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**REPORT ON REVIEWING VIET NAM'S LAW ON  
● ● ● PERSONS WITH DISABILITIES ● ● ●  
IN COMPARISON WITH THE CONVENTION ON  
THE RIGHTS OF PERSONS WITH DISABILITIES  
AND INTERNATIONAL BEST PRACTICES**

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**Research Team**  
Huong Phan  
Andrew Friedman  
Nguyen Quynh Lien

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# ABBREVIATIONS

CBR	Community-Based Rehabilitation
CHCs	Commune Health Centres
CRPD	Convention on the Rights of Persons with Disabilities
ILO	International Labour Organization
MOET	Ministry of Education and Training
MOLISA	Ministry of Labour, Invalids and Social Affairs
NCD	National Committee on Disability
OPDs	Organisations of Persons with Disabilities
PWDs	Persons with Disabilities
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund

# EXECUTIVE SUMMARY

## **(i) General introduction**

The Law on Persons with Disabilities of Viet Nam was promulgated on 17 June 2010. This Law made significant improvements compared to the Ordinance on Handicapped Persons (1998). In particular, the approach to policies and laws on PWDs have been transformed from a “donation or charity” approach to a human rights-based approach. The rights of PWDs recognized in the CRPD were also incorporated into this Law.

Viet Nam signed the CRPD in 2007 and ratified it without reservations in 2014. Viet Nam has developed a relatively comprehensive regulatory framework for the protection of the rights and legitimate interests of PWDs. Policies and laws related to PWDs have been improved to adapt to the changes in the socio-economic development of Viet Nam in order to ensure that PWDs can fully participate in society. Nevertheless, there exist some legal gaps between Viet Nam’s Law on Persons with Disabilities and the CRPD which need to be addressed to fulfil Viet Nam’s commitments to implement the CRPD.

## **(ii) Research objectives**

The objective of this research is to strengthen Viet Nam’s Law on Persons with Disabilities by aligning it with international standards, including the CRPD, as well as reinforcing its implementation.

## **(iii) Key findings and respective recommendations:**

The Law on Persons with Disabilities has brought many positive changes to the lives of PWDs, better protecting their fundamental rights and legitimate interests. Some notable changes are: for the first time, there is an examination at the commune level on forms and degrees of disabilities, facilitated by the National Committee on Disability; the national technical standards on accessibility to infrastructure for PWDs are determined, and; responsibility for the renovating of public transports and public buildings to ensure PWDs’ access is also specified. Despite such progress, there remains certain barriers and challenges for PWDs, as well as gaps in the regulatory framework, that hinder their full access and participation in society. Through this research, this study identified the primary barriers and challenges and proposed some recommendations, with the overall objective of aligning the regulatory framework in Viet Nam more closely with the CRPD, in particular:

**(1) Adopting the social model of disability:** The definition of PWDs in Viet Nam mainly focuses on visible physical impairments, reflecting the medical model, excluding people with cognitive and other less visible, or difficult-to-determine impairments. This model has resulted in PWDs being obstructed from obtaining an official disability certificate as a legal ground to ensure their access to certain essential public services such as transport healthcare, rehabilitation and the other areas of life including access to cultural sites. Furthermore, there is a lack of capacity at the commune level for conducting assessments to issue disability certificates, with many more complex assessments for disabilities being referred to the medical examination

at the central level to major cities, where many PWDs cannot access. The administrative procedure to obtain the disability certificate is too complex, which makes the system inefficient and ineffective in ensuring that eligible persons can receive the certificate and have access to essential services.

**Recommendation:** The Law should reflect the definition of PWDs used in the CRPD, adopting the social model instead of the medical model currently in effect, in order to ensure that all forms of disabilities are covered and that all PWDs can obtain an official disability certificate for accessing essential social services. 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.

**(2) Revising the definition of ‘discrimination’ and its application:** the current definition of discrimination against PWDs is too narrow, only focusing on acts of discrimination by individuals, such as ‘shunning,’ ‘refusing,’ ‘maltreating,’ ‘disparaging,’ ‘showing prejudice against,’ or ‘restricting the rights of,’ persons with disabilities” because of their impairments and does not include acts of discrimination by organizations. This definition also does not apply to indirect discrimination. Cases or instances of discrimination against PWDs are not effectively covered in the Law on Persons with Disabilities. As a result, there are challenges for decisions makers to make determinations of discrimination and its violators, which fails to create a sufficient deterrent against violations and protect the rights of PWDs.

**Recommendation:** The concept of discrimination should be expanded to include both indirect and direct discrimination, as well as acts of discrimination by organizations. Stricter sanctions on discrimination against PWDs should be stipulated clearly in the Law on Persons with Disabilities and other relevant legislation, together with developing effective enforcement mechanisms and remedies for victims of discrimination.

**(3) Clearly define responsibilities of service providers in ensuring accessibility in public transportation and construction:** unlike Article 9.2 (b) of the CRPD, the Law on Persons with Disabilities only defines responsibilities of the Ministry of Construction and Transport in developing accessibility standards and issuing guidelines for implementation<sup>1</sup>, but does not define the responsibilities of service providers in providing accessible services. The Law only applies the definition of “access” in a narrow context. Furthermore, the Law on Persons with Disabilities does not include the concepts of ‘reasonable accommodation’ and ‘universal design’, resulting in minimal obligations for organizations or individuals to eliminate barriers for PWDs.

**Recommendation:** The responsibilities of the service providers in transportation and construction should be stipulated in the Law. Concepts of ‘reasonable accommodation’ and ‘universal design’ should be added as standards for renovation and construction.

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<sup>1</sup> Law on Person with Disabilities, Law No. 51/2010/QH12, dated 17 June 2010, Article 50(5)



**(4) Adopting CRPD's definition of 'communication' and including formats for communication:** The concept of 'communication' is not defined in the national law as it is provided in the CRPD. Furthermore, the wide range of accessible modes and formats of communication covered in the CRPD is restricted to only Braille and sign language in the Law on Persons with Disabilities. The Law does not provide ensuring information and technology access for PWDs as a responsibility of organizations. Instead, it only "encourages" organizations and individuals to adopt and develop information technology for PWDs. Therefore, it is difficult to impose administrative sanctions on organizations/individuals that do not provide PWDs with access to information technology and communication.

**Recommendation:** The definition of 'communication' and its variety of different accessible modes and accessible formats should be added to the Law on Persons with Disabilities as outlined in CRPD. Moreover, the obligations of organizations and individuals in providing accessible information for PWDs should be clearly defined in the Law.

**(5) Integrating fundamental principles of the CRPD into national law:** The Law on Persons with Disabilities does not provide for fundamental principles by which the provisions of the Law should be implemented, in alignment with the eight guiding principles in the CRPD. As a result, for example, PWDs' full and effective participation and inclusion in society has not yet been ensured by the regulatory framework, without the underpinning of this guiding principle from the CRPD to guide implementation of the Law. Hence, the Law on Persons with Disabilities is lacking in terms of indicators to measure the effectiveness of the participation of PWDs, for example, in the decision-making process.

**Recommendation:** 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.

**(6) Ensuring access to inclusive education:** Access to higher education for PWDs is still limited. The CRPD requires the Member States to ensure that PWDs can access education at all levels and lifelong learning. However, the Law on Persons with Disabilities lacks any such provisions on the responsibilities of educational institutions in ensuring these rights. Furthermore, schools and vocational training institutions are often inaccessible and lack specialized teachers and support staff.

**Recommendation:** 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 programmes to the individual needs of PWDs, and students should receive the necessary support to effectively facilitate their study.

**(7) Guaranteeing access to healthcare and rehabilitation:** Currently, regulations on ensuring access to healthcare and rehabilitation focus more on renovating buildings and developing facilities and infrastructure. The Law does not stipulate There are no regulations on the responsibility of healthcare facilities to adopt reasonable accommodation for PWDs to access healthcare and rehabilitation services, resulting in many PWDs being denied access to much-needed care. Furthermore, assistive and rehabilitation equipment and devices for PWDs are not covered under the state health insurance programme, again creating a barrier to both accessibility general healthcare and rehabilitation for PWDs.

**Recommendation:** The responsibility of healthcare facilities for ensuring the accessibility of PWDs to healthcare and rehabilitation services should be provided for under the Law. Basic assistive devices for PWDs should be covered under the state health insurance programme.

**(8) Widening access to justice for all PWDs:** Only PWDs who can demonstrate difficult financial circumstances are eligible for free legal aid services, according to the Law on Legal Aid. As a result, many PWDs who cannot demonstrate such circumstances, or who do not hold the official certificate of disability entitling them to certain social services, are ineligible, and cannot access free legal aid services. Furthermore, the provision of free legal aid for PWDs does not include other necessary support to ensure their full access to such services, including appropriate communication methods.

**Recommendation:** 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.

**(9) Strengthening monitoring of the implementation of laws and policies:** Currently, both coordination and monitoring responsibilities are held by the NCD, which affects the independence of the monitoring mechanism, as required in the CRPD.

**Recommendation:** The Law should clarify the responsibilities of the government at all levels when making policies and decisions related to PWDs. Coordination and monitoring responsibilities should be divided, and the independence of monitoring institutions should be guaranteed.

