

Reviewing Regulations on Rights of Persons with Disabilities in Vietnam to Advance the Implementation of the Convention on the Rights of People with Disabilities

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Abstract

Viet Nam signed the International Convention on the Rights of Persons with Disabilities in 2007 and ratified it in 2014, recognizing all of the rights of PWDs included in the Convention without reservation. In addition, as a result of member states' commitment, policies and legislation related to PWDs have been adjusted in order to adapt to socioeconomic developments in order to guarantee that PWDs can completely participate fully in society. However, there are relevant legal gaps between the 2010 Law on Persons with Disabilities and the International Convention on the Rights of Persons with Disabilities, particularly, in terms of obstacles, problems, and challenges in implementing rights to education, health care, and vocational training. Through analyzing the barriers, challenges, and legal gaps compared to the International Convention on the Rights of Persons with Disabilities, the article proposes some recommendations to ensure that Viet Nam fully implements its commitments under the Convention.

Keywords: Rights of Persons with Disabilities; CRPD; Persons with Disabilities; Law on Persons with Disabilities

A. Introduction

The National Survey on People with Disabilities 2016 reported the

total of people with disabilities in the entire country is 6,225,519 persons, in which 671,659 children aged 2-17 and 5,553,860 people aged 18 years and older. This number in rural areas is 1.5 times higher than in urban areas.¹ According to the research, “of PWDs aged 2 or older, 17.8% live in multidimensional poor households”². “Households with PWDs are twice as likely to be poor as non-disabled households”³. Therefore, in order to assist PWDs eliminate barriers, access and participation in society, the implementation of State policies and Community assistance are important.

Therefore, on 30 July 1998, the Ordinance on Handicapped Persons was created as the first law in Viet Nam with provisions particularly for PWDs, consisting of 8 chapters and 35 articles. In order to direct the State to encourage and create favorable conditions for PWDs to exercise their political, economic, cultural, and social rights equally, as well as to encourage their abilities to stabilize their lives, fully integrate into the community, and participate in social activities. At the time, in addition to the Ordinance on Handicapped Persons, there were 20 laws with separate provisions related directly to PWDs: Civil Code, Law on Care and Protection Children, Labor Code, Law on Vocational Training, Law on Social Insurance, Law on Health Insurance, Law on Education, Law on Construction, Law on Road Traffic....and over 200 documents guiding the implementation of the Ordinance and laws have contributed to improving the lives of PWDs and changing the social perception of them; create a favorable legal and social environment for PWDs to integrate into the community; encourage domestic and foreign organizations and individuals to participate in assisting PWDs⁴.

On 20 October 2007, Viet Nam signed an accession to the International Convention on the Rights of Persons with Disabilities

1 General Statistic Office of Vietnam, The National Survey on People with Disabilities, 2016, page 15, accessed on 28 May 2022 <https://acdc.vn/uploads/documents/files/5c384680630c1.pdf>.

2 Ibid.,126.

3 Ibid.,17.

4 Report No. 168/TTr-CP dated October 10th 2009 on the Government's Disability Law Project to be submitted to the National Assembly.

(CRPD) on the rights of PWDs, based on the ideology of ensuring the rights of PWDs as well as the current institutions for PWDs. There were total of 13 regulations on the rights of disabled persons were promulgated in relation to communication, sports, tourism, social welfare access and Millennium Development Goals (MDGs) from 2010 to 2013.⁵ Significantly, the National Assembly enacted the Law on Person with Disabilities on 17 June 2010 to replace the Ordinance on Handicapped Persons. This law made a significant milestone in the issue of PWDs, both intellectually and behaviorally. Along with enforcing the Law, Vietnamese government has developed a significant project to assist PWDs from 2012 to 2020,⁶ and for period 2020 to 2030,⁷ and the Community-based social assistance and rehabilitation program for mentally ill, autistic children and mentally disturbed people for the period 2021 – 2030.⁸

On 23 October 2014, at the 8th session of the 13th National Assembly, the President presented a Report on the ratification of the United Nations Convention on the Rights of Persons with Disabilities. The approval of the CRPD by the National Assembly is a step toward completing the requirements for Viet Nam to become a member of the Convention. The National Assembly of the Republic of Viet Nam passed Resolution No. 84/2014/QH13 on 28 November 2014, ratifying the United Nations Convention on the Rights of Persons with Disabilities. On 5 February 2015⁹, the Convention went into effect. In particular, when ratifying the CRPD, the Government proposes that no provisions of the Convention be reserved and that the

5 VietNamNet News, “Báo VietnamNet,” VietNamNet News, accessed May 28, 2022. <https://vietnamnet.vn/en/vietnam-set-to-ratify-convention-on-disabled-rights-E94215.html>.

6 Prime Minister, Decision No.1019/QĐ-TTg dated 05 August 2012 on approval of the scheme for helping the disabled in the 2012 - 2020 period

7 Prime Minister, Decision No. 1190/QĐ-TTg dated 05 August 2020 on approval of the scheme for helping the disabled in the 2020 -2030 period

8 Prime Minister, Decision No. 1929/QĐ-TTg dated 25 November 2021 on approval of the program

9 National Assembly, Resolution No. 84/2014/QH13 dated 28 November 2014 on ratifying the United Nations Convention on the Rights of Persons with Disabilities.

petition be declared as regards: “The Socialist Republic of Viet Nam declares to recognize and protect the rights and interests of PWDs in accordance with applicable legal in all areas in the same situation as persons without disabilities”¹⁰. Ratification of the Convention by the National Assembly by an absolute vote and without reservation of any of the Convention's articles, acceptance of the constraints of properly implementing member states' commitments, preparation of the ground for strengthening dialogue on human rights and exchanging human rights information with other countries and international organizations. It demonstrates commitment to Viet Nam's strict regulations on protecting and promoting development for the benefit of PWDs. Contemporary, Viet Nam's ratification of the CRPD marked a significant milestone in human rights enforcement, enhancing Viet Nam's reputation in human rights enforcement by absorbing the recommendations of the United Nations' specialized committees, monitoring the implementation of human rights conventions by member states¹¹, and demonstrating Viet Nam's strong political commitment to being willing to confront obstacles that prevent separating PWDs from approach to property rights.

