; if they fail to reach an agreement thereon, they may request the Court to settle it.

### **Article 111. Several persons jointly support one or several persons**

Where several persons share the same obligation to support one or several persons, they shall agree mutually upon the mode and level of support appropriate to the actual income and capability of each supporting person and the essential needs of the supported person(s); if they fail to reach an agreement thereon, they may request the Court to settle it.

### **Article 112. Parent's obligations to support children**

*Father or mother who does not live with the children but violates the custody obligations toward his/her minor children or his/her major children who have lost civil act capacity, have no working capacity and no property to support themselves, shall have the obligations to support his/her children.*

*The level of child support shall be agreed by parents; if such an agreement cannot be reached, they shall ask the Court to settle.*

### **Article 113. Children's obligation to support their parents**

Adult children who no longer live with their parents are obliged to support their parents who have no working capacity and no property to support themselves.

### **Article 114. Obligation of mutual support among siblings**

1. In cases where their parents are no longer alive or have no working capacity and no property to support their children, adult elder brothers and/or sisters who no longer live with their younger brothers and/or sisters are obliged to support their minor brothers or sisters who have no property to support themselves or adult younger

brothers and/or sisters who have no working capacity and no property to support themselves.

2. Adult younger sisters and/or brothers who no longer live with their elder sisters and/or brothers are obliged to support their elder sisters and/or brothers who have no working capacity and no property to support themselves.

#### **Article 115. The supporting obligation between grandparents and grandchildren**

1. Grandparents who do not live with their grandchildren are obliged to support their grandchildren if the latter are minor or grown up but have no working capacity, no property to support themselves and have no one to support as prescribed in Article 58 of this Law.

2. Grandchildren who do not live with their grandparents are obliged to support their grandparents if the latter have no working capacity, no property to support themselves and have no one else to support as prescribed by this Law.

#### **Article 116. Support obligations between uncles/aunts and nieces/nephews**

*1. Uncles and aunts who do not live in the same house with nieces/nephews shall have the obligation to support nieces/nephews in cases where the nieces/nephews are minors or adults who have lost civil act capacity, have no working capacity and no property to support themselves, and do not have others to support them as regulated in this Law.*

*2. Adult nieces/nephews who do not live in the same house with uncles/aunts shall have the obligation to support uncles/aunts in cases where the uncles/aunts have lost civil act capacity, have no working capacity and no property to support themselves, and do not have others to support them as regulated in this Law.*

#### **Article 117. The supporting obligation between husband and wife after divorce, separation**

When divorced, *separated*, if the party facing with economic difficulties requests support with plausible reasons, the other party is obliged to support according to his/her capability.

#### **Article 118. Support level**

1. The support level shall be agreed upon by the person(s) with the supporting obligation and the person(s) enjoying the support or the latter's guardian on the basis of the actual income and capability of the person(s) with the supporting obligation and the essential needs of the person(s) enjoying the support; if they fail to reach an agreement thereon, they may request the Court to settle it.

2. Where there exist plausible reasons, the support level may change. The change of the support level shall be agreed upon by the concerned parties; if they fail to reach an agreement thereon, they may request the Court to settle it.

#### **Article 119. Mode of performing the supporting obligation**

The support may be provided monthly, quarterly, biannually, annually or in lump sum.

The concerned parties may agree upon a change in the supporting mode or a pause of the support in cases where the person(s) with the supporting obligation falls into a strained economic circumstance, thus being unable to perform his/her supporting obligation; if they fail to reach an agreement thereon, they may request the Court to settle it.

#### **Article 120. Termination of the supporting obligation**

The supporting obligation terminates in the following circumstances:

1. The supported people have attained their adulthood and have the working capacity;
2. The supported people have incomes or property to support themselves;
3. The supported people are adopted;
4. The supporting people directly rear the supported people;

5. The supporting people or supported people die;
6. The supported people have remarried other people after divorce;
7. Other cases prescribed by law.

**Article 121. People entitled to request the performance of support obligations**

1. *Support receivers and their parents or guardians* shall have the right, as prescribed by the Civil Litigation Law, to request the Court to compel those who fail to voluntarily perform their support obligations to perform such obligations.

2. The following agencies and organizations shall have the right, as prescribed by the Civil Litigation Law, to request the Court to compel those who fail to voluntarily perform their support obligations to perform such obligations:

- a) *Relatives,*
- b) *The state management agency on family*
- c) *The state management agency on children;*
- b) The Women's Union.

**Article 122. Encouragement of organizations and individuals financial support**

The State and society encourage organizations and individuals to provide support in cash or other property to families and individuals in extremely difficult and needy circumstances.