**(10) Enhancing participation of PWDs in decision-making and monitoring:** Although PWDs have the right to participate in decision making and monitoring the implementation of laws and policies related to them, they cannot participate effectively in decision -making and monitoring due to limited capacity, barriers in establishing of Organization of Persons with Disabilities(OPDs), and no formulation of their roles in policy monitoring processes in the Law on Persons with Disabilities.

**Recommendation:** OPDs and PWDs must be properly trained in monitoring the protection and promotion of their own rights, in both the implementation of the CRPD and in domestic law, and mechanisms must be developed to ensure their effective participation in decision-making processes, ensuring that the diversity of their needs are met in the regulatory framework. Moreover, the monitoring role of PWDs, as provided for under the CRPD, must be defined in the Law on Persons with Disabilities, with the establishment and operations of OPDs clearly provided for in the Law.

**(11) Reducing the gap between urban and rural service provisions:** In Viet Nam, approximately 80% of PWDs live in rural areas and may face with more difficulties and challenges in accessing services, especially healthcare and education.

**Recommendation:** 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 programmes 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.

**(12) Developing a network of OPDs across the country:** Many OPDs have been established at both central and local levels which represent specific types of disability or different groups such as the Club of Women with Disabilities and the Association of Parents with Disabled Children. However, the activities of these organizations would benefit from stronger coordination. Platforms for promoting collaboration would help build synergies between these organizations and their respective mandates and strengthen their role in policy advocacy and monitoring implementation of the CRPD and national laws and policies.

**Recommendation:** Facilitate the coming together of urban-based OPDs together with rural-based ones, providing knowledge and resource sharing opportunities between OPDs to strengthen capacity, coordinating campaigns and advocacy across the country. The National Committee on Disability should take primary responsibility in supporting the development of a network of OPDs, in strengthening coordination and collaboration between local and regional OPDs.

# I. GENERAL INTRODUCTION



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## 1.1 Social and legal context of persons with disabilities in Viet Nam

According to the National Survey on Persons with Disabilities conducted in 2016, 7.06 % of the population aged 2 and over were disabled. The number of PWDs was around 6.2 million people. This number in rural areas is 1.5 times higher than in urban areas.<sup>2</sup> This number has increased due to the ageing population, traffic accidents, and pollution. This survey also indicated that “households with PWDs are twice as likely to be poor as non-disabled households”.<sup>3</sup> Of PWDs aged 2 or older, 17.8% live in multidimensional poor households.<sup>4</sup> PWDs still face many challenges in accessibility and participation in society. The impact of disability is not only felt for PWDs, but also for their family members who often share the costs and care for expenses such as medical treatment, or special education among other things.

PWDs often cannot access the healthcare system due to many barriers such as inaccessible clinics or transportation systems, or the lack of capacity among health professionals to treat disability-related conditions.<sup>5</sup> Similarly, PWDs face difficulties in fully participating in education because of the inaccessible educational environment which lacks sign language; assistive technology (reading software); or elevators.

Viet Nam signed the Convention on the Rights of Person with Disabilities (CRPD) in 2007 and ratified it in 2014 with no reservations. The 2013 Constitution, as well as the 2010 Law on Persons with Disabilities, provides legal protection for and prevent discrimination against PWDs. Article 16(2) of the Constitution provides that: “no one is subject to discriminatory treatment in political, civil, economic, cultural or social life” and stigma and discrimination against PWDs are prohibited (Article 14(1) Law on Persons with Disabilities).

The Law on Persons with Disabilities was promulgated on 17 June 2010 and “provides the rights and obligations of persons with disabilities: and responsibilities of the State, families and society towards persons with disabilities” (Article 1). The Law on Persons with Disabilities is a very important legal document which made significant improvements on the Ordinance on Handicapped Persons (1998). In particular, the policies and laws on PWDs have been changed from a “donation or charity” approach to a human rights-based approach reflecting the spirit and language of the CRPD. Laws relating to specific areas, such as education, healthcare, vocational training, employment, information technology and others must comply with the Law on Persons with Disabilities in ensuring the rights of PWDs in specific aspects of daily life.

Significantly, the Government and related ministries have issued 6 Decrees and 21 Circulars, together with decisions issued by local government, for the implementation of the Law on Persons with Disabilities. The regulatory framework on PWDs is divided into two groups: (1) direct regulations on issues of PWDs including the Law on Persons with Disabilities and its guidelines for implementation, and (2) legal documents stipulating PWDs rights in specific areas, such as the Civil Code, Labour Code, Penal Code, Criminal Procedure Code, the Law on Children, the Law on Education, the Law on Vocational Training, the Law on Social Insurance, the Law on Construction, and the Law on Road Transportation.<sup>6</sup>

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<sup>2</sup> General Statistics Office of Vietnam (GSO) and UNICEF, National Survey on People with Disabilities 2016-2017, (2019), 15.

<sup>3</sup> Ibid., 17.

<sup>4</sup> Ibid., 126

<sup>5</sup> Ibid., 69.

<sup>6</sup> See Annex 1 for Legal documents related to PWDs.

In addition, Government ministries, and ministerial-level agencies have issued decrees and circulars for guidelines on implementation of the Law on Persons with Disabilities. These documents provide the legal basis for supporting PWDs' access to education, employment and social integration. However, there are still some limitations on the implementation and enforcement of these legal provisions.

In order to implement the Law on Persons with Disabilities, Viet Nam established the National Committee on Disability in 2015. The Prime Minister also issued Decision No.1100/QĐ-TTg dated 21 June 2016 'Approving the plan to implement the United Nations' Convention on the Rights of Persons with Disabilities in Viet Nam.' As a result, provincial Committees for PWDs have also been established in order to implement the CRPD at the local level. In addition, projects to support PWDs have been developed at both the central and local levels. For example, on 10 May 2017, the Prime Minister issued the 'National Action Plan for Implementing the 2030 Agenda for Sustainable Development'', which includes important indicators relating to accessibility and social integration of PWDs.<sup>7</sup>

## **1.2 Research objectives**

The objective of this research is to formulate recommendations on the revision of the Law on Persons with Disabilities in order to better align it with international laws, including the CRPD following ten-years of implementation of the Law since 2010. This will be achieved by analysing the gaps between the Law and the CRPD, together with the barriers to PWDs' participation in society. References will be made to international examples of good practice on areas where legislation or implementation needs improvement.

This report aims to achieve the following specific objectives:

- (1) Evaluating the current legal framework for the protection of the rights of PWDs, including the right to access to education, healthcare, employment, vocational training, and access to justice;
- (2) Identifying the current barriers and challenges for PWDs in exercising their rights;
- (3) Analysing the alignment between the Law on Persons with Disabilities and the CRPD; and
- (4) Giving recommendations to strengthen their alignment.

## **1.3 Research methodology**

### **(i) Theoretical frameworks**

This report is conducted based on the theoretical frameworks on human rights, with a focus on the rights of PWDs. The CRPD is used as a key instrument for the protection of the rights of PWDs, adopting the social model approach, with an aim toward the full participation of PWDs in society. The CRPD defines the terms "persons with disabilities", "access", "language", and "reasonable accommodation", while "non-discrimination" and "accessibility" are international principles.<sup>8</sup> These standards are used for reviewing the current legal framework on PWDs in Viet Nam in comparison with international standards. Key terms used in this report are prescribed under the CRPD as follows:

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<sup>7</sup> Decision No.622/QĐ-TTg dated 10 May 2017 on National Action Plan for Implementing the 2030 Agenda for Sustainable Development.

<sup>8</sup> United Nations, Convention on the Rights of Persons with Disabilities (CRPD), (2006), Articles 2 and 3.

(1) "Persons with disabilities" include those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

(2) "Communication" includes languages, display of text, Braille; tactile communication, large print, accessible multimedia, written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, accessible information and communication technology.

(3) "Language" includes spoken and signed languages and other forms of non-spoken languages;

(4) "Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

(5) "Reasonable accommodation" means necessary and appropriate modification and adjustments, not imposing a disproportionate or undue burden, where needed in a particular case, to ensure persons with disabilities the enjoyment or exercise, on an equal basis with others, all human rights and fundamental freedoms.

(6) "Accessibility" refers to enabling persons with disabilities to live independently and participate fully in all aspects of life. This ensures persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open to or provided to the public, both in urban and in rural areas. These measures shall include the identification and elimination of obstacles and barriers to accessibility.

(7) "Universal Design" means the design of products, environments, programmes, and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design and shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

## (ii) Research methods

- **Desk review:** this method was used for reviewing and analysing reports of the related ministries as well as studies about Viet Nam and foreign countries in the protection of the rights of PWDs and the implementation of law and policies on PWDs. Particular focus was paid to: the 'Report on the Evaluation of the Implementation of CRPD of Viet Nam' (2019);<sup>9</sup> 'Ending Stigma: Assessment from the Perspectives of People with Disabilities' (2017),<sup>10</sup> and; the National Survey on Person with Disabilities issued by General Statistic Office in collaboration with UNICEF (2016).<sup>11</sup>

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<sup>9</sup> Ministry of Labour, Invalid and Social Affairs, Report on the Evaluation of the Implementation of CRPD of Viet Nam, (2019).