Regarding reviewing the assessment and review the legal frameworks on persons with disabilities in Vietnam in comparison with the CRPD, there were many research articles such as journal articles or reports such as: Bogenschutz et.al., (2016),¹² UNFPA (2011),¹³

10 Quynh Hoa, Giang Nguyen (2015), “*Submit to the National Assembly for ratification of two United Nations Conventions*”, <https://congly.vn/thoi-su/thoi-cuoc/trinh-quoc-hoi-phe-chuan-hai-cong-uoc-cua-lien-hop-quoc-66370.html>

11 The Committee on the Rights of the Child (CRC), CRC/C/VNM/CO/3-4, khoản 56.

12 Matthew Bogenschutz, Hyojin Im, & Annie Liang, “Ecological Model of a Good Life for People with Disabilities in Vietnam,” *Global Social Welfare*, 3:243–254, 2016.

13 United Nations Population Fund, *People with Disabilities in Vietnam: Key findings from the 2009 Viet Nam Population and Housing Census*, Ha Noi: UNFPA, 2011.

Palmer, M., et.al., (2015)¹⁴ L. B., Hong, K. T., & Vinh, N. D (2008),¹⁵ Minh, H. B., et.al., (2014).¹⁶ Currently, the Report on Reviewing Vietnam's Law on Persons with Disabilities in comparison with the Convention on the Rights of Persons with Disabilities and International Best Practices (2020) was one of the research article published by the UNDP analyzed the current gaps of Vietnamese laws in comparison with CRPD but with recommendations from international practices. But it may not examine how those recommendations can work well in specific social economic conditions of Vietnam.¹⁷

However, it is likely that the number of the research studies are primarily concerned with the rights of persons with disabilities in Vietnam, as well as the rights of persons with disabilities in various social aspects. However, it is crucial needs for Vietnam to review the rights of persons with disabilities under right-based approach in progress of reforming the current legal system of Vietnam toward a rule of law state.

Based on an examination of the gaps and weaknesses in the research state of relevant scientific publications, "Reviewing Regulations on Rights of Persons with Disabilities in Vietnam to advance the implementation of the Convention on the Rights of People with Disabilities " is a thorough and in-depth research of the rights of per-

14 Palmer M, Groce N, Mont D, Nguyen OH, Mitra S, "The Economic Lives of People with Disabilities in Vietnam," PLoS ONE 10(7): e0133623, 2015.

15 L. B., Hong, K. T., & Vinh, N. D., "People with Disabilities in Vietnam: Findings from a Social Survey at Thai Binh, Quang Nam, Da Nang and Dong Nai," *Semantic Scholar*, 2008.

16 Minh, H. B., Giang, K. B., Liem, N. T., Palmer, M., Thao, N. P., & Duong, L. B., "Estimating the extra cost of living with disability in Vietnam," *Global Public Health*, Vol. 10, No. S1, S70–S79, 2015, <http://dx.doi.org/10.1080/17441692.2014.971332>

17 United Nations Development Program in Vietnam, Report on Reviewing Vietnam's Law on Persons with Disabilities in comparison with the Convention on the Rights of Persons with Disabilities and International Best Practices, 2020, https://www.vn.undp.org/content/vietnam/en/home/library/democratic_governance/reviewing-vietnam-law-on-persons-with-disabilities-in-comparison-with-the-convention-on-the-rights-of-persons-with-disabilities-and-international-best-practices.html on 28 May 2022.

sons with disabilities under Vietnamese law provisions, analyzing accomplishments in safeguarding the rights of persons with disabilities in Vietnam from the perspectives of society and the legal system. After that, it is feasible to examine the legal gaps between Vietnamese law and international law and provide recommendations to enhance both the provisions of the law and their practical execution. This is considered vital analysis because it addresses an urgent need in the framework of Vietnam's current integration and equitable growth.

B. An Overview of the Key Provisions of the 2006 International Convention on the Rights of Persons with Disabilities

According to Article 1 of the 1948 Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". This is the core principle which changes person's perceptions of PWDs throughout the world. In the past, the rights of PWDs were mainly approached from the perspective of social welfare. They were considered to be those who needed to receive support from the community. Thus, supporting activities for PWDs are only considered as humanitarian activities. However, nowadays, the issue of PWDs is still perceived from the perspective of human rights, based on the opinion that: "Everyone has the right to life and enjoy the same basic rights", PWDs are increasingly valued as they are comprehensively capable of learning, working, producing and contributing to society¹⁸. So, it is critical to guarantee that persons with disabilities have full accessibility to fundamental human rights without discrimination.

Starting from the demand of a common awareness about PWDs on an international scale as well as global actions so that they can truly access to all opportunities for socio-economic activities. On 19 December 2001, the United Nations General Assembly issued the

18 Ha Thi Lan (2014), *"Protecting the rights of people with disabilities in Vietnamese labor law - Actual situation and solutions"*, Master's Thesis in Law, Faculty of Law - Hanoi National University.

Resolution 56/168 establishing the Ad Hoc Committee¹⁹ to consider proposals for a convention to promote and protect the rights and dignity of PWDs. This legal document and the reference to the recommendations of the Human Rights Committee and the Social Development Committee²⁰, were based on an approach to all aspects of work in social development, human rights and non-discrimination. The Ad Hoc Committee established a working group for the purpose of preparing a draft of the convention to serve as the basis for negotiations between State Parties. After eight sessions of the Ad Hoc Committee to negotiations on the draft convention, on 13 December 2006, the Convention on the Rights of Persons with Disabilities and the Optional Protocol were approved in General Conference which entered into force on 3 May 2008.