## **CHAPTER VIII**

### **MARRIAGE AND FAMILY RELATIONS INVOLVING FOREIGN ELEMENTS**

**Article 123. Protection of the legitimate rights and interests of the parties to the marriage and family relationships involving foreign elements**

1. In the Socialist Republic of Vietnam, the marriage and family relationships involving foreign elements are respected and protected in accordance with the provisions of Vietnamese law and international agreements which the Socialist Republic of Vietnam *is a member*.

2. In their marriage and family relations with Vietnamese citizens, foreigners in Vietnam shall enjoy the same rights and obligations as Vietnamese citizens, except as otherwise provided for by Vietnamese law.

3. The State of the Socialist Republic of Vietnam shall protect the legitimate rights and interests of Vietnamese citizens abroad in their marriage and family relationships in accordance with the Vietnamese law, the host country's law and international laws and practices.

4. *The Government shall provide detailed guidance for settlement of marriage and family matters involving foreign elements in order to protect the legitimate rights and interests of the concerned parties and to ensure the implementation of provisions stated in clause 2 Article 4 of this Law.*”

**Article 124. Application of laws to marriage and family life involving foreign elements**

1. *Legal provisions on marriage and family of the Socialist Republic of Vietnam is applicable for marriage and family relations involving foreign elements, unless otherwise regulated by this Law.*

*When international agreements, of which the Socialist Republic of Vietnam is a member, have different provisions from those of this Law, the international agreements shall prevail.*

2. In cases where this Law and other Vietnamese laws have stated or where the international agreements of which Vietnam has signed or acceded to, the foreign law shall be applied, if such application does not contravene the principles of this Law.

When a foreign law is referred back to the Vietnamese law, the Vietnam’s marriage and family legislation shall be applied.

**Article 125. Jurisdiction of handling matters related to the marriage and family relationships involving foreign elements**

*1. The jurisdiction for civil status registration related to marriage and family relationships involving foreign elements shall be performed according to provisions of the legislation on civil status.*

2. The People's Court of provinces and centrally managed cities shall annul illegal marriages, settle divorce cases, disputes over rights and obligations of spouses, parents, and children, over recognition of father, mother involving foreign elements, consider the recognition or non-recognition of judgments, decisions on family and marriage by the foreign Court or competent agencies in accordance with provisions of this Law and other regulations of Vietnamese law.

The People's Court of districts, towns, cities under provinces where the Vietnamese citizens reside shall annul illegal marriages, settle divorce cases, disputes over rights and obligations of spouses, parents, and children, over recognition of father, mother children, adoption and guardianship between Vietnamese citizens residing in the border areas and citizens of neighboring countries residing in Vietnamese border areas in accordance with provisions of this Law and other regulations of the Vietnamese law.

**Article 126. Consular legalization of papers, documents on marriage and family**

*Papers and documents on marriage and family issued, established or certified by foreign competent agencies must undergo consular legalization for use in Vietnam, except when exempted from consular legalization according to international agreements that the Socialist Republic of Vietnam has acceded to on the principle of reciprocity.*

**Article 127. Recognition, making notation of sentences, decisions made by foreign competent authorities on marriage and family**



1. *The Vietnamese Court shall recognize sentences, decisions made by foreign competent authorities according to provisions of the Civil Litigation Law.*

2. *The Government shall provide detailed regulations on making notation according to laws on civil status of marriage and family matters based on sentences, and decisions made by foreign competent authorities.”*

#### **Article 128. Marriage involving foreign elements**

1. For marriages between Vietnamese citizens and foreigners, each party must abide by his/her country's law on marriage conditions; if their marriage is conducted at a Vietnamese competent state agency, the foreigner must also abide by the provisions of this Law on marriage conditions.

2. The marriages between foreigners in Vietnam before competent agencies of Vietnam must comply with the provisions of this Law on marriage conditions.

#### **Article 129. Divorce, separation involving foreign elements**

1. Divorce or *separation* between a Vietnamese citizen and a foreigner or between two foreigners permanently residing in Vietnam shall comply with provisions of this Law.

2. Where a partner who is a Vietnamese citizen does not reside in Vietnam at the time of the divorce or *separation* request, the divorce or *separation* shall be settled according to the law of the country where both spouses permanently reside; if they do not reside in the same country, the Vietnamese law shall apply.

3. The settlement of property, which is immovable property located overseas, upon divorce or *separation*, shall comply with the law of the country where such immovable property is located.