<sup>10</sup> iSEE and UNDP, Ending Stigma: Assessment from the Perspectives of People with Disabilities, Knowledge Publishing House (2017).

<sup>11</sup> National Survey on People with Disabilities 2016-2017, (2019).

- **Desk review:** this method was used for reviewing and analysing reports of the related ministries as well as studies about Viet Nam and foreign countries in the protection of the rights of PWDs and the implementation of law and policies

- **Comparative study:** this method was used for identifying and analysing the legal gaps and current legal regulations on PWDs which are inconsistent with the CRPD and examining international best-practices for the alignment of the law and its implementation.

- **Key informant interviews:** this method was used to consult with PWDs, OPDs and social organizations about the barriers and challenges faced by PWDs. Interviews have been conducted directly with PWDs, representatives of OPDs, and representatives of relevant state agencies at both the central and local levels.<sup>12</sup>

- **Consultation workshops:** this method was used to solicit feedback and knowledge exchange by presenting key research findings at workshops held in Ho Chi Minh City (24 September 2019), Ha Noi (16 October 2019), and Da Nang (18 November 2019). In total, over 100 participants attended the consultation workshop series.

### (iii) Research approaches

A rights-based approach is adopted to examine the rights of PWDs and analyse the situations of accessibility for PWDs in areas including education, healthcare, rehabilitation, vocational training, employment, together with an analysis of the barriers and challenges of PWDs in exercising these rights.

This research will provide examples of legislation from states that have demonstrated good practice in aligning national laws on PWDs with the spirit and language of the CRPD and other relevant international instruments.

The comparative examples of this section are guided by two principles. The first is the substantial similarity to Viet Nam in geographical, socio-economic and political conditions including Asian countries (Republic of Korea, Philippines, and Nepal). The second principle is the availability of data and analysis. This principle often results in the inclusion of examples that are starkly different from the first principle. This occurs largely because States that ratified the CRPD earlier have a greater opportunity to collect data and conduct research on implementation and compliance. Additionally, the presence of such data and analysis requires states to have the resources and mechanisms in place to conduct extensive monitoring and evaluation of the effectiveness of such efforts. As such, many of the examples selected under this principle are not substantially similar to countries chosen under the first category, including states such as Iceland and South Africa. Both principles are adhered to wherever possible in an effort to ensure best-practices are implementable in Viet Nam and there is adequate data to ensure that such efforts were previously successful. These best-practices are used as recommendations for revising the Law on Persons with Disabilities to comply with the CRPD and ensuring its effective implementation.

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<sup>12</sup> See Annex 4 for list of interviewees.



#### **(iv) Research limitations**

It is necessary to address the limitations of this study. To begin, only a limited number of key in-depth interviews could be conducted, 15 in total including individual and group interviews, and the data collected was predominantly based on reports from relevant agencies, without any qualitative analysis. Additionally, the research was unable to reach individuals representing all forms of disabilities. Finally, the urban-rural divide for PWDs in Viet Nam entails different solutions in different areas that limit the applicability of some recommendations and solutions.



Photo: UNDP Vietnam

## II. CURRENT SITUATIONS OF THE PWDS IN SPECIFIC AREAS

The Law on Persons with Disabilities outlines the protection of the rights of PWDs under the following headings: (1) To participate on an equal basis in social activities; (2) To live independently and integrate into the community; (3) To enjoy exemption from or reduction of certain contributions to social activities; and (4) To be provided with healthcare, functional rehabilitation, education, vocational training, employment, legal assistance, access to public facilities, means of transportation, information technology and cultural, sports, tourist and other services suitable to their forms and degrees of disability.<sup>13</sup> Obligations of state agencies, families, and societies for ensuring the promotion and protection of the rights of PWDs are stipulated under Articles 7 and 8. The Law on Persons with Disabilities also provides the forms and degrees (seriousness) of disabilities which constitute the basis for issuing a certificate of disability. The certificate of disability is one of the most important legal documents to ensure the accessibility of PWDs in a wide range of areas, including obtaining a healthcare insurance card, ticket exemption or reduction of prices when using public transportation, or free legal aid services. As of 2016, 63 provinces had carried out forms and degrees of disabilities examinations and 266,639 PWDs were determined to have an exceptionally serious disability, 634,567 persons with serious disabilities, and 543,126 persons with mild disabilities.<sup>14</sup>

The following section explores the selected areas of the rights of persons with disabilities covered in the regulatory framework of Viet Nam and their execution.

## 2.1 Obtaining the certificate of disability

According to the Law on Persons with Disabilities, PWDs can obtain certificates of disability. This certificate is essential for PWDs to access certain public services. As stipulated in the Circular 01/2019/TT-BLDTBXH, the Disability Examination Council is established by the Chairperson of the People's Committee at the commune level, and includes among its members the chief of the commune healthcare centre, representatives of the local Fatherland Front, Women's Union, Department of the Labour, Invalids, and Social Affairs, Youth Union and Veteran association. However, forms and degrees of disabilities may not be examined by simple observation; the template for determining forms and degrees of disabilities attached to the Circular only requires information of impaired parts of the body and functions, not social barriers faced by PWDs in their daily life. Hence, it is impossible to determine all forms and degrees, especially psycho-social, or other types of disabilities and determine disabilities from the social perspectives. In fact, many children displaying symptoms of autism have not yet obtained the certificate of disability, and as such cannot access the special education system.<sup>15</sup>

Obtaining a certificate of disability is difficult for children with disabilities as well as for their parents. If the form and degree of disability cannot be determined at a local level, parents of children with disabilities often request a medical certificate from Nhi Dong Hospital to submit to local authorities, which takes significant time and often leads to a backlog. As advised by a government official in the Ministry of Health, this is an incorrect procedure. Pursuant to the Circular 01/2019/TT-BLDTBXH, If the council at the commune level cannot make decision, the children with disabilities can be referred to the provincial level which should be capable to examine and certify their disabilities. Anyways, parents of children with disabilities are not fully aware of the State's regulations, and children displaying symptoms of autism cannot be examined in a timely manner or obtain the certificate of disability which may affect their access to

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<sup>13</sup> Law on Person with Disabilities, Law No. 51/2010/QH12, dated 17 June 2010, Article 4(1).

<sup>14</sup> Ministry of Labour, Invalid and Social Affairs, Report on Social Assistance, (2016).

<sup>15</sup> Vina Health, "Current policies for children with autism in Viet Nam, Rehabilitation Centre". 22 May 2020.

Accessed: 3 September 2019. Available at

<https://www.trungtamphuchoichucnang.com/tu-ky/chinh-sach-doi-voi-tre-tu-ky-o-viet-nam-hien-nay.html>.

suitable education.<sup>16</sup> In addition, it is difficult to determine the degree of disabilities in some cases, such as the seriousness of a sensory disability. If such degree of disability is difficult to determine, this can create a barrier for PWDs to receive appropriate social allowance or support from the State.<sup>17</sup> Furthermore, if a person displaying symptoms of autism is determined as having a serious 'intellectual or mental disability', they cannot enter higher education. Therefore, to expedite the process and guarantee entry, they resort to requesting for a 'mild disability certificate' to enrol in universities. Again, the certification process prevents PWDs, in particular, those with 'other types of disabilities', from receiving suitable support from the state, including access to an appropriate education.<sup>18</sup>

The significance of the disability certificate is more visible in crises situations when PWDs without the certificate are more vulnerable as they are often outside the reach of the government's response or recovery support to the crisis. For example, as part of the response to the COVID-19 pandemic in April 2020, the Government of Viet Nam announced, among other measures, a support package of US\$2.6 billion for those affected by this unprecedented crisis. People with severe and extremely severe disabilities, who possessed a certificate and had already been receiving supports through the monthly allowance under the social assistance system, were automatically entitled to receive an extra amount from the support package. Overall, the number of people with mild disabilities is much larger than that of people with severe and extremely severe disabilities possessing the certificate and receipt of monthly allowances. People with mild disabilities do not receive monthly allowance so must often take up employment in the informal sector to support their living costs. In addition, the complex and prolonged procedures of obtaining the certificate without significant monetary benefits attract little interest from people with mild disabilities.<sup>19</sup> In the Rapid Assessment of Socio-Economic Impacts of COVID-19 on People with Disabilities, conducted by UNDP between April and May 2020, 24% of PWDs responding to the survey did not possess a disability certificate, and 71% worked in the informal sector, who faced challenges in proving their eligibility to receive support from the Government's support package. Evidently, the Rapid Assessment indicates that only 16% of respondents had been supported with food and 13% with different forms of financial support. 20% had received personal protective equipment, and only 3% had received relevant training on public health responses such as handwashing, which is very low for a group at high risk.<sup>20</sup> The lesson learnt in terms of widening the scope of disability levels to be recognized and registered on official systems from COVID-19 acts as a driving force to reform the social protection system in general, and the disability certification in particular, to be more responsive, anticipatory, and disability-inclusive.

In addition, the current methods for determining the degree of disabilities at the commune level and Medical Assessment Council are different. The Medical Assessment Council determines the degree of disability based on the percentage of physical impairment, in accordance with Circular No.28/2013/ TTTLT-BYT-BLDTBXH which

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<sup>16</sup> Interview with Mr. Khiem, Chairman of Organization of Deaf Persons in Ho Chi Minh city, for this study, dated 24 September 2019. See Annex 4 for full list of interviews.

