

VIETNAMESE LEGISLATION AND ENSURING THE RIGHT TO PARTICIPATION OF WOMEN IN THE POST- ACCESSION OF VIETNAM TO CEDAW

HOÀNG MAI HƯƠNG^()*

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations General Assembly's Resolution 34/180 of 18 December 1979. Vietnam acceded to this Convention in 1980 and ratified it in 1981. As a state party, Vietnam is obliged to incorporate the Convention's substantive provisions into the national law in order to fulfill the obligation of "respect, protection and fulfillment" of women's rights enunciated in the Convention. The scope of women's human rights recognized in CEDAW is rather broad. This article only attempts to analyze fundamental legal principles on how to ensure the right to full participation of women as provided in Article 7 and Article 8 of the Convention; point out that Vietnam has developed and concretized the above-mentioned contents in the legal system and policies of our Party and State, as well as achievements attained by Vietnamese women in the field of human rights in general and the right to full participation in the political and public life in particular. The article also indicates limitations and gives some recommendations aimed at enhancing the realization of the right to full participation of women in the time to come.

1. The right to participation of women in CEDAW

Vietnamese women always keep a role and make crucially important contributions to the historical course of building, development and defense of the country. In our country, the right to participation of women is recognized in the Constitution and laws. This is the premise, the important precondition to ensure that women, getting out of the bond of the family life as well as social backward prejudice, substantially and fully participate in the political and public life of the country.

The right to participation is one the core rights found in CEDAW. Going through the text of this treaty, one can realize that the spirit of the right to participation is transmitted through

the treaty, but it is particularly provided in Article 7 and Article 8 of this Convention, in which Article 7 is still the central point as regards the right to participation of women. Article 7 begins with a provision pertaining to states parties' obligation to "undertake all appropriate measures" in order to eliminate discrimination against women. This obligation is commonly applied to all states parties of core international human rights treaties.

CEDAW puts forward three fundamental legal principles to necessarily observed, which include: non-discrimination; gender equality; and, state duty. These principles are crucially

^(*) M.A, researcher – Vietnamese Institute for Human Rights, Hochiminh National Political-Administrative Academy

important, but from the practical perspective, the first two principles keep a key role and are of cross-cutting character. This is because these principles are considered as standards in ensuring the fulfillment of any right of women in all relations (family, community, society, national and international). The third principle is deemed as a sufficient condition for the realization of the right to participation of women.

Materializing the right to full participation of women is synonymous with ensuring democracy in society. In politics, one of the elements that contribute to safeguarding democracy in society is the participation of mass population, on the ground of equality and non-discrimination, in activities of the public life. Looking with both theoretical and practical perspectives, democracy demonstrates in two forms: direct democracy and indirect democracy. The pragmatic manifestation of direct democracy is the direct participation of women and men in the entire process of state management, from the designing, policy-making to the practical implementation, or holding public offices, directly monitoring, inspecting the performance of public authorities with the entrusted power. Especially, direct democracy at the grassroots level is exercised by women's participation in making their comments or giving their opinions under different forms to issues relating to the community life, including those associated with their interests. As regards indirect democracy, its manifestation is women's participation in electing their representatives or standing for elected offices, representative offices of the state power.

One can realize that, hence, Article 7 of CEDAW affirms the importance of the right

to participation of women, as well as the practical significance of democracy. This is the thing that Vietnam is striving for homogenizing the meaning of these two issues – ensuring the right to participation of women is to confirm the presence of democracy, and vice versa democracy in place is to safeguard the right to participation of women.