#### **Article 130. Determination of father, mother, children involving foreign elements**

1. *The Vietnamese Civil Status Registry shall have the competence to handle the determination without dispute of father, mother, children between a Vietnamese*

*citizen and a foreigner or between two Vietnamese citizens where at least one of them resides overseas, between two foreigners where at least one of them permanently resides in Vietnam according to provisions of the legislation on civil status.*

*2. The Vietnamese Court shall handle the determination of father, mother children involving foreign elements for cases regulated in clause 2 Article 92, Article 93, Article 94, clause 1 Article 100, clause 1 Article 101 and Article 102 of this Law; other cases with disputes.*

### **Article 131. Support obligations involving foreign elements**

*The support obligations shall comply with the law where the person making the request resides. In cases where the person making the request does not have a place of residence in Vietnam, the law of the country of citizenship of the person making the request shall be applied.*

*The competent agencies to handle the support request of people mentioned in clause 1 of this Article shall be the agencies of the country where the person making the request resides.*

### **Article 132. Settlement of cohabitation between men and women, between same-sex couples involving foreign elements**

*In cases where there are request to settle cohabitation relations between men and women, between same-sex couples involving foreign elements, the Vietnamese competent authorities shall apply provisions of this Law and other related laws of Vietnam to settle, unless otherwise regulated by international agreements of which Vietnam is a member.*

## **CHAPTER IX**

### **IMPLEMENTATION PROVISIONS**

### **Article 133. Transitional provisions**

1. Provisions of this Law shall be applied to marriage and family relations established from the date that this Law takes effect.

2. Marriage and family relations established before the effective date of this Law shall conform to legal provisions that were effective at the time of establishing such relations.

3. The Court's application of the legislation on marriage and family to settle family and marriage matters shall be handled as follows:

a) Those cases that are accepted for handling by the Court before the effective date of this Law shall apply the law that were in effect at the time of accepting the application;

b) Cases, which are accepted for handling by the Court from the effective date of this Law and where marriage and family relations established before the effective date of this Law, shall be handled according to clause 2 of this Article; where marriage and family relations established after the effective date of this Law, the cases shall be handled according to clause 1 of this Article;

c) This Law shall not be used to appeal according to appeal procedure, and re-appeal procedure for cases where the Court applied the marriage and family legislation dated before the effective date of this Law.

#### **Article 134. Implementation effectiveness**

*This Law shall take effect from date... month ... year 20...*

*This Law replaces the 2000 Law on marriage and family*

#### **Article 135. Implementation guidance**

*The government shall provide for detailed regulations, guiding the implementation of provisions mentioned in this Law*

*The Supreme People's Court shall coordinate with the Supreme People's Procuracy and the Ministry of Justice to guide the implementation of provisions mentioned this Law.*

*This Law was adopted by the Socialist Republic of Vietnam's 13th National Assembly at its ... session on date.... Month.... Year 20...*

**THE NATIONAL  
ASSEMBLY**

**CHAIRMAN**

**Nguyễn Sinh Hùng**

## JOINT UN KEY RECOMMENDATIONS ON THE DRAFT AMENDED LAW ON MARRIAGE AND FAMILY

*As of 20 October 2013*

### **Introduction**

- United Nations (UN) in Viet Nam commends the drafting committee that developed the draft amended Law on Marriage and Family for the many positive improvements that considerably strengthen gender equality and women's rights throughout the law. We understand that amending the Law on Family and Marriage to cope with the changing realities of marriage and family in the Vietnamese society is a considerable task. However, it also provides a significant opportunity to bring about greater coherence of Viet Nam's laws and practices, as well as their compatibility with international laws and human rights standard.

- Nevertheless, we note that there is still some room for improvement of the draft amended law in line with principles and interpretation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other international conventions and agreements that Viet Nam has acceded to, as well as the findings, jurisprudence and commentary of international treaty bodies.

- UN also notes that the draft amended law confronts new issues that have not previously been addressed in law, and some of its proposed amendments have given rise to considerable debate. Therefore, we encourage the National Assembly and the drafting committee to consider a lengthier period of public discussion over the draft law's amendments, in particular with those who will be directly affected,

in order to ensure that they are well formulated, well supported, and respond adequately to the changing realities of marriage and family in Viet Nam.

### **General recommendations**

- **Introduction of gender-neutral terms:** To prevent confusion about interpretation of terms and to avoid potential gender discrimination, we suggest that the gender-specific language is replaced with gender-neutral language throughout the law, wherever appropriate. For instance, to replace “husband” and “wife” with the gender-neutral terms “spouse(s),” or “individual.”<sup>19</sup> Gender-neutral regulations help extend rights to all individuals and couples without discrimination or inequality on the grounds of sex, sexual orientation and gender identity. It can help avoid the binary gender construct (consisting of two opposite sexes, men and women) and the discrimination against transgender and intersex people as such of formulations can perpetuate their invisibility.

