
The Law on Domestic Violence and Its Practice in Taiwan

by

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Abstract: Taiwan enacted the Domestic Violence Prevention Act (hereinafter DVP Act) in June 1998 and became the first country in Asia to give comprehensive legal protection to battle and prevent domestic violence. As the first Asian country to enact a special law to provide substantive and procedural protection to combat domestic violence, Taiwan's experience of implementation of the DVP Act is precious for concerned observers. This paper reviews the history of the enactment of the DVP Act as well as the debate during the process of its revisions. It also discusses the various measures established by the DVP Act and the most recent development of legal reform. The DVP Act in Taiwan has created preventive, protective and remedial measures for victims, in addition to the punishment and treatment of perpetrators. After twenty years of legal implementation, the ideology embedded in traditional Chinese culture, which regards domestic matters as private business and shall be excluded from public scrutiny, has gradually been transformed. In conclusion, this paper argues that the next endeavor shall address the underlying causes of gender-based violence against women. Comprehensive preventive measures shall be adopted, which shall include but not be limited to the improvement of women's inequality in the family and in the workplace, awareness-raising programs that promote an understanding of domestic violence as unacceptable and harmful, as well as the adoption of effective measures to encourage media to eliminate harmful and stereotypical portrayal of women.

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Introduction

Taiwan enacted the Domestic Violence Prevention Act (hereinafter as DVP Act) in June of 1998 and became the first country in Asia to give comprehensive legal protection to battle and prevent domestic violence (Chen 2010: 187; Lin 2018: 1591). Similar to other cultures in the world, the patriarchal Chinese tradition used to deem violence in the family as a family matter and was excluded from the state's scrutiny and intervention. Before the enactment of DVP Act, the laws gave victims of domestic violence access to legal remedies aftermath in a civil suit, filed for a divorce, or filed assault complaints pursuant to the criminal procedure. However, the enforcement of such law was hamstrung by the traditional ideology of "family domain shall be free from the legal intervention (法不入家門)" and "even an upright official finds it hard to settle a family quarrel (清官難斷家務事)" (Chen 2013: 45). The family was for hundreds of years a law-free zone in Taiwan, which left victims of domestic violence helpless and powerless.

Two tragic incidents in the 1990s had finally raised public awareness of the need to establish a legal mechanism to protect women against domestic violence. The first incident took place in 1993, when a battered woman, Ju-wen Deng, hammered, and stabbed her husband during his sleep. Deng was raped multiple times in her teens by her neighbor, A-chi Lin, who also raped her mother ten years earlier. Lin threatened to kill Deng and the members of her family in order to keep her a sexual captive. She fled several times but Lin forced her to go back to him by beating her parents. Law enforcement chose to look away; friends considered this as a lovers' quarrel and encouraged Deng to marry Lin to settle it. The beating did not stop after they got married. Lin even tried to kill his two sons by putting one of them on the top of the van while driving and pressing the head of the other into the washing machine. Lin also attempted to rape Deng's two younger sisters and tried to hurt her brother by acid attack. On October 27, 1993, Deng hammered Lin's head while he was in deep sleep and stabbed him 15 times all over his body. The death of Lin became known to the public after she turned herself in the next morning (Kao 2007: 161-162). The women's activists were shocked by the news and organized a group of female lawyers to represent her in the trials. The lawyers helped Deng successfully get her sentence reduced to the imprisonment of three years in the appellate court.

The second incident was the death of Wan-Ju Peng, a women's rights activist who worked as the head of the Department of Women's Affairs in the Democratic Progressive Party (DPP) (Chang & Wu 2016: 153). She was passionate about putting a 1/4 quota mandate in the nomination rules of DPP and busy at lobbying the party representatives before the national convention was convened. On December 3, 1996, she was found dead four days after she left a hotel at midnight where she lobbied other DPP members to vote for her proposal.

She was brutally murdered allegedly by a taxi driver who was to this date never found. Women's activists were furious by her tragic death and hold a memorial parade called "fireflies at night" demanding the government to take action to combat various forms of violence against women. The two incidents finally made the issue of women's personal safety a priority on the political agenda. The women's

groups in Taiwan therefore vowed to enact laws to protect women from various forms of violence based on sex, which include sexual assault, sexual harassment, and domestic violence. These laws were enacted consecutively and are currently called “three laws on prevention of violence against women” (防暴三法, hereinafter as “3 laws on PVAW”).