The Convention on the Rights of Persons with Disabilities (CRPD) is the first international legal document for PWDs. The CRPD is the most powerful instrument expressing human rights, especially the rights of PWDs, since the Declaration of Human Rights (1948)²¹. The Convention approval was hailed as a historic achievement that will give hope to more than 1.5 billion PWDs in the 21st century²². Furthermore, it is the most quickly approved international Convention. As of 14 June 2019, 177 countries and the European Union representing 88% of the State Members at the United Nations have ratified the Convention. The Convention is the result of exchanges, discussions, and strategic communications between PWDs

19 According to the Cambridge Dictionary: "Ad hoc" is a happening or existing only for a specific purpose that was not previously planned, <https://dictionary.cambridge.org/vi/>

20 <https://www.un.org/development/desa/disabilities/resources/ad-hoc-committee-on-a-comprehensive-and-integral-international-convention-on-the-protection-and-promotion-of-the-rights-and-dignity-of-persons-with-disabilities.html>

21 According to the US National Library of Medicine National Institutes of Health, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4937523/>

22 <https://vnmission-newyork.mofa.gov.vn/vi-vn/News/Consulate-News/Trang/H%E1%BB%99i-ngh%E1%BB%8B-C%C3%B4ng-%C6%B0%E1%BB%9Bc-Quy%E1%BB%81n-c%E1%BB%A7a-Ng%C6%B0%E1%BB%9Di-Khuy%E1%BA%BFt-t%E1%BA%ADt.aspx>

from all over the world and government authorities. The principles that comprise this Convention are based on the experience of progressive legal and operational models across the globe in assisting PWDs to study, work, have entertainment, and live peacefully in the community²³. The purpose of the CRPD, according to the Declaration, is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”²⁴. Thus, the Convention promotes and protects the rights of PWDs in all economic, social, political, legal, and cultural aspects, enabling PWDs to have “equal rights” with others in all respects to lead their lives as full citizens who can make valuable contributions to society. The CRPD is established as a fundamental principles and legal provisions designed to protect and promote basic rights and fundamental freedoms for PWDs.

It may be stated that the signing of the CRPD established a legal framework, encouraged a culture of compliance, and resulted in commitments to the common goals of global inclusion of persons with disabilities. As a result, governments should join the International Conventions on the Rights of Persons with Disabilities in order to move toward a common element of understanding and attitudes toward PWDs.

C. Assessment of the Current Legal Frameworks on the Rights of Persons with Disabilities in Vietnam

1. Achievement in Legislation on the Rights of Persons with Disabilities in Comparison with CRPD

As can be seen, Viet Nam is in a period of strong integration in many aspects and is building a socialist rule of law state with the goal of “wealthy people, powerful nation, democracy, justice, and civiliza-

23 Victor Santiago Pineda (2008), “*We can! Interpretation of the Convention on the Rights of Persons with Disabilities*”, UNICEF, p. 9.

24 United Nations (2007). *From Exclusion to Equality: Realizing the rights of persons with disabilities*

tion”, the approval of standardization of the CRPD, followed by the internalization of documents with high legal value such as the Constitution, the Law on Persons with Disabilities, and other legal documents regulating the rights of PWDs in such areas as: Civil Code, Labor Code, Penal Code, Criminal Procedure Code, Children's Law, Education Law, Vocational Training Law, Social Insurance Law, Construction Law, Traffic Law... Many international organizations also have provided financial and technical support for research, experience, and international law on PWDs, which has been of great significance in all political, legal, and social aspects in general, and is meaningful in expressing the idea of respecting and protecting the legitimate rights and interests of PWDs in particular.

It is obvious that Viet Nam's legal system safeguarding the rights of PWDs respects the spirit of the CRPD and is largely compatible with its provisions. Laws and regulations affecting PWDs have altered from a "donation or charity" to a human rights-based perspective. PWDs now have more opportunities to express their rights and participate fully in society as a result of this development, some notable changes are:

First, recognize the term “person with disabilities”. In terms of vocabulary, the CRPD use the phrase “persons with disabilities” rather than the more generally used “Handicapped persons”. The phrase “persons with disabilities” is also used in the 2010 Law on Persons with Disabilities rather than the word “Handicapped persons” in the Ordinance on Handicapped Persons. This general term better reflects the reality of persons bear physical and mental impairments and do not carry a sense of disparagement.

Second, Ensuring the rights of persons with disabilities in some specific areas. In general, the rights in some basic areas of PWDs are stated in the CRPD such as: the right to an independent life; the right to access to transport and information infrastructure; the right to education; the right to healthcare and rehabilitation; the right to work... are fully regulated in the 2010 Law on Persons with Disabilities and other relevant legal documents.

Third, strengthening monitoring of the implementation of laws

and policies: In order to implement the provisions of Articles 3, 4, and 34 of the CRPD, Viet Nam established the Viet Nam National Committee on Persons with Disabilities²⁵ and proclaimed a National Plan to Implement the Convention on the Rights of Persons with Disabilities²⁶. It is a comprehensive action plan to promote and ensure the rights of PWDs in healthcare and rehabilitation, education, vocational training and employment, livelihood support, accessibility access to public buildings, transportation, and information technology, and legal justice. It contributes to a Contracting State's fulfillment of the Covenant's obligations.

Fourth, the incorporation of disability concerns into other legal documents in order to establish consistency in the legal system governing individuals with disabilities.

