

2020

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Recommended Citation

Yang, Hao and Yuan, Feng (2020) "Imbalanced Progress on the Implementation of Anti Domestic Violence Law in China," *Human Rights Brief*. Vol. 23 : Iss. 1 , Article 7.

Available at: <https://digitalcommons.wcl.american.edu/hrbrief/vol23/iss1/7>

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Imbalanced Progress on the Implementation of Anti Domestic Violence Law in China

by Hao Yang and Feng Yuan*

BACKGROUND

Official statistics from the All-China Women's Federation (ACWF) in 2011 show that 24.7 percent of married women in China have suffered at least one form of domestic violence (DV) from their husbands in their marriage.[1] The prevalence rate is believed to be underestimated, as this case only covers DV in marital relations. In a regionally sampled study,[2] thirty-nine percent of Chinese women reported they experienced violence from their current or former intimate partners.

After more than a decade of advocacy by NGOs and women activists, China's national Anti-Domestic Violence Law (DV Law) finally came into effect in March 2016. For the first time, China's law now emphasized the state's obligation to address DV issues and provided a legal framework for DV prevention, justice, and service provision for DV victims.

This law defines DV as the "infringing of physical, psychological or other harm by a family member on another by beating, trussing, injury, restraint and forcible limits on personal freedom, recurring verbal abuse, threats and other means." [3] The definition covers not only marital relations but also cohabitating partners and family members. The DV law also highlights special protection for DV victims who are minors, the elderly, the disabled, pregnant and lactating women, and seriously ill patients.[4] In addition, the law has stipulations on restraining orders, warning letters, and conditional mandatory reporting to help provide better protection for victims and people affected by DV.

However, this law provides a relatively narrow definition of DV and it does not include sexual violence and economic control, which are equally prevalent forms of DV.[5] The DV law also clearly excludes violence

against former spouses and intimate partners who are not living together, and it is ambiguous whether the law is applicable to same-sex partners or not.

Since the enactment of the DV law, NGOs in China have played a very proactive role in supporting its implementation. On the other hand, China's government responded at a comparatively slower pace to the need for improving the quality of implementation of the DV law, such as strengthening the capacity of law enforcers. Other stakeholders like employers have remained unaware of the DV Law and their responsibilities for preventing and addressing the impact of DV in the workplace even though the DV law states that employers should take anti-DV actions.[6]

WOMEN'S ORGANIZATIONS' EFFORTS IN PROMOTING THE IMPLEMENTATION OF DV LAW

Women's organizations are the most active actors for implementing the DV Law, particularly NGOs that focus on gender-based violence. They have conducted evaluations of the implementation of the DV law on various scales. For example, Beijing Equality,[7] which was co-founded by one of the co-authors of this article, has developed four evaluation reports regarding implementation progress of the DV law after one year, twenty months, two-year and four-year points, respectively. Given the absence of an official evaluation from the government, the findings from NGO evaluation reports like this provide significant evidence for advocacy and follow up actions for an improved implementation of the DV Law.

NGOs have also carried out considerable capacity building activities for relevant stakeholders including police, lawyers, social workers, community officials, counsellors, media professionals, as well as peer supporters to strengthen their services provided to DV

victims.

In addition, women's NGOs have been working on DV issues in many marginalized groups, such as disabled women, women living with HIV/AIDS, and LGBTI groups. For instance, Common Language[8] started to pay attention to DV issues of LGBTI groups since 2007 and completed the first study in China on DV implications on LBT women in 2009.[9] Based on DV cases among LGBTI groups, Common Language also conducted thorough analysis of gaps of implementation of the DV law, and barriers LGBTI people face when responding to DV.[10] Women's Network Against AIDS China[11] conducted a survey of the DV Experience of HIV Positive Women and Girls in 2016.[12] The survey shows 47.7 percent[13] of women living with HIV/AIDS experienced at least one type of domestic violence and they encountered substantial difficulties in access to justice and service due to their HIV status, low awareness, lack of enabling environment and existing quality service. NGOs have shared findings and policy recommendations from these studies with representatives from the National People's Congress to call their attention and advocate for future policy change. Several NGOs also carried out sensitization activities for service providers to address DV from a marginalized groups' perspective and built capacity for women living with HIV/AIDS, LGBTI and disabled women on preventing and responding to DV.

PROGRESS MADE BY THE STATE SECTORS IN IMPLEMENTING THE DV LAW

Since the enforcement of the law, several government departments at the national level, such as the Ministry of Justice, Supreme Court, ACWF, and local governments in 24 provinces have promulgated supporting measures to provide implementation guidelines for the DV law.[14] Law makers at the national level and in seven provinces have conducted inspections and field visits to monitor the implementation of the DV Law. [15] By March 2020, the four provinces of Shandong, Hunan, Hubei and Guizhou have enacted their provincial anti-DV Regulations.[16]

An important measure stemming from the new law aims to warn perpetrators and protect DV survivors, resulting in warning letters issued to minor offenders by police in most provinces [17] and protection orders were issued by court in most prefectures during the

past four years. For example, the court had issued 5,749 protection orders in total by December 2019, with 2,004 protection orders issued in 2019, nearly tripling the amount issued three years ago (687).[18] The applicants of the protection orders tend to become more diverse, for example, the Changsha Women's Federation[19] have taken initiatives in applying for protection orders on behalf of female survivors.