<sup>17</sup> Mr. Đoàn Phạm Khiêm, Recorded sharing from participant from Ho Chi Minh city Consultation Workshop for this study, dated 24 September 2019.

<sup>18</sup> Interview with Ms. Tu Thanh Thuy, a person with autism symptoms determined to be at exceptional serious disability level who wishes to appeal this determination as it affects her access to higher education, from Ha Noi Consultation Workshop for this study, dated 16 October 2019. See Annex 4 for full list of interviews.

<sup>19</sup> See

<https://e.vnexpress.net/news/business/economy/vietnam-approves-2-6-billion-support-package-for-covid-19-crisis-victims-4082541.html>

<sup>20</sup> See Rapid Assessment of the Socio-economic impact of COVID-19 on persons with disabilities in Viet Nam [https://www.vn.undp.org/content/vietnam/en/home/library/democratic\\_governance/ImpactPwDs.html](https://www.vn.undp.org/content/vietnam/en/home/library/democratic_governance/ImpactPwDs.html)

adopts international standards. Whereas the Circular No.01/2019/TT-BLDTBXH regulates the Examination Council at commune level to apply observation and interview methods. Consequently, there may be a difference in the degree of disabilities when examined by two different agencies. This may lead PWDs to disagree and complain about the assessment of the Council at the commune level, which can lead to appeals being lodged against the decision of the Council.<sup>21</sup> The components of the disability degree determination council specified in Article 16 of the Law on Persons with Disabilities, as mentioned above, taken together with the simple methods of determining forms and degrees of disabilities stipulated in Article 17, demonstrate the dominance of the medical model because disabilities are examined by health staff without considering other social barriers, and only visible physical impairments could be detected with these observation methods. As a consequence, certain social barriers to the full inclusion of PWDs in society will be ignored thus many PWDs requiring support to overcome such barriers will be further marginalized.

## 2.2 Education

The Law on Persons with Disabilities ensures the right to education of PWDs by obligating educational institutions to ensure teaching and learning conditions are suitable for PWDs and prohibits the refusal of admission to PWDs to such institutions.<sup>22</sup> The Ministry of Education and Training (MOET) issued Circular No.03/2018/BGDĐT dated 29 January 2018 on inclusive education for PWDs. Inclusive education programmes in schools, vocational training, and higher education have been modified to respond to the needs of PWDs. Inclusive education has been identified as the main mode of education for PWDs at all levels. Infrastructure and facilities have been renovated and improved accordingly. Teaching programmes and textbooks have been developed, reviewed and used by educational institutions for PWDs which enable children with disabilities to have more opportunities to efficiently access inclusive education.

MOET launched policies for primary intervention, detection and inclusive education for children with visual and sensory disabilities or persons facing difficulties to study. Up to now, Viet Nam has established inclusive education support centres in 21 provinces with 107 segregated education centres and 12 specialized education centres for children with disabilities.<sup>23</sup> The Law on persons disability defines that inclusive education should be carried out at all levels. However, in fact, the limited number of inclusive education centres remains a significant barrier for many children with disabilities to study. The number of children with disabilities has increased 10 times in the previous two decades. Of the total number of children with disabilities, 88.7% have entered primary education at the same age as children without disabilities, while in junior high school that rate was 33.6%.<sup>24</sup>

Although the Law on Persons with Disabilities defines inclusive education and indicates it is the main means of affording education for PWDs, the accessibility of the learning environment is also an important determinant of the quality of inclusive education. For example, if there is a lack of sign language interpretation for persons with hearing impairments, accessible documents for students with visual impairments or elevators for wheelchair users, then accessing education could prove impossible.<sup>25</sup> Currently, around 94.2% of children with disabilities participate in inclusive education. However,

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<sup>21</sup> Ministry of Health, Report on Accountability of the State's Management of Laws and Policies on Social Protection for People with Disabilities and the Elderly, (2019).

<sup>22</sup> Law on Persons with Disabilities (2010), Article 30.

<sup>23</sup> Ministry of Education and Training, Assessing the Support for the Education of People with Disabilities in the Period 2012-2020, (2019).

<sup>24</sup> National Survey on People with Disabilities (2019), 19.

<sup>25</sup> World Health Organization, World Bank, World Report on Disability, (2011), 4.

despite the high number of children currently receiving inclusive education, challenges remain in providing an equitable equitable inclusive education for children with disabilities from lower socio-economic backgrounds. The participation of children with disabilities in inclusive education aged 5-14 in multidimensional poor households is only 21% which is lower than similarly situated children without disabilities.<sup>26</sup> The barriers and challenges that prevent children and young people with disabilities from accessing the inclusive education system remain as follows:<sup>27</sup>

- *Facilities:* Only three out of every 100 schools apply universal design for PWDs (2.9%); 8 out of 100 have a ramp for PWDs (8.1%), and 10 of 100 have accessible toilets (9.9%).<sup>28</sup> Most educational institutions have not yet been renovated due to the lack of financial resources, an effective monitoring mechanism, or penalties for violations. For example, high desks, narrow doors and staircases remain challenging for students with disabilities, especially in rural areas.

- *Teachers and Supporting Staff:* Approximately three out of four educational institutions lack human resources for teaching children with disabilities (72.3%), while only one out of seven elementary and junior high school teachers are trained for teaching PWDs (14.1%).

- *Programme and Teaching Documents:* A lack of teaching documents and supportive equipment or tools are among the most serious barriers for PWDs to enjoy inclusive education. In particular, when textbooks published for children without disabilities need to be revised, so too must all textbooks and resources for PWDs be revised accordingly, otherwise, students with disabilities are disadvantaged with out-of-date learning resources. In addition, the high expense of producing Braille teaching documents presents a challenge for the education of PWDs and requires a certain investment from education agencies. Inclusive education programmes require all educational institutions to develop a personalized teaching curriculum for PWDs, but to date this requirement has only been followed at the elementary school level.<sup>29</sup> These barriers demonstrate that PWDs' right to education stipulated in Articles 27, 29, and 30 of the Law on Persons with Disabilities has not been effectively implemented for all.

- *Accountability of educational institutions:* Regulations on the responsibilities of educational institutions to "ensure teaching and learning conditions (are) suitable to persons with disabilities" are unclear as to the requirement of 'reasonable accommodation'. Educational institutions "are not allowed to refuse admission of persons with disabilities as it is a violation against the right to study of PWDs"<sup>30</sup> but this does not prevent educational institutions from indirect discrimination against children with disabilities. Many reasons are used to refuse admission giving rise to indirect discrimination, including overcapacity, lack of supporting staff, lack of teaching documents and others.

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<sup>26</sup> UNICEF, Children with disabilities in Viet Nam: Findings of Viet Nam's National Survey on People with Disabilities 2016-2017, (2018).

<sup>27</sup> National Survey on People with Disabilities (2019), 164, 165.

<sup>28</sup> Ibid., 19.

<sup>29</sup> Interview with Ms. Nguyen Thi Quy Suu, Primary Education Department, Ministry of Education and Training for this study, dated 18 September 2019. See Annex 4 for full list of interviews.

<sup>30</sup> Decree No. 144/2013/ND-CP dated 29 October 2013 of the Government regulating handlings of administrative violations in social protection, social relief, protection and taking care of children, Article 11(8) provides for sanctions against responsible authorities for preventing PWDs from accessing education.

A lack of accessibility in education is a key barrier for PWDs to fully participate in society. According to the National Survey on Persons with Disabilities, “50% of all PWDs aged 15-64 who live in multidimensionally poor households have never attended schools or completed primary school.”<sup>31</sup> In addition, PWDs face difficulties in accessing higher education because universities remain inaccessible in terms of both education provided and learning environment created, with no obligations for university leaders to improve their accessibility. For example, such challenges are felt acutely by deaf and hard of hearing persons:

“Currently, there are around 2.2 million persons with a sensory disability, of which over one million having congenital deafness symptoms. The number of deaf persons who have access to inclusive higher education at university nationally is only 30-40 people; while most deaf persons do receive lower-level education. Although deaf children in urban areas and with supportive family environments can often access education, they only can complete primary school.”<sup>32</sup>

Due to the lack of access to education, deaf and persons with hearing impairments are prevented from the enjoyment of other related rights:

“Lower education due to the lack of sign language interpretation causes negative impacts on the life of PWDs, such as preventing PWDs from gaining knowledge and also restricting their integration into family life and society. This also limits their opportunities to access to further education, vocational training, and employment. Hence, deaf persons cannot develop their capacity and improve their talent, establish new enterprises, or increase their access to information or transportation without accessible education.”<sup>33</sup>

Therefore, limited education among working aged PWDs remains a key barrier for them in finding a secure or high-income job.