Vietnamese legislation since 1945 has consistently been made to respect, protect and fulfill human rights in general and women's rights in particular. It can be said, however, that laws to ensure human rights in our country have actually developed since the country's entry into the renewal process. It needs to recall that before and even at the time of acceding and ratifying CEDAW, our country was in a very difficult situation. In 1986, we started our renewal and open-door policy, though in 1981, five years prior to the renewal drive, Vietnam had ratified CEDAW, expressing our commitment to safeguard women's human rights. This proved that our Party and State have constantly drawn attention to issues of women in general and the fulfillment of women's rights in particular, placing women at the center of the country's development. It can be said that such consistent viewpoints, commitment and policies of the Party and the State of Vietnam towards women have been maintained and continued since the founding of the Democratic Republic of Vietnam in 1945. The accession to CEDAW had certain impacts on the development of Vietnamese laws on ensuring human rights, particularly the right to participation of women. Remarkable progress has been made in the legal field, upon which women increasingly participate with a deeper and fuller scale in the political and public life of the country, improving their

status, affirming the more democratic nature of the society.

2. Vietnamese legislation ensuring the right to participation of women upon Vietnam's accession to CEDAW

The first progress achieved in the Vietnamese legal system as regards the safeguarding of the right to participation of women upon Vietnam's accession to CEDAW is visible in the Constitution 1992. Article 53 of the Constitution 1992 (amended 2001) prescribes: "Citizens are entitled to participate in state and social management, discussing commonly concerned issues of the country and locality; to submit recommendations to public authorities, etc." To make constitutional provisions further concretized, a series of legal documents have been promulgated to ensure women's participation in all fields, including in the political life. Those legal documents, among others, include the Law on the Election of Deputies to the National Assembly (amended in 2001), the Law on the Election of Members of the People's Council (amended in 2001), the Law on the Organization of the Government (1992), the Law on the Organization of People's Council and People's Committee (1994) and the Labor Code (amended in 2003). Generally, these laws comply with the principle of equality and non-discrimination between men and women in all fields of the social life. For instance, Article 2 of the Law on the Election of Members of the People's Council specifies: "Citizens of the Socialist Republic of Vietnam, regardless their ethnicity, sex, social status, religion, beliefs, educational level, occupation, time of residence, and as long as they are eighteen years old or above, are entitled to stand for election as members of the People's Council in accordance with the

law, unless they are mentally disabled persons or persons subjected to the deprivation of such right by the law or People's Court". This provision reaffirms that all citizens, regardless men or women, enjoy the same right in the field of election and standing for election.

Added to the source of law concerning the right to participation of women is a wide range of resolutions, directives of the Party on the work on female cadres, such as: Resolutions 152 and 153 adopted by the Central Committee of the Communist Party of Vietnam on the mobilization of women; Directive 44-CT/TW of 7 June 1984 of the Secretariat of the Central Committee of the CPV concerning some urgent tasks of the work on female cadres; Directive 37-CT/TW of 16 May 1994 of the Secretariat of the Central Committee of the CPV regarding the work on female cadres in the new situation; Resolution 04-NQ/TW of 12 July 1993 of the Political Bureau of the Central Committee of the CPV with regard to the renewal and strengthening of the mobilization of women in the new situation; Directive 28-CT/TW of 29 September 1993 of the Secretariat of the Central Committee of the CPV concerning the implementation of the Resolution of the Political Bureau with regard to the renewal and strengthening of the mobilization of women in the new situation, etc. The Resolution 04-NQ/TW affirmed: "Vietnamese women have a glorious historical tradition, possess great potentials and are a crucially important momentum of the renewal drive and socio-economic development. Women are workers, citizens and also mothers, first teachers of human beings. The objective of women's emancipation is to effectively improve the material and spiritual life of women, to raise the social status of women,

and to efficiently exercise equality of men and women, etc. The emancipation and work on women rest with the Party, the State, people's mass organizations, the entire society and individual families".