Since 2011, after the National Assembly promulgated the Law on Persons with Disabilities in 2010 and ratified the CRPD Convention in 2015, competent state agencies have issued 55 legal documents to regulate expenses under the Law on Persons with Disabilities. The Law on Persons with Disabilities specifies and directs how specific provisions of the Law on Persons with Disabilities are to be implemented, including: 16 Decrees; 04 Decisions of the Prime Minister; 15 Joint circulars between ministries and branches; 20 Circulars of ministries and branches. There are 03 documents in the group of general and key guiding documents, and 05 documents in the group of documents on disability-medical-rehabilitation identification. There are 05 documents in the group of important documents on subsidies and social assistance. There are 09 documents in the set of revised documents on education support policies. There are 08 documents in the group of primary documents on vocational training-job creation; 05 documents on the adjustment of information, communication-culture, and sports; and The adjustment group

25 Decision No.1717/QĐ-TTg on establish the Nation Council Committee on Persons with Disability

26 Decision No.1100/QĐ-TTg dated 21 June 2016 "Approving the plan to implement the United Nation's Convention on the Rights of Persons with Disabilities in Viet Nam.

includes 13 documents on building and transportation works, as well as 03 amended decrees on legal aid-handling administrative infractions and 05 financial regime guiding documents.

2. Development of the Policies and Programs to Support Persons with Disabilities

Not only do legislative policies on persons with disabilities be improved in order to absorb the CRPD Convention, but efforts should also be made to guarantee that the rights of persons with disabilities in Vietnam are recognized in the CRPD Convention's implementation. This is demonstrated in disability governance, the specialized legal system, as well as decisions and actions on social security policies and national action plans.

Firstly, establishment of the National Committee on Persons with Disabilities: The Communist Party of Vietnam's political line and viewpoints have always concentrated and been consistent on achieving social security, providing long-term assistance for persons with disabilities, related with human development, and ensuring human rights. That point of view is recognized relatively completely and simultaneously in the 2013 Constitution on the right to social security for all citizens (Article 34), the state's responsibility to ensure equality of opportunity and assist persons with disabilities, and specialized legal systems to safeguard and implement the rights of persons with disabilities. In addition, the Vietnamese government, ministries, and branches have issued and implemented several projects and strategies to assist persons with disabilities; Integrating the problem of people with disabilities into policy and coordinating policy execution is becoming increasingly progressive. The machinery for state management and supervision of the execution of legal policies affecting persons with disabilities has been built, with reasonably consistent assignment and decentralization from the national to the local level. In particular, the National Committee on Persons with Disabilities - the Government's inter-sectoral coordination organization is a significant step forward of the Government in the disability

management system. Furthermore, the social organization system of persons with disabilities/for persons with disabilities is increasingly diversified, actively participating in activities of formulating and criticizing policies related to people with disabilities as well as supervising persons with disabilities society for the implementation of policies and laws for persons with disabilities.

Secondly, development of social security policy, national action plan. In order to implement the CRPD Convention in Vietnam, both the Communist Party of Vietnam and the government have made significant decisions on social security measures, expanding numerous opportunities for persons with disabilities. The Vietnamese Government developed and implemented a number of national programs and projects to support persons with disabilities, including the National Action Plan to support persons with disabilities for 2012-2020, the National Action Plan on Rehabilitation and related programs. In accordance with the National Action Plan to support persons with disabilities for 2012-2020, most provinces have developed action plans to support persons with disabilities and allocated budget for the implementation of these plans. Moreover, on May 10th 2017, the Prime Minister promulgated the National Action Plan for implementation of the Agenda 2030 for Sustainable Development, which includes targets to support persons with disabilities in accessing to basic services and social inclusion.

3. Remaining Gaps of the Current Laws and Regulations in Comparison with the CRPD

As outlined above, although the Viet Nam's Law on Ensuring the Rights of Persons with Disabilities has developed a relatively comprehensive legal framework on the rights of PWDs, it still has some significant gaps in comparison with CRPD, including the following:

Firstly, the definition and method of identifying defects are not reasonable.

There are several distinctions between the two definitions that may lead to diverging outcomes in terms of how they are interpreted-

ed. Under Article 1, the CRPD defines the term of disability as follow “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments”²⁷, Viet Nam’s Law has been slightly more expansive, stating that “one or more body parts” or “function decline manifested in the form of a disability” which includes physical disability; hearing disability; visual disability; mental and psychiatric disability; intellectual disability; other disabilities²⁸. The CRPD requires impairments to be “long-term”, whereas there is no such requirement under the law in Viet Nam. The law in Viet Nam also includes all three categories of impairment included in the CRPD while adding visual, and psychiatric impairments, along with a catch-all provision of “other disabilities”. However, the back side of the definition is where the Viet Nam law runs into difficulties in terms of alignment with the CRPD. While the Convention provides a framework based on a social model, where the CRPD focuses on the interaction between impairments and external obstacles which limits the ability of PWDs to fully participate in society, that “hinder (PWDs) full and effective participation in society on an equal basis with others”. The Law in Viet Nam requires that such disabilities “cause (...) difficulties to his/her work, daily life, and studying”.²⁹ Viet Nam’s law has an approach based on the medical model, views impairments as “cause(ing)...difficulties”. This divergence in interpretation of the outcome of having a disability, in terms of how it impacts daily life or interactions, creates tension between the CRPD model of disability and the law in Viet Nam.

Second, there is no regulation on "reasonable accommodation".