## 2.3 Healthcare

The Ministry of Health provides guidelines for the implementation of rehabilitation, early examination and intervention for children with disabilities. For example, the ‘Guideline document for community-based rehabilitation,’ under Decision No.1213/QD-BYT dated 15 April 2009, provides guidance for the training healthcare staff, and the ‘Guideline for early examination and intervention,’ under Decision No.970/QD-BYT, dated 29 March 2012, provides guidance for the relevant child support staff to provide effective care for children with disabilities. Furthermore, the Government also approved the ‘National Strategy for Protection, Care and Improve People’s Health Period 2012-2020 with a Vision to 2030’ and the ‘Programme for Health-Population Strategy 2016-2020’ issued by the Ministry of Health. The Ministry of Health also developed and approved the ‘National Plan on Rehabilitation’ for the period 2014-2020, and through this plan implemented numerous projects supporting PWDs, including a rehabilitation project for victims of Agent Orange/dioxin.<sup>34</sup>

The relevant provision in the Law on Persons with Disabilities regulating the obligations and duties of healthcare providers is implemented at the commune level. This includes hospitals, healthcare and rehabilitation centres and other bodies.

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<sup>31</sup> National Survey on People with Disabilities (2019), 129.

<sup>32</sup> Interview with representative from organization of deaf persons for this study, dated 19 September 2019. See Annex 4 for full list of interviews.

<sup>33</sup> Ibid.

<sup>34</sup> Decision No.4039/BYT dated 6 October 2014 on approving the national plan on rehabilitation for the period 2014-2020.

Commune healthcare centres are responsible for recording the total number of PWDs and clarifying the relevant forms of disabilities, including physical, visual, hearing, mental, psycho-social and other disabilities. They are also responsible for providing information such as how to access rehabilitation, types of rehabilitation available, available supporting equipment, and updating personal information for PWDs, including residential address, degrees of disabilities, rehabilitation type, etc. Healthcare centres at the commune level assign the representative responsible for monitoring and caring for PWDs, making written records and ensuring PWDs are examined at least once a year.<sup>35</sup>

There are 63 rehabilitation centres nationwide, including one at a hospital at the central level and 62 others at the provincial level. All hospitals at the provincial level have rehabilitation divisions or units. Among the total of 713 Districts in Viet Nam, 90% have healthcare centres with a rehabilitation division.<sup>36</sup> Healthcare centres at the commune level only provide primary healthcare and manage healthcare records of PWDs related to community-based rehabilitation (CBR). Approximately 25% of communes provide rehabilitation services.<sup>37</sup> In addition, doctors, healthcare staff and coordinators in villages have been trained to provide CBR.

The Law on Health Insurance ensures the right of PWDs to access the state health insurance programme. However, PWDs still face difficulties in using health insurance for treatment and rehabilitation because of complicated procedures such as the requirement of registration in only one primary healthcare centre, which does not easily allow them to access others, often more accessible, healthcare centres. These and other such complicated administrative procedures are a barrier for PWDs to access healthcare services. In fact, many healthcare centres at the commune level lack specialized doctors to examine and provide treatment for PWDs. Only 2.3% of PWDs have access to appropriate rehabilitation services.<sup>38</sup> Nationally, 57.3% of CHCs have rehabilitation programmes, 90.6% of CHCs conduct education and disseminate knowledge about health care for PWDs and 88.3% of CHCs have a logbook for disability tracking. Only 16.9% of CHCs are designed in line with accessibility standards. Of this number, only 22.4% of CHCs have sanitary facilities designed for PWDs, and 41.7% have passageways and ramps for PWDs.<sup>39</sup> Significantly, PWDs who live in rural areas face more barriers and challenges in accessing healthcare services due to the lack of public transportation, geographic conditions, including mountainous and remoted areas or a lack of essential supports to access health services.

In addition, regulations on the list of treatment services covered by health insurance often do not include treatments needed by PWDs, causing them to face difficulties in securing basic support equipment. For example, only 21.74% of people over 18 years of age with a physical impairment can use assistive devices.

Deafness is considered less serious than other forms of disabilities. This has resulted in deaf persons facing significant difficulties in accessing healthcare services. Most

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<sup>35</sup> Ministry of Health, Report on Explanation of Responsibility in Implementation of Laws and Policies related to Social Support for Elder Persons and Persons with Disabilities, (2019), 7.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid, 8.

<sup>38</sup> Electronic Magazine of the Communist Party of Viet Nam, "Remaining Inequality for People with Disabilities", 11 January 2019. Accessed: 22 May 2020. Available at:

<http://dangcongsan.vn/xa-hoi/van-ton-tai-bat-binh-dang-doi-voi-nguoi-khuyet-tat-510740.html>

<sup>39</sup> National Survey on People with Disabilities (2019), 18.



healthcare centres lack sign language interpreters for people with hearing impairments, hence they cannot communicate with doctors.<sup>40</sup>

## 2.4 Vocational training and employment

Viet Nam has developed many programmes and policies on social security, job creation and vocational training for PWDs. The Prime Minister approved the 'Target Programme for Vocational Education - Employment and Occupational Safety' for the 2016-2020 period with Decision No. 899/QĐ-TTg, dated 20 June 2017. According to this Decision, a project on labour and employment market development was introduced, which supports the creation of jobs for PWDs, and in turn helped drive the achievement of the wider, longer-term National Programme for Supporting Persons with Disabilities for the period of 2012-2020.<sup>41</sup> Under Decision No. 710/QĐ-LĐTBXH dated 12 June 2018, the Department of Employment of MOLISA signed contracts with 28 agencies and units, including the Central Youth Union, 22 Employment Service Centres under the Department of Labour, Invalids and Social Affairs, four youth employment service centres and the Hanoi Association of People with Disabilities (DP Hanoi). The Decision provided a total budget of 12.5 billion VND to implement activities to support migrant workers and support job creation for young people, ethnic minorities, poor rural women and PWDs. In 2017, around 20,000 PWDs nationwide were supported with vocational training and job creation through vocational training programmes for rural workers. By the beginning of the third quarter of 2018, there were 156 vocational training institutions established, including 55 segregated vocational training facilities, as well as 200 other educational institutions which also provide vocational training for PWDs. Many PWDs have also been considered for tuition exemption or reduction under vocational training programmes.<sup>42</sup> For example, from 2013 to 2019, 15,545 PWDs received vocational training with the total value of 65.7 billion VND, of which 80% was covered as tuition exemptions, under the state budget, and 20% was covered with the support from individuals or organizations.<sup>43</sup> However, only 40% of those who underwent the training secured jobs, with typical incomes ranging from 1,000,000 VND to 3,000,000 VND per month.<sup>44</sup>

Access to vocational training is one of the biggest challenges faced by PWDs in securing employment, generating income and living independently. Currently, the number of PWDs who have professional knowledge and skills is limited. Approximately 1.2 million PWDs who are within the labour age and have working capacity need access to vocational training.<sup>45</sup>

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<sup>40</sup> Recorded sharing from participant from Ho Chi Minh city Consultation Workshop for this study, dated 24 September 2019.

<sup>41</sup> Decision No.1019/QĐ-TTg dated 05 August 2012 on the project for supporting persons with disabilities for the period 2012-2020.

<sup>42</sup> Education Journal of the Ministry of Education and Training, "Supporting job creation for PWDs in Viet Nam in the period of 2016-2018", 3 January 2019. Accessed: 20 May 2020. Available at:

<https://tapchigiaoduc.moet.gov.vn/vi/dao-tao-viec-lam/dao-tao-viec-lam/ho-tro-tao-viec-lam-cho-nguoi-khuyet-tat-o-viet-nam-giai-doan-2016-2018-29.html>, accessed on 20/11/2019

<sup>43</sup> Nhan Dan Online, "Vocational Training and Job Creation for People with Disabilities", 16 December 2019. Accessed: 4 February 2020. Available at:

<https://nhandan.com.vn/baohoinay/baohoinay-xahoi/item/42574402-day-nghe-va-tao-viec-lam-cho-nguoi-khuyet-tat.html>

<sup>44</sup> Nhan Dan Online, "Vocational Training and Job Creation for People with Disabilities", 16 December 2019. Accessed: 4 February 2020. Available at:

<https://nhandan.com.vn/baohoinay/baohoinay-xahoi/item/42574402-day-nghe-va-tao-viec-lam-cho-nguoi-khuyet-tat.html>

<sup>45</sup> Ministry of Labour, Invalid and Social Affairs, Report on Social Assistance, (2016).