The Enactment and Revision of the Domestic Violence Prevention Law

It was under such a political atmosphere that the DVP Act was drafted and enacted. Inspired by Deng’s incident, in 1994 the Awakening Foundation began to research the relevant laws in other jurisdictions such as Hong Kong, the United Kingdom, and the United States as references for Taiwan’s DVP Act. In 1996, the task of drafting was taken over by the Modern’s Women’s Foundation (MWF).

A drafting committee comprised of 40 judges, battered women’s advocates, attorneys, and other professionals was formed after the members of the MWF visited San Francisco, Los Angeles, and Seattle to understand how the DVP laws mechanism were designed and enforced in the United States.

The drafting committee decided to take the “Model Code on Domestic and Family Violence”, which was published in 1994 by the National Council of Juvenile and Family Court Judges in the United States as its fundamental model (Kao 2007: 63-64). The drafting work was based on a draft written by a female judge, the Honorable Feng-Hsian Kao, and also considered relevant laws in Australia and New Zealand.

The committee was then divided into task force groups which were responsible respectively for four different subjects: civil liability, penal punishment, domestic affairs, and prevention services. These four parts later became the major parts of the DVP Act. The drafting committee hold over 20 meetings and three public meetings before it published its final draft in September 1997. The draft was finally passed in May 1998 after months of partisan negotiations (Kao 2007: 64).

The 1998 DVP Act was a political compromise, the implementation of which was unsatisfactory for the battered women’s advocates. A coalition, “Coalition of Revision of DVP Act”, was therefore established in January 2001 to perfect the DVP Act. It was formed by a few women’s rights groups aimed at revising the 1998 DVP Act (Kao 2007: 64-65). The draft of the new law was finished and submitted to the parliament in 2003. In August 2004, yet another broadened coalition was formed, “Coalition of Lobbying the 3 Laws on PVAW”, the name of which was later changed as “Coalition of PVAW”, to facilitate the work of parliamentary lobbying.

The revision was successfully passed in March 2007, six years after its revision initiative action. In the following years, the DVP Act had undergone several revisions to improve the scheme or measures which would be more closely tailored to Taiwan’s circumstances (Chen 2010: 191).

Taiwan's Domestic Violence Prevention Measures

The Scope of Family Members

It is renowned that Taiwan's DVP Act not only protects heterosexual couples but also includes same-sex couples as protected subjects as early as in 2007, twelve years before same-sex marriage was legalized. Since domestic violence was defined by law as violence against "family members", it is crucial to identify the scope of the family members in law. Article 3 of the DVP Act stipulates that family member defined in this Act includes the following members and their minors: (1) spouse or former spouse; (2) persons with an existing or former cohabitation relationship, a relationship between a householder and household members or a relationship between household members; (3) persons with an existing or former relationship between lineal relative by blood or lineal relative by marriage; or (4) persons with an existing or former relationship between collateral relative by blood or collateral relative by marriage within four degrees of kinship. In 2007, the legislators adopted the term "cohabitation relationship" to replace the original "*de facto* matrimonial relationship" in Paragraph 2. The Coalition of PVAW criticized that some judges refused to issue a civil protection order to victims who suffer violence from her or his cohabiting couples because they considered the term *de facto* matrimonial relationship rather narrowly (Kao 2011: 53). The adoption of the term cohabitation relationship intended to include any intimate relationship with cohabitation fact. It therefore can be interpreted to include same-sex cohabiting couples (Kao 2011: 6, 55; Lin 2018: 1596).

In 2015, the scope of protection further extended to an intimate relationship that does not fulfill the requirement of cohabitation. The revision of 2015 added Article 63-1: if the victim is over the age of 16 and has been subjected to an illegal physical or mental infringement by a current or former partner in an intimate relationship who does not live with the victim relevant provisions shall be applied *mutatis mutandis*. As a result, the victim who only has an intimate relationship but does not live with the abuser can file for a civil protection order and be protected by the DVP Act.

Civil Protection Orders

The DVP Act in Taiwan also stands out for its comprehensive measures permitted in the civil protection order (Lin 2018: 1599-1600). Although judicial preventive order was commonly adopted in common law countries, at the time when the DVP Act was enacted, it was rarely seen in the Continental law system (Kao 2011: 64). Under the current DVP Act, the civil protection orders provided by Article 14 include (1) enjoining violence order: the order prohibits the defendant from committing acts of domestic violence against the victim or any child, youth, or specific family member that witnessed the domestic violence; (2) no-contact order: the order prohibits the defendant from committing any act of harassment, contact, stalking, communication, correspondence or other unnecessary contacts with the victim or any child, youth or specific family member that witnessed the domestic vio-