The 2010 Law on Persons with Disabilities does not provide for “reasonable accommodation”. In practice, individuals or organizations have paid more attention to renovating ramps or elevators for wheelchair users, and are often reluctant to undertake renovations, citing significant investment and a lack of financial resources as jus-

27 CRPD (2006), Article 1

28 Law on Persons with Disabilities (2010), Article 2(1)

29 Law on Persons with Disabilities (2010), Article 2(1)

tification for failing to do so. There seems to be a misunderstanding that reasonable accommodation incurs significant investment. However, more needs to be done to build awareness that any changes which improve access and independence for PWDs do not necessarily involve any financial investment, or at most a modest investment. On the other hand, Article 2 of the CRPD states that reasonable accommodation is very important for PWDs to exercise their rights on equal basis with other people. This provision is hugely significant for promoting equality for PWDs, as it acts as a cornerstone, or “door”, to ensure PWDs are able to exercise many more of their rights under the CRPD.

Third, the lack of fundamental principles for protect the rights of persons with disabilities.

Although Article 4 of the 2010 Law on Persons with Disabilities provides the rights and responsibilities of the PWDs and Article 14 regulates the prohibited acts, but the law still lacks fundamental principles such as “respect for difference and acceptance of persons with disabilities as part of human diversity and humanity” and “full and effective participation and inclusion in society” as prescribed under the CRPD. According to the human rights-based approach, PWDs are entitled to all the rights and freedoms from the international human rights framework, without distinction of any forms of disabilities. Therefore, the law should reflect the human rights-based approach by incorporating these fundamental principles, in line with the CRPD and Viet Nam’s 2013 Constitution, to create a legal basis for ensuring the full and effective participation of PWDs, and recognizing and respecting the diversity and humanity.

- In Terms of Education:

The 2010 Law on Persons with Disabilities outlines the responsibilities of educational institutions in relating to ensuring access to education for PWDs: (i) To ensure teaching and learning conditions are suitable for PWDs, (ii) To prohibit the refusal of admission to persons with disabilities in contravention of law, and (iii) To renovate and upgrade physical teaching and learning foundations which fail to meet the conditions on access by

PWDs³⁰. While the CRPD requires member states to ensure an inclusive education system at all levels and lifelong learning, as well as that “effective individualized support measures are provided in an environment that maximize academic and social development, consistent with the goal of full inclusion”³¹. Article 24 of the CRPD states that: “States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity”. Currently, PWDs are facing difficulties in accessing higher education, especially at the university level. The 2019 Law on Education, for example, only includes some forms of language and formats for specific types of hearing, speaking, and visual impairments, as following: “The State shall encourage and enable ethnic minority people to learn their spoken and written languages as prescribed in Governmental regulations; hearing-impaired and speaking-impaired persons to learn via sign language, vision-impaired persons to learn via the Braille alphabet as prescribed in the Law on Persons with Disabilities”³². As a result, to enable complete access to the education system, including inclusive education, all languages and other accessible formats defined by Article 2 of the CRPD should be complemented with the 2010 Law on Persons with Disabilities.

- In terms of Healthcare and Rehabilitation:

One of the most important rights of PWDs is access to healthcare and rehabilitation. The CRPD requires States Parties takes all appropriate measures to ensure gender-sensitive access for persons with disabilities to health services, including health-related rehabilitation³³. Under comparison to existing regulations, the focus on rehabilitation in the Law on Persons with Disabilities appears to be largely physical in line with the current definition outlined under CRPD. This understanding needs to be

30 Law on Persons with Disabilities (2010), Article 30

31 CRPD (2006), Article 24 (1), 2(e)

32 Law on Education (2019), Article 11 (2)

33 CRPD (2006), Article 25

shifted, instead of focusing more on accommodating the impairment, in making sure that every impairment is recognized and PWDs receive adequate, appropriate and quality rehabilitation. Although Article 24 in the Law stipulates that “the State shall invest in the construction of physical and technical foundations of public orthopedic and functional rehabilitation facilities”, this provision should lay more emphasis on the guarantee of accessibility of rehabilitation facilities and gender-sensitive rehabilitation and healthcare services, instead of just the development of infrastructure and facilities.

- In Terms of Construction and transportation:

Currently, most localities have not met the requirements for public construction renovation, despite the fact that Clause 1, Article 40 of the Law on Persons with Disabilities specifies a time limit for public construction renovation of January 2020, and Clause 2 Article 40 indicates that: “All residential buildings, working offices, public technical infrastructure works, and social infrastructure works that do not fall under the cases listed in Clause 1 of this Article must be completed by January 1, 2025. It should ensure that PWDs have equal access”. Additionally, the Law on Persons with Disabilities does not clearly define the responsibility of the private sector in providing accessible serves for PWDs, as required by Article 9.2 (b) of the CRPD. The Law only applies the accessibility standard in a narrow context such as in limited circumstances in both the public transportation and public construction sectors. The CRPD, on the other hand, demands States Parties to take appropriate measures to eliminate all obstacles and barriers, including infrastructural, and those for which the private sector is also responsible, to enable PWDs to access and fully participate in society.

- In Terms of Information and Communication:

According to Article 43 of the 2010 Law on Persons with Disabilities, only Braille and sign language are included in terms of modes of communication. As a result, this should be expanded upon to ensure the law in Viet Nam responds to the rapid devel-

opment of information technology. It is essential to include the concept of communication under the Law as provided for under Article 2 of the CRPD, including augmentative and alternative modes and formats of communication.

- In Terms of Social Allowance:

Article 28 of the Convention clearly states: “States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability”. Currently, Viet Nam's social protection including the social allowance for PWDs and monthly care fees for their careers, have been applied based on the degree of disability, only serious and exceptionally serious disability. Therefore, this is not aligned with the CRPD in terms of the provision of social protection. The CRPD requires States Parties to recognize the right to access social allowance and exercise this right without discrimination. PWDs and their families who live in poorer conditions receive support from the national funding programs, “Funds for Assistance of Persons with Disabilities”³⁴. Furthermore, in comparison to the fundamental living conditions of each individual, the level of social protection benefits for PWDs remains inadequate. There are no regulations governing the conditions for increasing the standard level in order to determine the appropriate degree of social protection. Viet Nam still follows the medical model for determining the eligibility of social allowance whereas the CRPD uses the social model for requiring states to support PWDs and their families. The adoption of the social model would facilitate greater access of PWDs to social allowance programs, this strengthening alignment with the CRPD. Nevertheless, in comparison to the fundamental living conditions of each individual, the level of social protection

34 Law on Persons with Disabilities (2010), Article 10(1).

benefits for PWDs remains inadequate. There are no regulations governing the criteria for raising the standard level in order to determine the appropriate degree of social protection.