- **Assurance of the legal system consistency:** To ensure the consistency of the Viet Nam legal system as well as its enforcement, the forthcoming amended law should be adopted at the same time with the revisions of other laws and provisions which govern directly or indirectly family and marriage issues, such as the Civil Code, the Law on adoption and the Law on Civil Status. We suggest that the drafting committee examine the existing related laws and wherever appropriate include the specific principles which are cross-cut between the Law on Family and Marriage with the Law on Adoption, or the Law on Civil Status or the Civil Code, in this draft amended law, in order to avoid the potential legal conflicts as a result of conflicting norms and legal interpretation.

### **General provisions (Chapter I, Articles 1-7)**

- The following principles are recommended in order to uphold various principles of gender equality, prohibition on discrimination and violence on the basis of sex, sexual orientation and gender identity, and human rights as promoted by CEDAW and other international conventions.

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<sup>19</sup> A list of convertible gender-neutral language and terms can be found in Appendix 1 of this document.

- **Basic Principles:**

o In Article 2 (1), revise the draft provision to make it gender neutral as follows “Voluntary, progressive and monogamous marriage in which two people are equal.”

o In Article 2 (5), following “Inheritance and promotion of cultural and ethical traditions of the Vietnamese nation in the marriage and family domain ”add the phrase “*provided these do not discriminate against or violate the human rights afforded to all individuals under the Constitution of Viet Nam.*”

o In Article 2 (6), in order to avoid reinforcing stereotypes of women in their reproductive role as mothers above all other roles and to promote sharing of parental responsibilities, rephrase the end of the sentence to read, “*to help parents to properly perform their parental functions by helping both parents as equal partners in raising children.*”

- **Customary practice:** Customary laws and practices have evolved over many years, impacted by a wide range of influence. In various parts of the world, issues related to family and property are especially likely to be governed by deeply entrenched traditional and customary norms, some aspects of which may not promote equality and human rights. Statutory law plays a normative role in defining legitimate behaviour in a society and therefore drafters should be attentive to ensure that the amended law does not allow protective, equality-promoted provisions to be circumvented by recourse to customary law or practice.

o Article 6 (particularly Art. 6(1)(b)) should therefore be reviewed in the context of the full statutory and customary framework to ensure it does not result in discrimination, perpetuate gender inequalities, or provide a means to circumvent mandatory provisions of the law. No customary practice should be applied if it violates the basic principles of the marriage and family regime (Article 4) or is discriminatory toward women or girls in the family. The regulations contemplated in Art. 6(2) are critical in this regard.

o We therefore recommend to add Article 6 (1c) to read “A customary practice shall be applied when it does not violate the basic principles of the marriage and family regime stipulated in Article 2 of this Law and does not violate provisions on protection of marriage and family regime prescribed in clause 2 Article 4 of this law, provided that the customary practice is not discriminatory toward women or girls in the family.”

- **Interpretation of terms:** Add the following terms or revise existing terms in Article 7 as follows:

o In (3) “Getting married” is an act whereby “two people establish a spousal relationship with each other in accordance with provisions of this Law regarding conditions for getting married and marriage registration”.

o Add “Household and family work,” ensuring that the definition includes all levels of care for family members, as well as domestic work that contribute to the daily needs of family members.

o In (5) replace the term “living together as wife and husband” with an internationally recognized term, such as “defacto union” or “cohabiting couple” or “domestic partnership”, and define it using gender-neutral terms as follows “A defacto union means two persons mutually agree to organize a life of living together in a stable and continuous manner and consider each other as defacto spouse.” Around the world, domestic partnerships<sup>20</sup> are increasingly common. Like married couples, those in domestic partnerships may share accommodation, pool resources, depend on each other for emotional and financial support, and raise children. Consequently cohabitating couples often suffer hardship upon the breakdown of such relationships similar to what spouses experience at the termination of a marriage. Because women are more often in a weaker bargaining position and subject to discrimination in many aspects of their lives, women in

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<sup>20</sup> For the purposes of this document, domestic partner, cohabiting couple and defacto union are used interchangeably.



domestic partnerships may be in a vulnerable economic and social position during the relationship as well as at its conclusion.

For all of these reasons, it is important to provide legal recognition of domestic partnerships and legal protection to those in domestic partnerships, including but not limited to custody of children, support obligations, division of property and inheritance.

- o In (16) ensure that the definition of “family” includes men, women and children living together in defacto unions, revise as follows: “Family is a group of people closely bound together by marriage, cohabitation, bloodline or nurture relations, thus giving rise to obligations and rights among them as stipulated in this Law.”