- **Employment:** A low percentage of PWDs can find a job after vocational training and tend to be mainly self-employed. 80% of PWDs live in rural areas with low levels of education and a lack of information about job recruitment. PWDs often feel ashamed or reluctant together with barriers from society such as discrimination or stigma, making it more difficult for them to find jobs. In addition, some families do not allow their children with disabilities to become employed because they do not want them to be exposed to hard work. Significantly, many employers are reluctant to recruit PWDs because of their concern about working capacity and productivity.<sup>46</sup> In addition to this type of discrimination and stigma, there is a general lack of awareness among enterprises about their role in recruiting PWDs as well as a lack of job creation for roles appropriate for PWDs. Some provinces have not promulgated the list of occupations and cost norms for vocational training for PWDs.<sup>47</sup>

- **Vocational training:** PWDs can often feel ashamed and experience further challenges in pursuing vocational training opportunities. School or vocational training institutions do not ensure full access for PWDs, with limitations in terms of classroom design, ramps and pathways, and accessible toilets, among others. These training institutions also lack teachers and support staff who have the skills and knowledge to train PWDs.<sup>48</sup> Targeted policies are needed to overcome such challenges, where generally applicable policies for PWDs can fail certain groups, including for example, deaf persons: “Compared to other forms of disability, deaf people have more advantages, capacity, and ability to integrate into society. However, deaf persons cannot exercise their rights and derive benefit from policies which apply for all PWDs, or for deaf persons in particular because of their limited communication ability. Among policies that are applied to all PWDs, there are no specialized policies to ensure that deaf persons can access vocational training and find stable jobs.”<sup>49</sup>

- **Policies for businesses employing PWDs:** Article 34 of the Law on Persons with Disabilities provides support for businesses which employ at least 30% PWDs of their entire workforce, including the improvement of working conditions and facilities, exemption from the enterprise’s income tax, the ability to borrow loans with preferential interest rates, exemption from rents of land, reduced ground and water leasing rates, and reduction of leasing prices in general for businesses. However, this high threshold, at 30%, is not appropriate for small, medium-sized and family-owned businesses. Hence, the ambitious targets and incentives set by Government policy to encourage businesses to employ PWDs have not been effective. The role of the private sector in creating and maintaining jobs for PWDs has not been fulfilled.<sup>50</sup>

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<sup>46</sup> Education Journal of the Ministry of Education and Training, “Supporting job creation for PWDs in Viet Nam in the period of 2016-2018”, 3 January 2019.

<sup>47</sup> Interview with Ms. Pham Thi Hoan, Deputy Head of Education Department, General Department of Vocational Training, MOLISA, for this study, dated 16 September 2019. See Annex 4 for full list of interviews.

<sup>48</sup> Interview with Ms. Pham Thi Hoan, Deputy Head of Education Department, General Department of Vocational Training, MOLISA, for this study, dated 18 September 2019. See Annex 4 for full list of interviews.

<sup>49</sup> Interview with representative of the Organization of Deaf Persons for this study, dated 18 September 2019. See Annex 4 for full list of interviews.

<sup>50</sup> Recorded sharing from Ms. Kim Anh from the Ho Chi Minh city Consultation Workshop for this study, dated 24 September 2019.

## 2.5 Public transportation and construction

The Law on Persons with Disabilities specifies the minimum standards to ensure PWDs access to buildings and public transportation. Regarding construction, the Law provides minimum accessibility standards at each construction stage, from the design phase, construction, and inspection of new buildings, and also for old buildings, such as standards for renovations. New construction works must comply with national construction standards in order to ensure access for PWDs, as stipulated under the National Technical Regulation on Construction for Disabled Access to Buildings and Facilities.<sup>51</sup> In addition, the Law on Persons with Disabilities also provides schedules for the improvement of residential buildings and public works. Old construction and infrastructure which existed before the Law's promulgation must satisfy the conditions by 1 January 2020, while by 1 January 2025 all residential buildings, offices, public technical infrastructures, and social infrastructures must satisfy the conditions for PWDs' access.<sup>52</sup> Specifically, the Ministry of Construction is responsible for monitoring the implementation of renovation plans in accordance with the Law.

The Ministry of Transportation issued a number of legal documents on reducing or exempting ticket costs for PWDs and improving the technical standards for vehicles and transport infrastructure systems, including bus stops, lounges, railway stations and airports. The Ministry of Transport issued Circular No. 12/2017/TT-BGTVT dated 15 April 2017 on training, testing, and issuing driving licenses for road motor vehicles. This Circular provides specific regulations on training, creating, examining, and issuing driving licenses for PWDs and ensures PWDs are granted driving licenses for vehicles of category A1 covering motorized tricycles or driving licenses for vehicles of category B1 covering cars.

PWDs still face difficulties and challenges in accessing public transportation and using public facilities, including:

- **Facilities:** there is no 'reasonable accommodation' requirement in ensuring accessibility of PWDs in transportation and public facilities. Currently, only: 22.6% of medical centres; 20.8% educational institutions; 13.2% of exhibition centres; 11.3% of conference centres and government offices; 5.7% of supermarkets; 3.8% of the gymnasiums, post offices, railway stations, and border gates; 7.5% of nursing homes and social protection centres, and; 2% of banks are accessible for PWDs.<sup>53</sup> Expense is often cited as a reason for avoiding improvements, or a minimum standard is met to avoid sanctions instead of going beyond basic compliance to enhance access for PWDs.<sup>54</sup>
- **Public Transportation Systems:** As of 2018, only 30% of 457 stations ensure accessibility of PWDs, and only 478 (making up 4.8% of public buses) are accessible for PWDs, mainly low-floor buses.<sup>55</sup> Although policies on reducing or exempting ticket prices have been applied, PWDs still face difficulties in using

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<sup>51</sup> Ministry of Construction, National Technical Regulation on Construction for Disabled Access to Buildings and Facilities, (2014) (QCVN 10:2014/BXD).

<sup>52</sup> Law on Persons with Disabilities (2010), Article 40.

<sup>53</sup> National Survey on Person with Disabilities 2016-2017, (2019).

<sup>54</sup> Ministry of Construction, Department of Environment and Technology, Current situation of application the national technical standards QCVN 10:2014/BXD by the new building and renovating constructions, (2019), 4.

<sup>55</sup> Le Xuan, T., Transport Development and Strategy Institute, Report on implementation of the Law on Persons with Disabilities and CRPD in public Transport in Viet Nam, (2019), 11.

public transportation because of a lack of accessible facilities and support staff. In addition, deaf people also face difficulties in using public transportation because of a lack of sign language at stations, airports, and a lack of staff support for buying tickets or getting on or off vehicles.<sup>56</sup>

**- Using private vehicles:** Currently, many PWDs can use their private vehicles (cars and motorbikes) for daily travels, however, they cannot obtain driving licenses due to the difficulties in issuing the necessary documentation, including health certificates, thus they continue to travel with the necessary legal permit and are at risk of being penalized.

## 2.6 Information, Technology and Communication

The Law on Persons with Disabilities stipulates that it is a responsibility of the “mass media to reflect the material and spiritual life of PWDs.”<sup>57</sup> Article 35.1 (b) of the Law on Access to Information (2016) and Decree No.13/ND-CP/2018 also regulate that it is the responsibility of state agencies to facilitate disabled persons’ access to information in areas with extremely difficult social and economic conditions, including border regions, islands, and mountainous regions. Viet Nam Television (VTV) has the responsibility to ensure programmes are broadcasted with Vietnamese subtitles and sign language. There are currently four television channels (VTV2, VTV4, People’s TV and O2TV) which broadcast programmes with sign language interpretation. Since 2012, Viet Nam has been broadcasting a programme to teach sign language on television.<sup>58</sup> Currently, more than 60% of websites or web portals of state agencies provide basic functions to support PWDs in accessing and using information and communication technology in accordance with the regulations of the Ministry of Information and Communications. Some examples include providing screen reading software for the visually impaired, and options for increasing or decreasing the font size on websites.

Although Viet Nam has issued policies to improve accessibility to information, PWDs still face challenges, in particular accessing information targeted or relevant to them, including laws, policies and guidance, such as the social security policies. According to one interviewee, “Many PWDs who live in my commune do not know about social security policies such as social allowance provided by the state and local government. Therefore, I need to learn and practice sign language in order to share information about the new policies to PWDs.”<sup>59</sup> In addition, documents, newspapers, books, television programmes have not yet ensured full access to information for PWDs. Reasonable accommodation has been observed in certain areas, including providing subtitles and sign language interpretation for selected national television programmes, including VTV news, yet more needs to be done to extend this to more programmes and the wider media. Technology can play an important role in facilitating access to information. However, the regulatory framework and investment have not created an environment where technology can fulfil its role in this regard. In one prominent example, assistive electronic devices (screen reader software, talking watches etc.) are not covered by the Government, but are also not affordable for

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<sup>56</sup> Interview with Mr. Phan Ngoc Viet, PWD, Leader of the Committee on Advocacy for the Rights of the Deaf, for this study, dated . See Annex 4 for full list of interviews.

<sup>57</sup> Law on Person with Disabilities (2010), Article 43(2).

<sup>58</sup> MOLISA, Report on the Evaluation of the Implementation of CRPD of Viet Nam, (2019), 31.