lence; (3) kick out order: the order demands the defendant to relocate from the place of domicile or residence of the victim or any child, youth or specific family member that witnessed the domestic violence and, if required, prohibit the defendant from any use, collect benefits or disposition of its real property; (4) stay away order: the order demands the defendant to maintain a specific distance from the following locations, which include the place of domicile or residence of the victim or any child, youth or specific family member that witnessed the domestic violence, their school, workplace or other specific location that they frequent; (5) property possession order: the order determines the right to use any vehicle, motorcycle or other necessities of personal life, profession or education and, if required, order the handover thereof; (6) temporary custody order: the order makes temporary rulings about the exercising the rights and assuming the duties in regard to minors, ordering the contents and manner to be fulfilled, exercised or performed by one or both parties in a joint manner. It can also order the delivery of children if required; (7) temporary visitation order: the order fixes the time, location and manner for defendant's meetings with minors and, if required, prohibit such meetings; (8) rent or child support order: the order decrees the defendant to pay rental for the victim's place of domicile or residence or the living expenses of minors; (9) damage compensation order: the order decrees the defendant to pay expenses for the medical care, assistance, shelter or property damage of the victim or specific family member; (10) batterer treatment program order: the order demands the defendant to complete an offender treatment program; (11) attorney fees order: the order decrees the defendant to bear certain attorney's fees; (12) confidentiality of information order: the order prohibits the defendant from viewing relevant information concerning the household registration, school registration or source of income of the victim and the minors under the victim's temporary custody; and (13) other orders: other orders are allowed to be issued if it is deemed required for the protection of the victim or any child, youth or specific family member who witnessed the domestic violence.

There are three types of protection orders. An ordinary order shall be issued after a trial while a temporary protection order or an emergency protection order can be made without a trial. The temporary protection order or an emergency protection order can only contain content of the abovementioned items (1)-(6), (12) and (13) because order contained items (7)-(11) require more cautious deliberation (Kao 2008: 24). Such a wide range of protection orders issued by the court not only intend to promptly prevent victims from repeated offenses but also render the legal remedies to the victims as well as give abuser immediate treatment to prevent a recurrence.

Family courts have been created to deal with domestic litigation and non-contentious cases involving domestic violence (including the issuance of civil protection orders). Victims of domestic violence or child abuse may be accompanied by social workers or psychologists in court, and are entitled to other protective measures. During questioning in court, they are not confronted with the perpetrator, and their identity and place of residence are not disclosed, to ensure fair treatment for women in court (ROC 2013: 22).

Criminal Procedure

Under Taiwan's DVP Act, if an act of domestic violence also constitutes another criminal offense such as criminal assault or attempted murder in the Penal Code, such an offense can be considered "a criminal offense of domestic violence" as defined in Article 2, paragraph 2: "a criminal offense stipulated by another law due to an act of domestic violence committed in a willful manner against a family member". In addition, according to Article 61 the breach of a protection order with the content of enjoining violence, no contact, moving out, staying away or batterer treatment is also deemed as a criminal offense. If an offender commits one of the aforementioned offenses, a few special measures will thus be allowed in order to protect victims. Firstly, the perpetrator may be arrested without a warrant where there is a danger of continuous infringements upon the victim's life, body, or freedom. Also, the perpetrator can be detained if the judge determines there is evidence that justifies concern over repeated offenses of such acts. Thirdly, if the detention is not deemed necessary, the perpetrator shall be released on bail, to the custody of another, with a limitation on his residence restriction or be released. The judge may thus issue the order of enjoining no contact, moving out, staying away, or other necessary action or inaction the judge deems fit to ensure the victim's safety, as a condition of the perpetrator's release. Finally, each district prosecutor's office has assembled a Women and Child Protection Unit dedicated to handling cases of domestic violence. Furthermore, the Taiwan High Court Prosecutor's Office has also assembled a Supervisory Panel for Women's and Children's Cases to supervise local offices.

Prevention and Treatment

The DVP Act not only stipulates punishment and civil remedies to address the infringement of the victim's life, body, and liberty, it also establishes a prevention mechanism and network to provide prevention services. Firstly, the DVP Act mandates the municipal governments to set up "Centers for Domestic Violence Prevention" (DVP Center). A DVP center at the municipal level consolidates manpower and resources of different authorities such as police, education, health, social policy, civil administration, household registration, and labor and news departments and agencies.

The single-window service of the DVP center provides 24-hour emergency rescue service, financial aid, legal services, education services, shelter placements for the victims, physical and mental treatment, counseling as well as batterer treatment and follow-up assistance (ROC 2013: 21).