- In Terms of Legal Aid and Access to Justice:

There is an incompatibility in the Viet Nam's legal system in ensuring access to essential services for PWDs, such as legal aid. The CRPD requires member states to "ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse", "are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body"³⁵. In addition, the CRPD also requires State Parties to promote appropriate training on disability sensitive issues for those working in the administration of justice, including police and prison staff³⁶. While the Law on Persons with Disabilities outlines that all PWDs should be eligible for legal aid services. However, the Law on Legal Aid provides that legal aid services are only available for PWDs who experience financial difficulty. The Criminal Procedure Code further provides that lawyers be provided for PWDs who have limited legal capacity. Here we see misalignment between domestic laws, with one in ensuring greater access to essential services, such as legal aid, than the other. Furthermore, to effectively ensure access to justice for PWDs, procedural and age-appropriate accommodations for PWDs engaging the justice system are not currently in place, including a lack of training for legal aid services. As a result of this misalignment and gaps in the law, we currently exclude the majority of people with mild disabilities who do not receive a monthly social allowance from effectively accessing legal aid services, both in terms of the criteria for such entitlement and the support services which facilitate their access.

³⁵ CRPD (2006), Article 12 (4)

³⁶ CRPD (2006), Article 13 (2)

4. Challenges and Barriers to Ensure the Rights of Persons with Disabilities

Despite Viet Nam's efforts to ensure the rights of PWDs as a member state committed to the CRPD, there are still obstacles that prevent it from meeting the Convention's recommendations in a thorough and comprehensive manner, the primary barriers and challenges are:

Firstly, according to the economic, social, and living conditions of Vietnamese persons, those with disabilities still remain difficult, particularly those who live in rural, hilly, remote, and isolated areas. In which, the proportion of PWDs in rural areas is 7.65%. The rate of people with disabilities in the North Central and Central Coast regions is the highest in the country with 8.85%, and up to 70% of PWDs in Vietnam belong to poor households³⁷. From the statistics shown above, the majority of PWDs are both poor and live in areas with lower economic development than the rest of the country. This creates a significant challenge in implementing policies and legal rules for PWDs. Moreover, from the standpoint of the Convention's codification, the rate of legality of the Convention's provisions must be appropriate to each country's and each region's internal socio-economic conditions.

Second, many PWDs have not only low self-esteem but also a limited understanding of society and themselves. Because propaganda and education on human rights, citizenship, and disabilities are still limited in Viet Nam, which affecting community, social groups, and individual participation. Aside from socioeconomic factors, the level of awareness and attitudes of PWDs and the broader population play an important role in the Convention's codification. While PWDs and person's awareness and attitudes have an impact on both law making and the application of the law to PWDs, it is not possible to fully and thoroughly prescribe the standards that the Convention has previously recommended.

³⁷ General Statistics Office of Vietnam (2018), "National survey on people with disability 2016", statistical publishing house, p.179-182

D. Conclusion and Recommendations

In brief, since Vietnam ratified the CRPD and promulgated the Law on Persons with Disabilities in 2010 as well as other related laws and regulations, persons with disabilities in Vietnam still face with many challenges in exercising their rights, especially the rights to access to essential public services such as education, healthcare, social allowance and rehabilitation. In addition, the gaps of Vietnamese law remain the obstacles to prevent Vietnam from fulfilling its commitment of the member states of the CRPD. Significantly, the Sustainable Development Goals with the aim “leave no one behind” can be achieved only when persons with disabilities can fully participate in society without any barriers, therefore, revising the Law on Persons with Disabilities as well as other related document is one of the most important tasks of Vietnam.

In order to strengthen Viet Nam’s Law on Persons with Disabilities by aligning it with international standards, including the CRPD, some recommendations, in particular:

Firstly, it is necessary to adopt the social model of disability.

To guarantee that all forms of disability are recognized, the Law on Persons with Disabilities must adopt the CRPD definition of a person with a disability, utilizing a social model rather than the medical model currently in effect. They can issue an official disability certificate as a legal ground to ensure PWDs access to certain essential public services such as transport healthcare, rehabilitation and the other areas of life including access to cultural sites. The administrative procedure to obtain a disability certificate should ensure full access for all PWDs, regardless of place of residence or form of disability. This full coverage especially shows its effectiveness in anticipatory governance as a buffer for PWDs in response to disaster situations when they could receive immediate support with their certificates. Capacity building for local councils with responsibility for assessing disabilities should be conducted regularly so that all types of disabilities existing in every locality can be accurately and adequately assessed.

Second, it is necessary to integrate fundamental principles of the CRPD into national law.

The fundamental principles of “respect for difference and acceptance of persons with disabilities as part of human diversity and humanity,” “full and effective participation and inclusion in society” and “accessibility” should be explicitly mentioned in the Law on Persons with Disabilities”. The implementation of these principles will serve as the foundation for refining the legislative framework relating to PWDs in various areas, particularly education, healthcare, rehabilitation, vocational training, and referral. Besides, this serves as the foundation for improving legal provisions on dealing with acts of discrimination and discrimination against PWDs, as well as specifying the responsibilities of agencies, organizations, and individuals in attempting to make “reasonable accommodations” to ensure that PWDs can access and enforce their rights.