Along with provisions of *determining* character, Vietnamese laws also contain provisions with strict sanctions aimed at *protecting* political rights of citizens in general and of women in particular, including the prevention of women's political rights from being violated as recognized by laws and equivalent remedies provided in the Penal Code, the Criminal Procedures Code, the Ordinance on Handling of Administrative Violations, etc. For example, with a view to ensuring the realization of the right to equality for women in election and standing for election, the existing Penal Code of Vietnam provides sanctions against violations of the right to vote and stand for election of citizens, and violations of the equal right of women (Articles 126 and 130). Article 130 stipulates: "A person who commits violence or a serious act against the equal right of women, including the right to participation in political activities shall be subjected to a warning, non-custody reformatory punishment or imprisonment from three months to one year". Apart from legal provisions containing sanctions imposed on violations of the right to vote and stand to election of citizens, as well as the equal right of women, for the first time, the Law on the Election of Deputies of the National Assembly has a specific provision determining the number of female deputies of the National Assembly. As per se of this Law, in order to ensure women taking a considerable number of spots in the National Assembly, the Standing Committee of the National Assembly shall accept the proposed

number of female deputies upon the proposal submitted by the Presidium of the Central Committee of Vietnam Women's Union. A framework provision as such on the proportion of women in the National Assembly is crucially necessary, particularly in country like Vietnam where Confucianism still dominates the society and sex prejudice is prevailing. The fact is that not only Vietnam determines the proportion of women in the National Assembly, but also in the world some countries lay down an appropriate rate of women in the legislature, resulting in gender equality. One can see that determining the proportion of women in the National Assembly gives more opportunity to women to advance to equality with men, though some said that this provision virtually brings about discrimination against men. However, in contrast, to some extent, the laying down of the proportion of women in the National Assembly and People's Councils at all levels partly limits women's contribution since a quota may not commensurate with the number of women who are eligible for election and highly elected. Thus, it is only necessary to make a provision on giving priority to the election of women when men and women have the same qualifications.

The Government has issued numerous important documents aimed at bringing laws, policies and guidelines of the Party as regards the right to participation of women into reality.

The availability of a huge system of legal documents, resolutions and directives of the Party and the State, as well as with their own awareness and efforts, gives much support to women in establishing their vital role in society. Now, Vietnamese women have their representatives in the policy, law and decision

making at all levels and in different sectors. This is clearly reflected through the following statistics:

The proportion of female deputies of the National Assembly has consecutively increased in the recent legislatures (it was 17.8%, 18.5%, 26.2% and 27.3% in VIII, IX, X and XI legislatures respectively). In the 2004-2009 term, the proportion of female members of People's Council stood at 23.83%, 23.22% and 20.1% at provincial, district and communal levels respectively. According to reports published by the World Union of Parliaments, Vietnam ranked the ninth of one hundred thirty five member countries of this organization and the second among countries in the Asia-Pacific region as regards female membership in the National Assembly (only behind New Zealand). In some Asian countries, the proportion of women taking spots in the National Assembly was very low. For instance, the Republic of Korea registered for 5.9%, Indonesia claimed for 8%. As compared to the above-mentioned countries, one can see that the proportion of female members of Parliament in Vietnam was higher several times.

An increase was also in the proportion of women in the administrative agencies, research institutions, enterprises, party committees at all levels and social-political organizations alike. There emerged outstanding examples of women who were managers of enterprises operating effectively. However, the proportion of women working in these agencies as compared to female labor force remained modest, and women only kept the second to the head position occupied by men.

According to the Report of the Central Committee of Vietnam Women's Union of the

IXth tenure in 2002, the number of female cadres in state management bodies included: 01 Vice-President of the State; 12.5% Ministers or equivalent posts; 9.1 Vice-Ministers or equivalent posts; 12.1% Directors or equivalent posts; 8.1 Vice-Directors or equivalent posts. In the 1999-2004 term, women accounted for 6.4% of members of provincial/municipal People's Committees; 4.9% of members of district People's Committees; and, 4.54% of members of People's Committees at communal/ward level.

In the field of business and production, women also made up a rather modest official proportion. For instance, in state-owned enterprises, the proportion of women directly involved in leadership and management was 5% of Directors-General, 9.7% of Vice Directors-General (General Corporations 91), 1.7% of Chairpersons of the Management Boards, 2.9% of Directors-General and 1.4% of Vice Directors-General (General Corporations 90).