Secondly, a 24-hour "113 women and children's hotline" on January 13, 2001, and the "0800-013-999 male-care hotline" were installed in June 2004, to provide care, support, counseling, and referral service for specific issues and needs" (ROC 2009: 235-236). Thirdly, in order to assist victims of domestic violence to cope with their financial difficulty, various subsidies can be issued to victims, including, for instance, litigation and attorney's costs, housing rental, medical costs. A business start-up loan program, the "Free and Young Program", was created in 2002 to help women, especially battered women to start up their own business in order to

live a life with financial independence. It also provided free training opportunities to victims of domestic violence and guidance plans after the business start-up (ROC 2009: 202). Fourthly, local police departments have assembled their teams of specialists to handle incidents of domestic violence. A special position, a domestic violence prevention officer, has been created in each police station to handle cases of domestic violence (ROC 2013: 21).

Special care was provided to migrant women from east-south Asian countries and Mainland China. They were considered the most vulnerable and susceptible to domestic violence as foreign spouses are more likely to be economically or socially disadvantaged. Statistics have shown that foreigners and mainland China residents (including Hong Kong and Macao residents) accounted for 2.66% and 2.39%, respectively, of the total number of domestic violence victims (ROC 2013: 20).

The Domestic Violence Prevention Manual was published in five other languages than Chinese including English, Indonesian, Thai, Vietnamese and Cambodian, which informed foreign spouses that they were entitled to the same protection as ROC citizens in cases of domestic violence (ROC 2013: 26). Meanwhile, subsidies were drawn from the Foreign Spouse Assistance Fund to provide adequate protection for foreign and mainland spouses.

A special hotline (0800-088-885) has been created to help foreign spouses adapt to life in Taiwan (ROC 2013: 21). Incidents of domestic violence or sexual assault will be transferred to the 113 protection hotline or referred to the Domestic Violence and Sexual Assault Prevention Center in the victims area. The “113” hotline also provided simultaneous interpreters for foreign spouses (ROC 2009: 235). The Ministry of Interior promulgated administrative instructions to urge policemen to enhance their awareness and take action to prevent domestic violence (ROC 2009: 236).

The DVP Act has set up offender treatment programs, which include awareness of educational assistance, parenting educational assistance, psychological assistance, psychiatric treatment, detoxification treatment, or other assistance or treatment. Central government agencies have overseen local governments’ efforts in implementing the domestic violence offender treatment program and offering help to people with a history of domestic violence (ROC 2013: 22). In addition to enhancing counseling services offered through a special hotline for men, local governments have also been instructed to work with NGOs to develop services aimed at stopping violent behaviour.

The completion of an offender treatment program or other specific assistance may be ordained by the court as a condition to child visitation or release from detention. If the perpetrator does not receive a treatment program, or if the number of hours received is insufficient, or if the perpetrator fails to comply with the requirements of the treatment program or engages in any conduct of intimidation or violence, the enforcement authority of the offender treatment program shall give notice to the municipal or county (city) competent authority and may also, if required, ask the municipal or county (city) competent authority to coordinate and handle the issue.

Most Recent Developments

The Scope of Services Broadened

As previously mentioned, the DVP Act can apply to both cohabitation relationships and non-cohabiting intimate relationships after revisions in 2007 and 2015. Besides, the scope of issuance of protection orders and other relevant services has been extended to children who witness domestic violence after the revision in 2015. The number of these newly protected victims who report domestic violence incidents emerged after 2015 (Ministry of Health and Welfare 2020). Because the funding and manpower were not increased accordingly, the provisions of services thus encountered resource shortages. Besides, since the application of non-cohabiting intimate relationships in the DVP Act encompasses victims over the age of 16, teenagers who are abused by their partners can also be protected by the DVP measures. However, the current DVP services do not differentiate teenage and adult victims; as a result, the services provided cannot meet the needs of teenage victims. Women's groups thus called for the establishment of a differentiated system to provide services for both teenage victims over 16 years old and adults (Taipei Women's Rescue Foundation 2018: 3).