Third, it is necessary to ensure access to inclusive education.

The obligations of educational institutions and local governments to ensuring inclusive education should be clarified in the Law. It is essential to build the capacity of PWDs by eliminating barriers in education, especially in higher education and vocational training. This must be done together with raising awareness of both central and local government in the process of allocating annual budgets for PWDs to invest in education. The State should hold primary responsibility in providing vocational training and should utilize a human-rights based approach in developing vocational training policies, including tailoring programs to the individual needs of PWDs, and students should receive the necessary support to effectively facilitate their study.

Fourth, it is necessary to guarantee access to healthcare and rehabilitation.

Currently, since health insurance policies for PWDs are quite restricted, as is the list of assistive equipment covered by health insurance, health insurance policies should be approached based on financial hardship rather than severe or exceptionally severe disability. Likewise, basic rehabilitation equipment for those with disabilities

should be included in the state's health insurance program. Access to health care and rehabilitation services for PWDs is the responsibility of health facilities.

Fifth, it is necessary to clearly define responsibilities of service providers in ensuring accessibility in public transportation and construction.

The responsibilities of the service providers in transportation and construction should be stipulated in the Law. Because expanding the private sector's responsibility in ensuring access for PWDs is fully consistent with the State's policy of “socializing” the provision of essential services, limiting the scope of application of the Persons with disabilities Law to public construction works or the provision of continuing assurance obligations of public institutions would limit the scope of application of the Persons with disabilities Law. Additionally, concepts of “reasonable accommodation” and “universal design” should be added as standards for renovation and construction.

Sixth, it is necessary to apply the definitions of communication and access to information as provided for in the CRPD.

The definition of communication and diversity in ways and formats of access should be supplemented with the Disability Law. In addition, the obligations of organizations and individuals in providing accessible information to PWDs should also be more clearly defined.

Seventh, it is necessary to widening access to justice for all PWDs.

All PWDs should be ensured access to free legal aid services, regardless of their financial circumstances, in line with the Law on Persons with Disabilities. The Law on Legal Aid should be revised accordingly to ensure alignment with the stronger protection in ensuring access to justice for PWDs under the Law on Persons with Disabilities. Both the Law on Legal Aid and the Law on Persons with Disabilities should provide procedural and age-appropriate accommodations for PWDs in order to facilitate their access to legal aid services, including training and capacity building for legal aid providers on serving PWD clients, in alignment with Article 13 of the CRPD.

Eighth, it is necessary to reduce the gap between urban and rural service provisions.

In order to give full effect to the provisions and protections enshrined in the CRPD, the Government of Viet Nam should work to reduce the gap in accessibility, rehabilitation, and education between urban and rural PWDs, especially in the policy-making process. The special programs for PWDs who live in remote or mountainous areas should be developed. A human rights-based approach requires that all persons be able to exercise their rights on an individual basis, something that is limited due to the significant gap between urban and rural services.

Bibliography

Legal Documents

- United Nations, International Convention on the Rights of Persons with Disabilities, 2006;
- United Nations, Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons), 1983;
- United Nations, Recommendation No. 168 Vocational Rehabilitation and Employment (Disabled Persons), 1983;
- United Nations, Universal Declaration of Human Rights, 1948;
- United Nations, Convention on the Child's Rights, 1989;
- Socialist Republic of Viet Nam, National Assembly, Constitution of 1992;
- Socialist Republic of Viet Nam, National Assembly, Constitution of 2013;
- Socialist Republic of Viet Nam, National Assembly, Labor Code 2012; amended 2019;
- Socialist Republic of Viet Nam, National Assembly, Law on Occupational Safety and Health 2015;
- Socialist Republic of Viet Nam, National Assembly, Law on Persons with Disabilities; 2010;
- Socialist Republic of Viet Nam, National Assembly, Law on Employment 2013;

- Socialist Republic of Viet Nam, National Assembly, Law on Occupational Safety and Health 2015;
- Socialist Republic of Viet Nam, National Assembly, Law on Vocational Education 2014;
- Socialist Republic of Viet Nam, National Assembly, Law on Education 2019;
- Socialist Republic of Viet Nam, National Assembly, Law on Employment 2013;
- Socialist Republic of Viet Nam, National Assembly, Law on Health Insurance 2008, amended 2014;
- Socialist Republic of Viet Nam, Standing Committee of the National Assembly, Ordinance on Handicapped Persons;
- Socialist Republic of Viet Nam, Prime Minister, Decision No.1019/QĐ-TTg dated 05 August 2012 on the project for supporting persons with disabilities for the period 2012-2020;
- Socialist Republic of Vietnam, Prime Minister, Decision No.1717/QĐ-TTg on establish the Nation Council Committee on Persons with Disabilities;
- Socialist Republic of Vietnam, Prime Minister, Decision No.1100/QĐ-TTg dated 21 June 2016 “Approving the plan to implement the United Nation’s Convention on the Rights of Persons with Disabilities in Viet Nam;
- Socialist Republic of Viet Nam, Minister of Labour, Invalid and Social Affairs, Circular No.763/VBHN-BLĐTBXH dated 28 February 2019 on Detailing and guiding a number of articles of the Law on Persons with Disabilities;
- Socialist Republic of Vietnam, Minister of Labour, Invalid and Social Affairs, Directive No. 3930/BLĐTBXH-TCDN dated 21 October 2014 on Improving efficiency and quality in realizing the goal of vocational training and job creation for people with disabilities.

Books and Reports

- ACDC- USAID Vietnam, *Literature Review on Disability Policy in Vietnam*, Project “Monitoring and evaluating CRPD implementation in Vietnam”, May 2016.