The proportion of women in the Central Committee of the Communist Party of Vietnam through tenures was 8.21% in the VIIth tenure, 10.58% in the VIIIth tenure, and 8.6% in the IXth tenure. At the Central level, there were women taking spots in leadership of the Party in three tenures (in the VIIIth tenure, there was one woman elected to the Political Bureau; the VIIth and IXth tenures also had female members of the Secretariat of the Central Committee of the CPV).

Still, in the 2001-2005 term, the proportion of women taking spots in provincial/municipal Party Committees and district Party Committees reached 15% or above in nine of sixty-one provinces/cities (in which, Tuyen Quang claimed for 26.67%, Hochiminh city for 19.61%, Son La for 19.10%); ten of sixty-

one provinces/cities had women joined Party Committees at the grassroots level with a rate of 15% or above; while ten of sixty-one provinces/cities had female cadres admitted to Party Committees with a proportion of below 7%, particularly there were two provinces that reached only 4.25% of female cadres involved in Party Committees (in Can Tho and Thua Thien Hue provinces); women in the capacity of members of Standing Committees of provincial/municipal Party Committees accounted for 8.66%, most of these women were appointed to the posts of Chairperson of the Commission for Mass Mobilization or Chairperson of the Commission for Inspection.

With the adoption of Directive 37-CT/TW, there was a substantial increase in the proportion of female cadres working in mass organizations, social-political organizations. As compared to that in state management and Party Committees at all levels, the proportion of female cadres in mass organizations, social-political organizations was much higher. The proportion of female cadres in five mass organizations (the Confederation of Labor, Hochiminh Communist Youth Union, Farmers' Union, Women's Union, Vietnam War Veterans Association) and the Fatherland Front were follows: at the Central level, 33.33% for Chairpersons, 25.28% for Vice-Chairpersons, 29.60% for members of Presidiums or equivalent posts, 29.91% for members of Executive Committees, 25% for Directors of Departments or equivalent posts, 39% for Vice-Directors of Departments or equivalent posts; at the provincial/municipal level, 31.58% for Chairpersons, 29.05% for Vice-Chairpersons, 36.42% for members of Standing Committees, 32.86% for members of Executive Committees. The proportion of

women in leadership of the Vietnam Fatherland Front and three mass organizations (General Confederation of Labor, Hochiminh Communist Youth Union, and Farmers' Union) were as follows: at the Central level, 25% for Chairpersons, 8.30% for Vice-Chairpersons, 20.37% for members of Presidiums or equivalent posts, 17.25% for members of Executive Committees, 14.86% for Directors of Departments or equivalent, 28.44% for Vice-Directors or equivalent posts; at the provincial/municipal level, 10.92% for Chairpersons, 16.15% for Vice-Chairpersons, 15.04% for members of Standing Committees, 19.53% for members of Executive Committees. In the judicial body system, the proportion of female cadres was lower as compared with that of their opposite sex counterparts and very few women holding key spots. For instance, in 2001, female judges in the People's Supreme Court made up 22%; while the figure of female judges was 27% in provincial courts and 35% in district courts. This was a limitation for women in enforcing the right to equality with men in safeguarding public order and social justice, especially in defending their rights and interests in proceedings and trials before the court. However, work of judges is of a unique character, which can not be done by all ordinary people. Thus, in order to become a judge, a woman must have as an equal legal background and professional skills as a man does. The existing legislation gives no preferential standards to women in appointing them as judges. Due to a limited number of women in judicial bodies and other procedures-carrying organs, women themselves have limited opportunities and conditions to protect the rights and interests of the same sex persons. Women face unavoidable disadvantages as a result of

gender prejudices and inconsistent psychology, inevitably in the civil, marriage and family fields. This poses a demand for more efforts dedicated by women themselves in order to have more women being appointed as judges to protect their own rights and interests.