<sup>59</sup> Interview with Ms. Dieu Linh, Representative from the Women with Disabilities Club, District Number 7, for this study, dated 24 September 2019. See Annex 4 for full list of interviews.

most PWDs. In addition, the intellectual property law allows the conversion of only printed materials into Braille and other languages, and not other modes of communication, formats or media, which creates informational barriers for certain people, for example, blind persons who cannot read Braille and require audio playback to listen to materials.<sup>60</sup>

## 2.7 Social Allowance

Viet Nam has implemented its social protection policies to ensure that PWDs are guaranteed the minimum income and access to basic and essential social services. Social allowance is provided for persons with serious and exceptionally serious disabilities, and PWDs are also eligible for general social security benefits such as those for poor households. In five years, the monthly allowance has increased by 54%, from 576,000 VND in 2011 to 896,600 VND in 2016. Article 45 of the Law on Persons with Disabilities provides that persons with exceptionally serious disabilities without anyone to support them or who are incapable of taking care of themselves shall be admitted to social-relief establishments. Currently, Viet Nam has a total of 432 social relief establishments (182 public centres and 250 private centres), including 67 centres which cater specifically for PWDs. There are 896,644 persons with serious disabilities and exceptionally serious disabilities receiving a monthly allowance from the state budget.<sup>61</sup>

## 2.8 Legal aid and access to justice

Viet Nam has developed a relatively comprehensive legal system for the protection of the rights and interests of PWDs. The Law on Handling of Administrative Violations (2012) and the Penal Code (2015, amended 2017) stipulate protective measures for PWDs. Individuals discriminating against PWDs shall receive administrative sanctions or be subject to criminal liability. Significantly, Decree No.144/2013 ND-CP dated 29 October 2013 on Administrative Sanctions of Violations of Social Protection, Social Relief, Care and Protection for Children declares that administrative penalties shall be imposed on individuals committing violations against PWDs. For example, violations committed by healthcare centres, educational institutions, vocational training schools, or employers, in discriminating against PWDs, shall be fined between 3,000,000 and 5,000,000 VND.

However, the current regulatory framework on the protection of rights, and response to violations and discrimination against PWDs, are only promulgated through Decrees in specific fields, such as in education, healthcare, construction, and employment, but not in the Law on Persons with Disabilities. The Law on Persons with Disabilities does not include any provisions detailing the legal liability of institutions, covered under the Law, who fail to fulfil their obligations. For example, Article 23 (4) of the Law on Persons with Disabilities provides the responsibility of a healthcare centre to renovate facilities and infrastructures to ensure accessibility of PWDs. However, it does not include any specific sanctions or penalties where the healthcare institution fails to fulfil this responsibility. In general, the current legal system still lacks effective regulations on the protection of the rights of PWDs.<sup>62</sup>

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<sup>60</sup> Decree No.22/2018 ND-CP dated 23 February 2018 on guidelines for certain number of articles of the Intellectual Property Law and Law on amendments to the Intellectual Property Law 2009 in terms of the copyright and related rights, Article 7.

<sup>61</sup> MOLISA, Report on Social Assistance, (2016).

<sup>62</sup> Dao Thi, A., USAID, Vietnam Assistance for the Handicapped (VNAH), Ensuring the implementation of the rights of PWDs through administrative penalties, (2011).

Significantly, indirect discrimination against PWDs has not yet been prohibited by law, whereby a practice, policy or rule which applies to everyone in the same way, but has a worse effect on PWDs than others, putting them at a particular disadvantage. This creates a challenge for PWDs in accessing justice. For example, a person using a wheelchair is often ignored by bus conductors or treated with a negative attitude because in certain circumstances bus drivers do not want to serve persons using wheelchairs due to perceived inconveniences, thus discriminating against PWDs.<sup>63</sup> However, PWDs very often do not seek legal redress in such cases because such acts of discrimination are often considered not serious in terms of severity, by the discriminator, the victim, and the wider society. Another clear example is where private primary schools deny admission to children with disabilities, including children with symptoms of autism, due to pressure exerted from the parents of children without disabilities who are admitted to the school.<sup>64</sup> Currently, the laws only define direct discrimination and only focus on the act committed by individuals rather than organizations, creating a further barrier for PWDs in accessing justice.

Furthermore, physical accessibility is only outlined under the Law in relation to construction and transportation, but again under no provision is the legal liability of organizations which are determined to have prevented, or failed to have ensured accessibility, outlined. The standards of accessibility should be provided for under the Law across all services and institutions, including education, healthcare and information. And equally importantly, the Law on Persons with Disabilities must outline clearly the legal liability for failure to fulfil obligations in ensuring standards of accessibility are met, including the relevant penalties, and redress for victims.

PWDs are at high risk of being discriminated against or having their rights and legitimate interests violated, therefore, legal aid is one of the most important support services to ensure their right to access to justice. Under the Law on Legal Aid, 2017, Article 7, and Decision 81/QĐ-BTP dated 10 January 2018, outlines that PWDs who face financial difficulties can access free state legal aid services. Financially difficult conditions include those from poor or near-poor households or those receiving a monthly allowance as prescribed by law. Thus, people with serious and exceptionally serious disabilities are eligible for access to free legal aid services. In addition, PWDs can get free legal support in certain other situations such as PWDs with “Meritorious contributions to the Revolution”; children with disabilities, and; PWDs who are ethnic minorities living in an area with difficult socio-economic conditions. In addition, the Criminal Procedure Code, 2015, also provides the responsibility of judicial bodies to nominate lawyers to defend PWDs when they are criminally charged and unable to defend themselves or do not have the support of a legal representative.<sup>65</sup>

Despite these supports, many PWDs can still not access legal aid services for many reasons, including a lack of legal knowledge or awareness and a lack of availability of legal aid in difficult areas such as rural, remote or mountainous regions. Additionally, PWDs often do not want to share their complaints or stories because of a fear of communicating with other people or state agencies. This lack of awareness and communication about legal aid service availability results in many PWDs not utilizing their right to access free legal aid. For example, in 2015 and 2016, there were a total of 9,499 PWDs receiving legal aid at the provincial level, of which 686 PWDs were

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<sup>63</sup> E-Government Portal, Government of Vietnam, “When can discrimination against persons with disabilities be stopped?”, 25 November 2018. Accessed: 20 November 2019. Available at:

<http://tphcm.chinhphu.vn/bao-gio-nguoi-khuyet-tat-thoi-bi-phan-biet-doi-xu>.

<sup>64</sup> Interview with representative from the Ministry of Education and Training for this study, dated 18 September 2019. See Annex 4 for full list of interviews.

<sup>65</sup> Criminal Procedure Code, Law No. 101/2015/QH13, dated 27 November 2015, Article 76(1).

supported with their criminal proceedings, 8,691 PWDs got legal counsel, and 122 others received support from other legal aid activities.<sup>66</sup>

In addition, these challenges faced by PWDs, organizations or legal aid service providers advising PWDs often do not fully understand the cases they are arguing, including collecting evidence and statements from their clients and therefore cannot effectively protect the rights and legitimate interests of PWDs or ensure their equality before the law.

Representatives of the Ministry of Justice indicated the difficulties and barriers in providing legal aid services for PWDs:

“There are different approaches in the Law on Legal Aid and the Law on Persons with Disabilities. The Law on Persons with Disabilities provides the right to access legal aid for PWDs, which is not based on their financial condition. The Law on Legal Aid, however, specifies that only PWDs who receive monthly allowances and have difficult financial conditions can access free legal aid services. In addition, it is difficult for legal aid service providers to communicate with PWDs, especially those with hearing impairments. Some legal aid service providers still lack the necessary skills and experiences to effectively support PWDs. Some organizations have not yet renovated their facilities and lack the necessary equipment and financial resources for building capacity and professional skills in providing legal aid and representing PWDs in criminal proceedings.”<sup>67</sup>

## 2.9 Monitoring of implementation

The NCD was established to support the Prime Minister in directing and coordinating the relevant ministries and local authorities in monitoring the implementation of the laws and policies related to PWDs. The NCD also issued Decision No.33/QĐ-UBQGKT dated 17 March 2017, which requires relevant government agencies, at both central and local levels, to report back on and assess the implementation of laws and policies related to PWDs, with respect to the responsibilities and mandate of each agency. Report form ‘No. 2’ sets the standard criteria for all relevant agencies in assessing the implementation of laws and policies related to the PWDs, but does not, however, include detailed indicators to measure implementation, for example meeting standards on accessibility.

According to the Law on Persons with Disabilities, MOLISA is responsible for monitoring the implementation of the policies and laws related to PWDs. In 2016, the General Statistics Office, in collaboration with UNICEF, conducted a national survey on PWDs. This survey was carried out in 1,074 communes and was aimed to “assess the disability situation and socio-economic conditions in population to provide evidences for planning and improving the lives of persons with disabilities in Viet Nam.”<sup>68</sup> In 2017, the NCD issued indicators for evaluating the implementation of social works related to PWDs. These include quantitative indicators for each specific area which enable the NCD, relevant ministries and local government to monitor and produce annual reports about the implementation of policies related to PWDs, which are synthesized by NCD and reviewed by MOLISA to inform the development of annual plan related to PWDs. These include quantitative indicators for each specific area which enable

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<sup>66</sup> MOLISA, Report on the Evaluation of the Implementation of CRPD of Viet Nam, (2019).

<sup>67</sup> Interview with representative of the Ministry of Justice for this study, dated 26 September 2019. See Annex 4 for full list of interviews.