Prosecution and detention took place in some provinces and perpetrators have received legal penalties. According to the Supreme People's Procuratorate, 5,134 people were prosecuted for DV crimes in 2016. [20] During their evaluation, Beijing Equality observed 304 media reports of DV incidents, and in 73 of them the police arrested the perpetrator. In some other cases, the court detained perpetrators who violated the protection order.[21]

Local public security bureaus have started to understand more about DV issues and are being more responsive to DV cases than before. More than ten governments at provincial and municipal levels developed concrete measures for police to handle DV cases and issue warning letters.[22] Local Public Security Bureaus in some areas such as Hunan province have also conducted training sessions on DV for police officers.[23]

The state-owned media increasingly covered DV related news and incidents in March and November, during International Women's Day and International Day of Elimination of Violence Against Women. The media reached out to women's organizations more often for information on DV issues and women's organization themselves also utilized social media to raise their voice related to DV issues. Between 2016 and 2018, at least 5,382 pieces of information on DV were published through various news outlets and forty-two percent of them were released by women's organizations.[24]

GAPS IN IMPLEMENTATION OF THE DV LAW

Despite the progress made during the past four years, there are still considerable challenges in effectively implementing the DV Law.

Although local rules of implementation of the DV law were issued at the provincial level and some govern-

ment departments at the national level also promulgated their supporting measures, there is a lack of comprehensive rules or guidance for implementation at the national level, which is needed to clarify detailed procedures, specific responsibilities and division of labor among different government departments for a more coordinated and collaborative response to DV.

Written warning letters against perpetrators as well as protection orders are being issued by the police and the courts in most provinces for a better protection of the victims. However, due to the inadequate awareness and capacity of the police, the potential of the written warning letters has not been fully utilized. For instance, police received 238 DV cases in Dezhou of Shandong province between January to November 2017, but only issued 28 warning letters.[25] Beijing Equality in their evaluation report stated that police officers in many places were still not aware of their responsibilities of issuing written warnings or the procedures.[26] It is not uncommon for police officers to ignore the request from the survivors for issuing warning letters or not to even file their complaints. Unless serious injuries are involved, the police usually refuse to assist the survivors to go to hospital, examine injuries, apply for protection orders on their behalf, or refer them to other available services.

There is also a limited number of issued protection orders. The approval rate of protection orders was sixty-three percent in 2018.[27] According to Beijing Equality's analysis of 560 Written Judgements, the withdrawal rate had reached 21.5 percent in 2018.[28] In addition, because of the conservative definition of DV in the DV Law, the protection order is rarely applicable or available to former partners or divorced couples who may still suffer from incidents of domestic violence. Local government departments and courts lack necessary human resources and expertise to properly implement judicial means, such as issuing the protection order or conducting follow up actions to ensure compliance by abusers and protection of victims. Finally, judges' inadequate understanding of the functions of the orders and procedures necessary for issuing protection orders also contributes to ineffective implementation.

It is still very challenging for the courts to verify the facts of DV due to insufficient evidence. Sometimes when the facts of DV are verified, the custody of the

children is still granted to the perpetrators. Also, the DV Law requires stakeholders, such as trade unions, women's federations, federations of people with disabilities to educate or provide psychological counseling for perpetrators.[29] However, currently there are no such measures taken to rectify perpetrators' behavior and only a few NGOs have provided service for perpetrators.[30]

Although the law offers special protection to some vulnerable people like minors and the disabled, other marginalized groups, such as women living with HIV/AIDS and LGBTI, are still absent from the attention of decision-makers. Based on the DV law, anti-DV practice is no longer limited to married couples and extended to cohabiting partners in some places. However, due to low awareness of this change in the law, stakeholders such as police, village or community committees, and women's federations do not always respond to DV cases in non-marital relationships.

The utilization rate of existing DV shelters is extremely low. According to ACWF, there were over 2,000 shelters available but they only accommodated 149 people in 2015.[31] In addition, many shelters do not meet the needs of DV survivors because they are not well equipped with trained DV practitioners to provide high quality service for victims, such as psychological counselling and legal assistance.