The Follow-up Measures Based on the Recommendations of International Experts

Although Taiwan cannot be an official party to any human rights treaty, Taiwan has voluntarily complied with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Taiwan after the enactment of the CEDAW Implementation Act (CEDAWIA) effective in 2012. Taiwan has established an innovative and unique state reporting mechanism to monitor state implementation of human rights treaties since 2013. The reporting and reviewing process followed the procedure and guidelines developed by the UN reporting system but the review committee is formed by international human rights experts. Instead of submitting the state report to the treaty bodies in the United Nations, the Taiwan government had formed an *ad-hoc* review committee domestically by inviting independent experts who had human rights expertise and experience from overseas (Chen 2018). The reporting obligation is explicitly mandated in Article 6 of the CEDAWIA. Pursuant to the CEDAWIA, the government has undergone two rounds of review for the CEDAW state reports respectively in 2014 and 2018 (Kuan forthcoming). The implementation of the DVP Act was a constant concern for both the review committee and the NGOs. In the Concluding Observations and Recommendations (COR) made by the review committee, the independent experts had paid attention to the following issues: (1) the prolonged procedure of issuance of protection orders: the average waiting period before a temporary protection order is issued is 25.27 days, and 48.87 days before an ordinary protection order is issued (Paragraph 2.27, the Third CEDAW Report). The review committee, therefore, expressed its concern that protection orders are not issued promptly and urged the court to ensure that protection orders are timely issued as provided by the law (Point 18, COR of the Second CEDAW Report) (CEDAW Review Committee

2014: 8); (2) the protection services provided for victims of disadvantaged status: the review committee expresses its concern on the persistence and high prevalence of domestic violence against marriage immigrants (Point 18, COR of the Second CEDAW Report). The review committee also recommends the government to systematically collect statistical data on all forms of violence against women and specifically mentioned that the data shall be disaggregated by gender, age, disability, and ethnicity (Point 29 (e), COR of the Third CEDAW Report) (CEDAW Review Committee 2018: 8); (3) insufficient acknowledgment of domestic violence as gender-based: the review committee had expressed concerns with the reportedly high number of justice system professionals that do not recognize domestic violence as a gender issue (Point 28, COR of the Third CEDAW Report) (CEDAW Review Committee 2018: 8). It also urged the government to emphasize in law and relevant measures that domestic violence is gender-based violence against women, which has been specified in CEDAW's General Recommendations (GR) No. 19 and No. 35. The follow-up meetings had been held in order to find solutions to address the above shortcomings and issues. It still needs further observations to monitor whether the different competent authorities can work hand-in-hand to propose the best plans to solve these problems before the next round of state report in 2020.

The Thorough Examination of the Current DVP Structure

According to Article 8 of CEDAWIA, the government should assure all laws, regulations, and administrative measures are in accord with the CEDAW provisions as well as the interpretations made by the CEDAW Committee in the UN. The government is also obliged to revise or abolish laws, regulations, and measures which are found contradictory to CEDAW. The government thus had undergone two rounds of a thorough examination of norm-congruency on laws, regulations, and measures in order to abide by the legislative obligation respectively in 2013 and 2017. In the last two rounds, there were no laws, regulations, and measures related to domestic violence protection found contradictory to CEDAW and its general recommendations. The third round of examination was launched in September 2020, with an execution period of one year. The purpose of this round of examination is to check if there are any laws, regulations and measure incongruent with the latest GRs, i.e., GR No. 34 to GR No. 37. Since GR No. 35 focuses on gender-based violence against women, it can be properly anticipated that the whole legal scheme of domestic violence protection will be put under scrutiny. It was already suggested in the COR of the third CEDAW report that the DVP Act be amended to specify that domestic violence is gender-based violence against women in order to comply with the CEDAW Committee's GR No. 35. It is fair to say that revision of certain provisions in the DVP Act is foreseeable.

Conclusion

As the first Asian country to enact a special law to establish substantive and procedural protection on domestic violence protection, Taiwan's experience of implementation of the DVP Act is precious for concerned observers. Although some may criticize that the transplanted mechanism from the West was foreign to

the local society and resulted in a discrepancy between law and enforcement (Huang et al. 2014: 272-273), the ideology embedded in the traditional Chinese culture, which regards domestic matters as private business and shall be excluded from public scrutiny, has gradually transformed after twenty years of legal implementation. The 113 hotline service has become widely known among Taiwanese people, including children and migrant women; resources and manpower have been allocated in protection, remedies, and treatment of victims. However, the prevalence of domestic violence is still high in Taiwan. Also, victims with particularly disadvantaged social conditions, for example, women with disabilities and older women, are constantly overlooked. In conclusion, I argue that the next endeavor should address the underlying causes of gender-based violence against women. The persistently high rate of domestic violence incidents reflects the fact that gender stereotypes and misogyny continue to perpetuate Taiwanese society and family. The focus should be put on the work of prevention. Comprehensive preventive measures should be adopted, which should include but not be limited to the improvement of women's inequality in the family and in the workplace, awareness-raising programs that promote an understanding of domestic violence as unacceptable and harmful, as well as the adoption of effective measures to encourage the media to eliminate harmful and stereotypical portrayal of women.

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