- o In (18) ensure that the definition of “family member” includes and applies to people bound together by cohabitation relations, thus giving rise to obligations and rights among them as stipulated in the Law.

- o In (21) the list of “essential needs” should be expanded to include shelter, water and sanitation and transportation. Essential needs should be understood to encompass not only the materials goods required to sustain life, but also to live with dignity and to develop fully.

- o Add “Gender-based discrimination” and define it to include any distinction, exclusion or restriction that does not give women and girls equal rights with men and boys in marriage and family life, access to goods and services, opportunities for education and selfadvancement, rights to property and inheritance, and decision-making power.

- o Add “Legitimate interests of women and children,” and define it to include sufficient material and financial resources to meet their basic human needs, and to allow for their individual and collective growth and development.

### **Marriage (Chapters II, Articles 8-16)**

- **Defacto unions:** In its 1994 General Recommendation No. 21, Equality in Marriage and Family Relations, the CEDAW Committee declared that women and men living in defacto unions “should have equality . . . in family life . . . sharing of income and assets . . . and care and raising of children.” Note that CEDAW General Recommendations, which interpret and elaborate upon the CEDAW Convention, carry the same obligation as the Convention for states that have acceded to the convention. In addition, in respect to the equal right principle as proclaimed in the Universal Declaration of Human Rights, “All human beings are born free and equal in dignity and rights,” we thus recommend the following:

- o Delete Article 13, Article 14, Article 15 and Article 16.

- o Add provisions extending to people in defacto unions the same substantive rights and responsibilities as married couples in all areas of marriage, separation, divorce, and child rearing including those related to property, adoption, surrogacy, family rights and responsibilities, etc. Overall, it should be made explicit in the law that provisions on Marital Relations (Chapter III), Termination of Martial Relations (Chapter IV), Relations between Parents and Children (Chapter V), Relations between Extended Family Members (Chapter VI), Support (Chapter VII), and Marriage and Family Involving Foreign Elements (Chapter VIII) should govern defacto unions of different-sex as well as same-sex couples.

- If, however, Viet Nam provides limited rights to people living in defacto unions compared to married couples, as now proposed in Article 13, 14, 15 and 16 (1), we recommend the following changes consistent with these principles supported by UN experts and in international treaties:

- o Articles 13, 14, 15 and 16 should make clear that they are addressing “legal consequences” of the defacto union, not just the “consequences” as indicated in the draft. In particular, Articles 13, 14 and 15 should be strengthened to cover three areas of legal consequences which can arise in defacto unions including: (1) parenting consequences, (2) material (including property, social welfare or other material benefit) consequences, and (3) other legal consequences

(for example: to be protected against domestic violence, foreign partner of Vietnamese national is entitled to a residence permit, etc).

- o Articles 13 should be strengthened to clearly describe the conditions under which common ownership of property is established among parties who do not have a property agreement, as the Civil Code does not appear to offer any protections to individuals in defacto unions.

- o Article 15 addresses the settlement of property, obligations and contracts in domestic partnerships. As with marriage, dependencies and vulnerabilities result overtime when couples establish a defacto union. Subsection 3 indicates that the settlement of property “shall ensure the legitimate rights and interests of women and children”, presumably in recognition of this fact. It would be strengthened by specifying that the phrase “legitimate rights and interests” does not only refer to formal, contractual property relations but also includes maintenance, common property and access to the family home, parental rights and responsibilities. Where people are involved in relationships characterized by mutual commitment and emotional and economic interdependency, they should be entitled to share in the gains to the property they likely contributed to acquiring or maintaining. As the CEDAW Committee has stated, “In many countries, property accumulated during a de facto relationship is not treated at law on the same basis as property acquired during marriage. Invariably, if the relationship ends, the woman receives a significantly lower share than her partner. Property laws and customs that discriminate in this way against married or unmarried women, with or without children, should be revoked and discouraged.”<sup>21</sup>

- In addition, under international human rights law, the obligation to protect individuals from discrimination on the basis of sexual orientation extends to ensuring that unmarried same-sex couples are treated in the same way and entitled to the same benefits as unmarried different-sex couples. For this reason, we strongly support the following recommendation:

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<sup>21</sup> CEDAW Committee, “General Recommendation 21: Equality in Marriage and Family Relations”, UN Doc A/49/38, 1994, para 33.

- o Remove and revise wherever appropriate provisions that introduce legal discrepancies between different sex cohabitation and same-sex cohabitation. Accordingly, Articles 13, 14 and 15 should remove use of the terms “man and woman” and “men and women” and consistently use the term “defacto union,” defined in Article 7 (5) as suggested above, which applies to both different-sex and same-sex couples.