- General Statistics Office of Vietnam (GSO) and UNICEF, *National Survey on People with Disabilities 2016-2017*, (2019);
- Handbook for Trainers of People with Disabilities Funded by the German Technical Cooperation Organization (GTZ) and the German Development Assistance Agency, *Disability models and Policies*, 2010.
- Hanoi Law University, *Vietnam Disability Law Textbook*, People's Public Security Publishing House, Hanoi, 2011.
- ILO Office in Viet Nam, *Report of the Tripartite Technical and Consultative Conference, United Nations Convention Center in Bangkok, Employment for People with Disabilities - a Human Rights-Based Approach*, January 2006;
- Ministry of Health, *Report on the implementation of the United Nations Convention on the Rights of Persons with Disabilities*, Hanoi, 2 December 2016;
- Ministry of Labour - Invalids and social affairs, *Outline of Propaganda for the Law on People with Disabilities*, Hanoi, 2016.
- Ministry of Labour - Invalids and social affairs, *Report No. 18/TTr-BLDTBXH dated 3 March 2014 on the ratification of the United Nations Convention on the Rights of Persons with Disabilities*.
- Ministry of Labour - Invalids and social affairs, *Report on reviewing, comparing and evaluating the provisions of Vietnamese law on people with disabilities with the United Nations Convention on the Rights of Persons with Disabilities*, Hanoi, July 2009.
- Ministry of Labour - Invalids and social affairs, *Report on the implementation of the United Nations Convention on the Rights of Persons with Disabilities*, Hanoi, 13 February 2017.
- Truong Viet Dung (editor), Nguyen Duy Luat, *Health Organization and Management*, Publishing House Medicine, Hanoi, 2007.
- Report No. 168/TTr-CP dated October 10th 2009 on the Government's Disability Law Project to be submitted to the National Assembly;
- The Vietnam Federation of People with Disabilities and its Member Organizations Independent Report on the Implementation of the United Nations Convention on the Rights of Persons with

- Disabilities in Vietnam, June 2018.
- Tran Trong Hai (editor), *Community-Based Rehabilitation*, Publishing House Education, Hanoi, 2010.
- UNDP Viet Nam in Collaboration with the Department of Social Protection, Ministry of Labor, *Invalids and Social Affairs, Report on the review of the Law on Persons with Disabilities - Comparison with the International Convention on the Rights of Persons with Disabilities and the Experiences of Some Countries*, 2019.
- United Nations, *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities*, Geneva 2007.

Journals

- Do Thi Dung, "Health Care Regime for People with Disabilities and Directions for Improvement," *Journal of Jurisprudence* (Special issue of the law on people with disabilities), No. 10/2013.
- L. B., Hong, K. T., & Vinh, N. D., "People with Disabilities in Vietnam: Findings from a Social Survey at Thai Binh, Quang Nam, Da Nang and Dong Nai," *Semantic Scholar*, 2008.
- Matthew Bogenschutz, Hyojin Im, & Annie Liang, "Ecological Model of a Good Life for People with Disabilities in Vietnam," *Global Social Welfare*, 3:243–254, 2016.
- Minh, H. B., Giang, K. B., Liem, N. T., Palmer, M., Thao, N. P., & Duong, L. B., "Estimating the extra cost of living with disability in Vietnam," *Global Public Health*, Vol. 10, No. S1, S70–S79, 2015, <http://dx.doi.org/10.1080/17441692.2014.971332>
- Nguyen Thi Minh Thuy, Tran Trong Hai, *Journal of Public Health*, No. 28, 2013, Need for assistance in daily life and social integration of people with disabilities.
- Palmer M, Groce N, Mont D, Nguyen OH, Mitra S, "The Economic Lives of People with Disabilities in Vietnam," *PLoS ONE* 10(7): e0133623, 2015.
- Phan Thi Lan Huong, "Disability Law Review – Comparison with the International Convention on the Rights of Persons with Disabilities and Recommendations for Vietnam," *Jurisprudence Review* No. 2/2020

United Nations Population Fund, “People with Disabilities in Vietnam: Key Findings from the 2009 Viet Nam Population and Housing Census,” Ha Noi: UNFPA, 2011.

Other Documents

Ha Thi Lan (2014), "Protecting the rights of people with disabilities in Vietnamese labor law - Actual situation and solutions", Master's Thesis in Law, Faculty of Law - Hanoi National University;
Nguyen Thi Lan Anh, Director of the Action Center for Community Development (ACDC) (2016), Inlusiveness - Accessing and Empowering People with Ability.

“Difficulty in accessing medical services and healthcare”, tại địa chỉ: <https://baophunuthudo.vn/article/31041/170/ky-3-kho-khan-trong-tiep-can-dich-vu-y-te-cham-soc-suc-khoe>.

Hoa Cu, “In 2019: About 20,000 people with disabilities received basic vocational training” <http://baodansinh.vn/nam-2019-khoang-20000-nguoi-khuyet-tat-duoc-dao-tao-trinh-do-so-cap-nghe-20191227160111885.html>

Tran Thai Duong, “Securing the labor rights and employment of people with disabilities in Vietnam and accession to ILO Convention 159”: <http://www.lapphap.vn/Pages/tintuc/tinchitiet.aspx?tintucid=206892>

ILO (2019), “Vietnam ratifies ILO Convention 159 on Employment for Persons with Disabilities” at address: https://www.ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS_679337/lang-vi/index.html.s

Quynh Hoa, Giang Nguyen (2015), “Submit to the National Assembly for ratification of two United Nations Conventions” <https://congly.vn/thoi-su/thoi-cuoc/trinh-quoc-hoi-phe-chuan-hai-cong-uoc-cua-lien-hop-quoc-66370.html>

Hanoi Law University, October 5, 2015, Proceedings of the Conference - Sharing experiences in teaching and researching the law of people with disabilities in law training institutions;