Through the above analysis and peculiar statistics as regards the system of legal documents and policies on the fulfillment and implementation of the right to participation of women in our country after acceding to CEDAW, we can be proud that though we are still facing difficulties, the country remains at low development level, as compared with other countries in the region and the world we have safeguarded rather well the right to participation of women, confirming the highly democratic character of the Vietnamese society. Concurrently, we can affirm the steadfastness and character of Vietnamese people that we have been striving for the betterment of our commitment with the international community in protecting women's human rights. This is a key when we are in steep integration into the regional, international and world community.

We frankly, however, concede that there remain obstacles in ensuring the fulfillment of the right to participation of women. Law is of direction character, but more than that it must present enforcement nature, which is recognized by practicability and severity of sanctions enunciated in legal normative documents.

3. Some observations and recommendations

Having discussed the aforementioned documents, it can be said that the law on political rights in general and the right to participation of women in particular has

advanced one more step. Political rights of women are more specifically prescribed in legal normative documents of the State. Nevertheless, one weak point of the law on political rights of women is that most of provisions enunciated in the Constitution and the above-mentioned legal documents are of general character, referring to citizen's rights; while specific regulations on political rights of women are stated in by-law documents. Furthermore, legal provisions are deeply imbued with direction character and contain no remedy or concrete sanctions aimed at ensuring their enforcement in reality. This causes legal documents to hardly enter into practice, and to have less practicability. Thus, participation of women in the political and public life of the country is limited. Through the above analyzed statistics, generally, the proportion of women engaged in leadership, management though has increased both in terms of quality and quantity, the real digit only accounted for more than twenty percent (except some provinces reached over thirty percent) as compared with the goal set forth for popularly elected bodies and government agencies.

As such, what is the reason causing less participation of women in leadership and management, not commensurate with their potential while the Party and State have adopted numerous directions, policies and laws concerning political rights in general and the right to participation of women in particular? Reasons, among others, from the legal perspective include:

Firstly, reviewing and codifying legal documents relating to women's rights in general and political rights of women in particular is not done regularly and efficiently. Hence, a number of legal

provisions on women, not commensurate with the reality, are not yet abolished. Concurrently, some by-laws are not synchronized and inconsistent with laws, triggering difficulty in implementation. Reviewing legal documents is even more nettlesome in localities. In 2003, the Government issued the Decree 135/2003/ND-CP of 14 November 2003 as regards reviewing and handling legal documents. This is a correct policy that needs to be seriously implemented because in the past we "ran to produce documents" without thoroughly taking into account the overlapping or even conflict between legal documents and provisions, making our legal system excessively expanded but less effective and impracticable in respect of content. Some said that our legal documents were similar to curricula, which are general and deeply imbued with theoretical nature.

With the adoption of the Government's Decree, though initial achievements have been obtained, in the recent interview, Mr. Dinh Trung Tung, Vice-Minister of Justice said: "... there remain many shortcomings. In many localities, ministries and sectors at the central level, a wide range of documents, particularly those providing guidelines for implementing laws and ordinance passed by the National Assembly, documents issued by the Government are in conflict one with another, overlap and even contravene rules set forth in documents promulgated by the higher level. In the meantime, results achieved in checking, reviewing and handling documents contrary to laws are limited in many places, hardly meeting requirements". It can be said that in the present context and the time to come, more laws, by-law documents are to be passed in order to follow rapid developments in our

country. Thus, should the reviewing of legal documents is not quickly and seriously exercised, it is more difficult in bringing into full play involvement of all social strata, including women.

Secondly, the national law does not keep pace with the international law, especially in the field of political rights of women. Non-ratification of the Convention on Political Rights of Women 1952 (the Convention 1952), to somewhat, impacts the promotion of the role and status of Vietnamese women in the international arena. As regards this matter, there are different points of view. Some questioned the necessity of acceding to the Convention 1952 when we already ratified CEDAW, a more progressive and all-embracing instrument as compared with the Convention 1952. It is exclusively included that our laws also contain provisions comparable with the Convention 1952. Actually, should we compare our country's legal provisions with almost other basic international human rights instruments, including CEDAW; one can say that there is nothing new for us from those international instruments. Nevertheless, the matter lies in that once we have acceded to or ratified an international instrument; we express our commitment with the international community to fulfill obligations arising from such instrument. Additionally, it serves as a benchmark or an "evidence" for our action.