- o Delete Article 16, as it will be redundant after the suggested changes above.

**Marital relations (Chapter III, Articles 17-50) including termination of martial relation (Chapter IV, Articles 51-71)**

- The following additions and changes are recommended in keeping with the CEDAW principle establishing “the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration” and CEDAW General Recommendations 21, interpreting this provision.

- **Common property and personal property:** Call upon the appropriate agency to develop guidance on assisting couples who intend to enter into marriage or a defacto union to negotiate a fair and equitable written contract detailing the couple’s agreements over common and personal property, and to legally register such an agreement. (Articles 47, 48, 49 and 50). In order to protect the spouses, a provision which authorizes a court to vary or set aside an agreement should be added as well. The following draft text could be adapted for that purpose:

- o A court may vary or set aside any written agreement pertaining to the division of property between spouses if it is satisfied that the agreement has been obtained through fraud, coercion, undue influence or domestic violence.

- o Where a court has set aside any antenuptial agreement pursuant to Section (1), the parties to the marriage will be deemed to have chosen to be

governed by a [type of property regime] regime as set out in Articles X – X of this Act<sup>22</sup>.

- o A similar provision should be added to Article 48 regarding changes to the chosen property regime. For example:

- + A court may vary or set aside any postnuptial agreement proposing to change the elected marital property regime if it is satisfied that the agreement has been obtained through fraud, coercion, undue influence or domestic violence, and the spouses will continue to be governed by the marital property regime they chose at the time of marriage<sup>23</sup>.

- o Resolve the contradictions in the provisions regarding common and personal property, in favor of the expanded understanding of common property proposed in the amended law. In particular:

- o Ensure that there is consistency between the provision that “The possession, use and made decision of common property shall require agreement of both partners” (Article 35) and other articles that undermine this joint decision-making. These include:

- + Article 25, which allows one spouse to legally represent the other in business transactions; Article 26, which allows one spouse to conduct transactions related to property that requires an ownership or land use certificate with a bona fide third party;

- o Ensure that there is consistency between the broader definition of common property, as defined in Article 33, and cases of division of property for purposes of inheritance upon the death of one spouse (Article 70)

- o Regarding the various references to the assertion that household and family work is considered as income (Articles 15, 59 (2b) and 61), provide

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<sup>22</sup> “Choice of Marital Property Regime” in Respect, Protect and Fulfill: Legislating for Women’s Rights in the Context of HIV/AIDS, Volume Two: Family and Property Issues (Canadian HIV/AIDS Legal Network, 2009), p. 3-11.

<sup>23</sup> Ibid., p. 3-13.

guidance on how to determine the value household and family work regarding its contribution to common property.

- **Property Regime (Article 28-30):**

o Article 28 should be clarified, clearly defining the provisions of this law that are referred to here as “the property regime based on law” and the interaction with Article 44.

o In Article 29, recognize reproductive and household work as a legitimate contribution to the family is important.; add guidance on how such contribution is to be valued in a property calculation should be added for clarity and effectiveness.

o Article 30 addresses transactions related to the matrimonial home. The matrimonial home is central to family life and often the primary asset of a couple. Enacting specific protections for the matrimonial home is a practical and increasingly common means to protect women’s access to housing during and at the dissolution of a marriage. Such provisions should apply irrespective of a couple’s chosen marital property regime.

**Appendix 2** provides examples from other countries’ legislation for reference.

**Termination of martial relation (Chapter IV, Articles 51-71), including Support (Chapter VII, Articles 109-122)**

- The following additions and changes are recommended in keeping with the CEDAW principle that spouses shall have “The same rights and responsibilities during marriage and at its dissolution.” [CEDAW, Article 16 (c)]

- **Division of property on divorce (Article 59):** Subsection 1 allows the division of property to be agreed upon by the parties. In order to protect the legitimate interests of each spouse, a clause should be added authorizing the court to review the agreed upon division to ensure it is just and equitable, and to ensure

that the agreement has not been obtained through fraud coercion, undue influence or domestic violence. For example:

o Where the spouses have entered into an agreement specifying the distribution of marital property upon divorce which the court finds manifestly unfair or was the result of fraud, coercion, undue influence or domestic violence, the court may make such disposition of the assets and liabilities of the parties, without regard to which spouse holds title or rights to any property, as shall appear just and equitable.<sup>24</sup>

- **The right to stay in the matrimonial home (Article 63):**

o The provision pertaining to the possession of the matrimonial home upon divorce is a protective provision which will prevent insecurity, vulnerability, poverty and sexual violence, particularly for women. The 6-month time limit may, however, undermine its effectiveness.

o Add a provision in this law or other laws, as appropriate, allowing women and children to stay in the marital home in situations of separation of spouses before an agreement on property is reached as well as in situations of domestic violence.