The DV Law encourages multiple stakeholders to collaborate and present a coordinated effort to prevent and respond to DV issues. Concerning the role of key stakeholders, other than governments and social organizations, are listed in the DV Law as one of the players to raise awareness for the public and provide service for DV victims. However, the number of NGOs with a focus on addressing DV is quite limited and most of them are located in urban areas in Eastern and Southern China such as Beijing and Guangdong, leaving other parts of the country in urgent need of anti DV service.[32] Moreover, the anti DV NGOs face challenges of insufficient human resources and funding as well as inadequate technical capacity.[33]

The DV law also identified employers as one of the key stakeholders to prevent and respond to DV's impact in the workplace by educating perpetrators, providing support for DV victims and intervening in ongoing abuses. However, most employers have low awareness



COURT ROOM IN JIANGSU PROVINCE, PEOPLE'S REPUBLIC OF CHINA BY WIKIMEDIA COMMONS USER PTRUMP 16, CC-BY-SA.

of DV, DV law, or their responsibilities for addressing DV in the workplace.[34]

RECOMMENDATIONS ON IMPROVING THE IMPLEMENTATION OF THE DV LAW

Based on the imbalanced progress of implementation of the DV Law and its challenges, NGOs and practitioners urge the National People's Congress to carry out law enforcement investigations, inspections, and issue national level implementation guidelines for the DV law. The definition of DV should include sexual violence, economic control, and DV against a former spouse; elaborate specific procedures for granting protection orders; written warning letters and mandatory reporting; clarify roles and responsibilities among all stakeholders—including the leading agency in facilitating the cooperation among different departments in a coordinated response. It is suggested for the government to address a multi-sector cooperation model explicitly, it should set forth a multi-year anti-DV plan, increase the number of anti-DV projects in government purchased services, support the development of anti DV focused civil society organizations, and regularly monitor and evaluate the anti-DV work and

publish DV related data and information.[35]

Related agencies should also continue to strengthen the awareness and capacity for key stakeholders including police, lawyers, judges, prosecutors, women's federations and service providers on gender equality to handle DV cases and their responsibilities for effective implementation of the DV Law.[36]

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3 [Anti-Domestic Violence Law of the People's Republic of China] (promulgated by the Standing Committee of the Nat'l People's Congress, Dec 27, 2015, effective Mar. 1, 2016), <http://www.lawinfochina.com/display.aspx?id=20841&lib=law&EncodingName=big5> (China).

4 Id. at art. 5 ("The minors, the elderly, the disabled, pregnant

and lactating women, and seriously ill patients suffering domestic violence shall be given special protection”).

5 Sexual violence may include marital rape and harassment, forced marriage, forced pregnancy or abortion, denial of access to sexual and reproductive health information and service and etc. Economic control takes place when one family member deprives the other of her/his access to or ownership of economic resources.

6 Anti-Domestic Violence Law, supra note 3, art. 4 (“The relevant departments of the people’s governments at the county level or above, judicial organs, people’s organizations, social organizations, residents’ committees, villagers’ committees, enterprises, and public institutions shall, in accordance with this Law and relevant laws, effectively perform the anti-domestic violence work”); id. at art. 11 (“Where an employer discovers that any of its employees commits domestic violence, it shall criticize and educate the employee, and effectively mediate and resolve family conflicts”).

7 Beijing Equality was founded in 2014, on the legacy of the Anti-Domestic Violence Network, the biggest Chinese NGO to address DV and gender-based violence issues.

8 Founded in 2005, Common Language is an NGO to protect rights for LBT women/sexual orientation and gender identity and expression minority group in China.

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17 Anti-Domestic Violence Law, supra note 3, art. 16 (“If the circumstances of DV is relatively minor and the perpetrator cannot be given public security management punishment, the public security organ shall give criticism and education or issue warning letters to the perpetrator.”)

18 China Women Newspaper, supra note 16.

19 Changsha is capital city of Hunan Province located in central China.

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21 Feng Yuan & Cao Ningyu, supra note 15.

22 Id.

23 Id.

24 Id.

25 Id.

26 id.

27 Zhang Qing & Feng Yuan, The Role of Protection Orders Needs to Be Fully Utilized: An analysis of 560 Written Judgement -- A Three-Year Monitoring Report on the Implementation of the Anti-Domestic Violence Law of the People’s Republic of China, Beijing Equality (2019), <http://www.equality-beijing.org/newinfo.aspx?id=73> (China).

28 Id.

29 Anti-Domestic Violence Law, supra note 3, art. 22 (“Trade unions, communist youth leagues, women’s federations, disabled persons’ federations, residents’ committees, and villagers’ committees, among others, shall conduct law-related education for perpetrators committing domestic violence, and may, where necessary, provide psychological counseling for the perpetrators and victims”).

30 Feng Yuan & Cao Ningyu, supra note 15.

31 Lian Haiping, Addressing Domestic Violence Needs More Than Just Shelters, China Court (Sep. 13, 2016), <https://www.chinacourt.org/article/detail/2016/09/id/2085710.shtml> (China).

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33 Id. 34 Li Wenfen & Chen Tingting, Impact of Domestic Violence on the Workplace in China, The Asia Foundation (2017), <https://asiafoundation.org/publication/impact-domestic-violence-workplace-china/>.

35 Feng Yuan & Cao Ningyu, supra note 15.

36 Id.