Based on the ground of the above-mentioned situation and causes, with a view to further bringing into play the right to participation of women in general, it is mandatory for us to take into account and boost prompt exercise of the following undertakings:

First, on 21 November 2006, the National Assembly passed the Law on Gender

Equality. It can be said that this is a success of gender equality in our country, at the same time a manifestation of another political will of the Party and State in materializing our commitment to ensure the rights and interests of women. It should be admitted that the adoption of this law is not a breakthrough turning point, but a continuing action and persistent policy of the Party and State of Vietnam towards the advancement of women which is concretized by a specific legal document. Nevertheless, it is noteworthy that we now have for the first time a peculiar law on women, safeguarding all-around and full participation of women in the development mainstream of the country. Hence, in order for this law to be substantively implemented, immediately after the closing of this session of the National Assembly, it is imperative to enhance steep and extensive publicity of this law at all levels, in every sector and circle, making all persons get familiarized with the spirit and content of the law. And, once the Law on Gender Equality has entered into force, it is necessary to set up a mechanism to monitor the enforcement; concurrently, relevant bodies need to review and assess whether the law's content is practicable, otherwise if necessary, appropriate amendments shall be made.

Second, in parallel with translating the Law on Gender Equality into reality, it is necessary to boost in a more potent and resolute manner reviewing and codifying legal documents. It can be said that in addition to the Constitution, the Law on Gender Equality keeps a key part in safeguarding women's rights. Any legal provision overlapping or contravening the Law needs to be abolished in order to ensure consistency, avoiding the situation where by-law documents are more

effective than regulations enunciated in laws. In the process of reviewing and codifying legal documents, it needs to provide training and improve the qualification of legal professionals. This work must be urgently and constantly carried out.

Third, incentive policies should be adopted to support women's participation in leadership and management, such as remunerations, subsidies, family services, with a view to emancipating women from house-core occupation and encouraging them to proactively participate in the public work. The reason for needing such policies is because a common thinking of women is that they "only need to take care of their families and children", and that "it is not their turn to be promoted as leaders or managers, men take all". The exercise of the above-suggested policies will be a momentum to mobilize and bring into play strength of many women, and overall to make full use of participation and contribution of all members of society to the common development drive of the country.

Fourth, laws and policies on ethnicity adopted by the Party and State are rather comprehensive and all-embracing. In the past time, based on conditions and capacity of ethnic minority compatriots, we have safeguarded efficiently participation of ethnic minorities, including ethnic minority women, in the development life of the country. However, participation of ethnic minority women is still limited both in terms of quantity and quality. So as to gradually improve the situation, it is necessary to adopt separate policies in order to ensure participation of ethnic minority women. For instance, the Party and State promulgate policies giving priority in education to ethnic minority girl children and women for their

entry in nominated-schools, or providing preferences as regards criteria for acceptance into school or entrance-exams as well as certain subsidies applicable to these target groups. Still, in exercising grassroots democracy, it needs to adopt specific regulations aimed at advocating for participation of ethnic minority women in planning, decision-making at their village level.

Safeguarding participation and the right to participation of women is pivotal, demonstrating the society's appreciation of the role and status of women. It was significantly concluded by the first President of Tunisia, Habib Bourguiba, that "a country can not develop without enhancing the social status of women". The progress and participation of women in all aspects of the public life, particularly in governance, is a benchmark of the development level, extent of democracy of a society. This is a message, which all state parties of CEDAW are called upon to look up and complies with the goal and commitment of our Party, State and people of making our "country strong with a prosperous people and a just, democratic and civilized society".

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