- **Support for ex-spouses:** Provide further guidance on the appropriate level of support and frequency of payments by spouses to an ex-spouse (Article 60). Also call upon the appropriate agency to develop measures for more effective enforcement of ex-spousal support provisions.

**Relations between parents and children (Chapter V, Articles 72-104), relations between extended family members (Chapter VI, Articles 105-108) and support (Chapter VII, Articles 109-122)**

- The following additions and changes are recommended in keeping with the CEDAW principle that spouses shall have “the same rights and responsibilities

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<sup>24</sup> “Division of Property” in Respect, Protect and Fulfill: Legislating for Women’s Rights in the Context of HIV/AIDS, Volume Two: Family and Property Issues (Canadian HIV/AIDS Legal Network, 2009), p. 4-21.

as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount.” [CEDAW, Article 16 (1)d]

- **Obligations of parents (Article 73):** For further clarity, it would strengthen the bill to include a provision here noting that parents have equal responsibility to provide for the essential needs of all of their children. Similarly, it would be beneficial to clarify in Article 91 that parents whose rights towards their minor children have been restricted are still legally obligated to provide maintenance payments in order to ensure that the child(ren)’s essential needs are met.

- **Parents’ obligations to support children (Article 112):** According to article 112, parents are to agree on the level of child support to be paid. The appropriate agency should provide guidelines on appropriate levels of support, frequency of payments, etc. An enforcement system should also be created, if it does not already exist, and referenced in this provision.

- **Children’s names:** Add a provision in this draft amended law or in the Law on Civil Status that spouses shall reach agreement on the names of children, and that such decisions shall prevail over custom or ethnicity, including in situations of adoption. (Article 73)

- **Child, maternal and spousal support:**

- o Add a provision in this law or other laws, as appropriate, stipulating that fathers shall have the obligation to contribute to the pregnancy and childbirth costs for mothers of their children with whom they do not live and to whom they are not married.

- o Strengthen the requirement for provision of support children born to single mothers, by revising Article 73 (3) to read, “The parent has the same right and obligation, together take care and support his/her minor children or his/her



major children who have lost civil act capacity, have no working capacity and no property to support themselves, including children born outside of marriage.”

- o Provide further guidance on the appropriate level of child support payments as well as the frequency of such payments by the non-custodial parent in the situation of separation or divorce (Articles 87 and 66a). Also call upon the appropriate agency to develop measures for more effective enforcement of child support provisions (Articles 87). Add a provision addressing a situation where one spouse has no independent source of income and is dependent on a spouse who receives a pension or other form of state support, the pension or support should continue for the dependent spouse after the death of the spouse receiving the state support.

- o Add provision(s) setting the principle that children should be treated equally, without distinction as children born to single mothers, and/or without distinction based on the sexual orientation or the gender identity of their parents. No right should be denied to children on the basis of an absence of a marital tie between the parents, in particular in case of same-sex couples when their parents' inability to establish a legal bond with the child (in the case of two mothers who are not legally enabled to adopt each other's children for example).

- **Physical custody:** Consider adding an option of joint physical custody of children older than 3 years of age between parents following separation or divorce, in addition to the option of selecting one parent as the custodial parent. (Article 85) In such cases, both parents shall jointly make decisions concerning the child, in the best interest of the child, and the child shall divide the time between parents more equally.

### **Marriage and family relations involving foreign elements (Chapter VIII, Articles 123-132)**

- In keeping with the CEDAW principle that “neither marriage to a [foreigner] nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon

her the nationality of the husband," (CEDAW, Article 9) ensure that this or other laws explicitly:

- o Protect a Vietnamese woman’s right to retain her nationality when she marries a foreigner, or when her husband changes his nationality;
- o Give foreigners married to Vietnamese citizens the same rights to residency, citizenship, employment and social security in Viet Nam;
- o Protect the rights of a Vietnamese spouse and children in situations of separation or divorce when they are living overseas, or when one spouse is living overseas

**Appendix 1:**

**Gender-neutral terms recommended for the draft amended Law on Family and Marriage**

<b>Từ ngữ đang được sử dụng trong dự thảo luật</b>	<b>Terms being used in the current draft</b>	<b>Từ ngữ trung tính về giới nên sử dụng</b>	<b>Recommended gender-neutral terms</b>
Bố dượng, mẹ kế	Step fathers, step mothers	Cha mẹ kế	Step parents
Cha mẹ	Father and mother	Người sinh thành / (hoặc giữ nguyên “cha mẹ” vì là từ ghép ám chỉ bậc sinh thành, không nhất thiết phải có một cha và một mẹ, “cha mẹ” có thể hiểu như “parents”)	“Care-takers” / or we keep the current term “cha mẹ” (father and mother) because they imply birthgivers/care-takers, not necessarily one father and one mother, and it could be understood as parents
Cha mẹ chồng, cha mẹ vợ	Parents of husband, parents of wife (Parents-	Cha mẹ của người phối ngẫu	Parents (literally father and mother) of partner

	inlaw)		
Chung sống như vợ chồng	Cohabitation as husband and wife	Chung sống trên thực tế	“defacto union” or “cohabiting couple” or “domestic partnership”
Có vợ, có chồng	Having a wife, having a husband	Trong quan hệ hôn nhân	In a marriage
Cùng cha khác mẹ, cùng mẹ khác cha	Same father but different mothers, same mother but different fathers (half brothers sisters)	Khác một trong hai cha mẹ	Sharing one parent
Lấy vợ, lấy chồng	Getting a wife, getting a husband	Kết hôn	Getting married
Nam nữ, nam và nữ	Male and female	Hai người	Two persons
Quan hệ vợ chồng	Relationship of husband and wife	Quan hệ hôn nhân / Quan hệ phối ngẫu	Marriage (relationship) / Spousal relationship
Vợ chồng	Wife and husband	Hai bên phối ngẫu	Spouses
Vợ, chồng	Wife, husband	Các bên phối ngẫu / Một trong hai bên phối ngẫu / Hai bên phối ngẫu	Spouse

## **Appendix 2:**

### **The following provisions could usefully be adapted for Article 30:**

#### **- Definition of the matrimonial home**

o The matrimonial home means the building(s) or part of a building in which the spouses ordinarily reside together and includes:

- + household goods and furnishings used in relation to the residence;
- + and the surrounding residential land.

#### **- Rights and duties with respect to the matrimonial home**

o Each spouse has an equal right to possession, use and enjoyment of the matrimonial home, subject to the provisions of the [relevant domestic violence legislation] and any protection orders issued pursuant to that Act.

o Both spouses have a reciprocal duty to contribute to the upkeep of the matrimonial home, including through the performance of household duties and in proportion to their respective financial positions.

o A spouse shall not be evicted from the matrimonial home during the subsistence of the marriage:

+ by or at the instance of the other spouse, except in accordance with an order of a court; or

+ by any person except on the sale of any estate or interest in the matrimonial home in execution of a decree, by a trustee in bankruptcy or by a mortgagee or charge in exercise of a power of sale or other remedy given under any law.

o Where any interest in the matrimonial home is owned by either spouse, that spouse shall not, while the marriage subsists and without the prior and written consent of the other spouse, dispose of or encumber any interest in the matrimonial home.

o If a spouse disposes of or encumbers an interest in a matrimonial home in contravention of Section (4):

+ the transaction may be revoked by an application from the other spouse;

or

+ the interest so transferred or created shall be subject to the right of the other spouse to continue to reside in the matrimonial home until the marriage is dissolved pursuant to the [relevant divorce legislation] and the court orders that this rights has been terminated; unless the person holding the interest or encumbrance at the time of the application acquired it for value, in good faith and without notice that the property was a matrimonial home at the time of acquiring it or making an agreement to acquire it.

o Where an unauthorized transaction is not revoked pursuant to Section (5), and the joint estate suffers a loss as a result of that transaction, an adjustment shall be effected in favour of the other spouse:

+ upon division of the joint estate; or

+ upon demand of the other spouse at any time during the subsistence of the marriage.

**- Applicability of provisions regarding matrimonial home**

o Article X regarding the matrimonial home applies irrespective of the marital property regime elected, the terms of any antenuptial agreement, or, in the case of communal land, the relevant communal law or practice.

o Spouses are not permitted to contract out of Article X<sup>25</sup>.

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<sup>25</sup> “Protected Property” in Respect, Protect and Fulfill: Legislating for Women’s Rights in the Context of HIV/AIDS, Volume Two: Family and Property Issues (Canadian HIV/AIDS Legal Network, 2009), pp. 3-6 & 3-8.

**The 2<sup>nd</sup> Legal Policy Dialogue in 2013:**

**“Amending the Law on Marriage and Family from a Human Rights  
Based Perspective”**

**Materials of the Project “Strengthening Access to Justice and Protection of  
Rights in Viet Nam”**

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