<sup>68</sup> National Survey on People with Disabilities 2016-2017, (2019), 13.

the NCD, relevant ministries and local government to monitor and produce annual reports about the implementation of policies related to PWDs, which are synthesized by NCD and reviewed by MOLISA to inform the development of annual plan related to PWDs. Hence, each related ministry shall be responsible to report in accordance with the indicators as prescribed by NCD. Overall, PWDs and their organizations can easily access information and data about PWDs, and have the right to “participate in the formulation and supervise the implementation of policies and law on persons with disabilities.”<sup>69</sup>

However, the Law on Persons with Disabilities does not include any clear provisions on establishing the role of the NCD in monitoring the implementation of the Law. The Law also fails to clearly stipulate that “... in particular, persons with disabilities and their representative organizations, shall be involved and participate *fully* in the monitoring process” (emphasis added), thus reflecting the obligations under the CRPD, as per Article 33.3. The lack of an independent monitoring mechanism, with the full participation of PWDs and their organizations, is an important factor contributing to the ineffective monitoring of both the Law on Persons with Disabilities and the CRPD. For example, the leader of OPD Ha Nam Province has not participated in decision-making processes and monitoring efforts for the implementation of policies and laws related to PWDs at the local level.<sup>70</sup>

Even before having access to decision-makers for the purposes of monitoring the implementation of laws and policies, PWDs face challenges in mobilizing to fulfil their role in this regard. Although the concept of an OPD is defined in Article 9 of the Law on Persons with Disabilities, PWDs still face difficulties in founding their own organizations at the grassroots level. Lacking a comprehensive legal framework on organizations and the operation of social organizations, including OPDs, remains a key challenge in facilitating the mobilization and coordination of PWDs, to promote the role of OPDs in monitoring laws and policies.

In summary, through evaluating the regulatory framework in the selected areas highlighted above, primarily through the Law on Persons with Disabilities, Viet Nam’s laws and policies are relatively comprehensive in terms of trying to ensure that PWDs have access to public services. The impact of the Law on Persons with Disabilities was evaluated by a public official from MOLISA, for the purposes of this study, as follows:

“In brief, the 2010 Law on Persons with Disabilities has brought many positive impacts to the life of PWDs. The rights and legitimate interests of PWDs are better protected. For example, it is the first time that forms and degrees of disabilities can be examined by the Impairment Assessing Council at the commune level, national technical standards on the accessibility of infrastructure for PWDs were introduced, access to school is determined, and responsibilities for renovating public transportation and in the construction industry for ensuring accessibility of PWDs are also provided for. In general, the Law on Persons with Disabilities has contributed to protecting the rights of PWDs by outlining responsibilities of state agencies, families and society as well as promoting the accessibility of PWDs in society. However, there are several areas where the law and its implementation need improvement.”<sup>71</sup>

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<sup>69</sup> Law on Persons with Disabilities (2010), Article 9.

<sup>70</sup> Interview with Mr. Tran Quang Dung, Chairman of the Organization of Persons with Disabilities of Ha Nam Province, for this study, dated 13 November 2019. See Annex 4 for full list of interviews

<sup>71</sup> Interview with Ms. Pham Thi Hoan, Deputy Head of Education Department, General Department of Vocational Training, MOLISA, for this study, dated 16 September 2019. See Annex 4 for full list of interviews





### III. KEY RESEARCH FINDINGS ON ALIGNMENT OF LAW ON PERSONS WITH DISABILITIES AND THE CRPD ● ● ● ● ● ●

As outlined above, although the Law on 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:

### 3.1 Definitions

#### (i) Definition of disability

The definition of disability under the Law on Persons with Disabilities uses a medical model and does not include all forms of disability, as outlined in Article 2.1, which states: *“Person with disabilities means a person who is impaired in one or more body parts or suffers functional decline manifested in the form of disability which causes difficulties to his/her work, daily life and study”*. Following the medical model, the determination of the forms and degrees of disabilities is outlined under Article 17.1 as carried out by the method of “direct observation” of PWDs through their simple activities of serving their personal daily life, *“using the set of questions under medical and social criteria and other simple methods”* to conclude the degree of disability of each person. This determination method cannot detect hidden disabilities. For example, a person with autism said that it was difficult for any observers to recognize that she was displaying symptoms of serious autism through communication because her symptoms cannot easily be detected by simple observation, as is the current method prescribed under Article 17 of the Law on Persons with Disabilities and as conducted by the Council of Disability Examination at the commune level.<sup>72</sup>

Under Article 1, the CRPD defines the term of disability as follows: *“Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”* The CRPD requires States parties to recognize the diversity of persons with disabilities. The social model approach under CRPD is more suitable with other standards on “accessibility”, and “reasonable accommodation” which States parties should adopt in order to eliminate all “barriers” and “obstacles” to enable PWDs to participate equally in society as persons without disabilities.

There are several differences between the two definitions that may lead to diverging outcomes in terms of how they are interpreted. These can broadly be categorized as distinctions in the definition (front-side) and distinctions in the substantive outcome (back side) of the definition.

On the front-side of the two definitions, the law in Viet Nam is somewhat more expansive than the CRPD. While the Convention describes PWDs as “those who have long-term physical, mental, intellectual or sensory impairments,” Viet Nam’s law requires impairment in “one or more body parts” or “functional decline manifested in the form of a disability” which includes physical disability; hearing disability; visual disability; mental and psychiatric disability; intellectual disability, and; other disabilities. 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”.

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<sup>72</sup> Interview with Ms. Tu Thanh Thuy, a person with autism symptoms determined to be at exceptional serious disability level, from Ha Noi Consultation Workshop for this study, dated 16 October 2019. See Annex 4 for full list of interviews.

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 includes disabilities 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”.<sup>73</sup> The difference in approaches highlights the difference between the social and medical models, as discussed above. Where the CRPD focuses on the interaction between impairments and external obstacles which then limits the ability of PWDs to fully participate in society, the Vietnamese law views impairments as “caus(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.

## **(ii) Language and communication**

Article 2 of CRPD explains the term “communication” as follows: “‘Communication’ includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology.” “Language” is described under Article 2 as including “spoken and signed languages and other forms of non-spoken languages”. The Law on Persons with Disabilities does not include any concepts around languages and communication, such as those reflected in the CRPD. Consequently, there is a barrier to accessing information and effectively communicating as a legal ground for determining the standard of accessibility required for PWDs and alignment with the CRPD.

## **(iii) Reasonable accommodation**

The 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 justification 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. For example, adjusting the height of a table and expanding the aisles between desks for wheelchair users are both measures of reasonable accommodation which help to strengthen accessibility for PWDs, and are not prohibitively expensive.<sup>74</sup>

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.

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<sup>73</sup> Law on Persons with Disabilities (2010), Article 2(1).

<sup>74</sup> Interview with Ms. Catherine Phuong, Assistant Resident Representative, UNDP Viet Nam, for this study, dated 8 October 2019. See Annex 4 for full list of interviews.

#### **(iv) Universal Design**

As stated above, Article 2 of the CRPD defines “Universal Design” as “the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.” The Convention further states that “‘Universal design’ shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.”<sup>75</sup> There is no inclusion or definition of universal design in the Law on Persons with Disabilities. It should be added to the Law to specify the concept and related standards for the design such products, programmes, and services, including buildings, websites, and facilities, to guarantee access for PWDs.

#### **(v) Discrimination**

The Law on Persons with Disabilities defines the concept of discrimination as “the act of shunning, refusing, maltreating, disparaging, showing prejudice against, or restricting the rights of, persons with disabilities because of their impairments” (Article 2(3)). This definition is too narrow because it does not include the acts of organizations. Additionally, this definition only refers to direct discrimination. Thus, there is a lack of legal basis for punishing indirect discrimination as discussed above. As such, PWDs cannot request or seek legal address in a case of indirect discrimination due to the lack of comprehensive regulations on discrimination against PWDs.

#### **(vi) Fundamental principles for protecting the rights of PWDs.**

Article 4 of the Law on Persons with Disabilities provides the rights and responsibilities of the PWDs and Article 14 regulates the prohibited acts, but this law still lacks fundamental principles such as “(r)espect for difference and acceptance of persons with disabilities as part of human diversity and humanity,” and “(f)ull 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.

### **3.2 Education**

The Law on Persons with Disabilities outlines the responsibilities of educational institutions in relation to ensuring access to education for PWDs: (1) To ensure teaching and learning conditions are suitable for persons with disabilities; (2) To prohibit the refusal of admission to persons with disabilities in contravention of law, and; (3) To renovate and upgrade physical teaching and learning foundations which fail to meet the conditions on access by persons with disabilities (Article 30). 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 environments that maximize academic and social*

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<sup>75</sup> United Nations, CRPD, (2006), Article 2.

*development, consistent with the goal of full inclusion.*" (Article 24(1), 2(e)). 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 Law in Viet Nam ensures the right to access education for PWDs at an older age through a variety of policies and measures, including policies that prioritize the enrolment of PWDs, exemption or reduction of tuition fees for PWDs, exemption from some subjects, and offering support equipment and study tools (Article 27). However, the capacity and investment in many cases to implement such policies, and ensure they are widely available, are still limited, thus hindering PWDs' access to higher education.

In addition to the provisions in the Law on Persons with Disabilities, the Law on Education, 2019, Article 11(2) provides that *"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."* This regulation only includes some forms of language and formats for specific types of hearing, speaking, and visual impairments. All types of languages and accessible formats defined in Article 2 of the CRPD should be provided for under Viet Nam's Law on Persons with Disabilities.

Educational institutions are subject to administrative sanctions in case of a shortage of teaching and learning conditions unsuitable for PWDs (Article 11, Decree 144/2013/ND-CP). However, no monitoring mechanism was established, or in-charge agency assigned, to assess the suitability of "teaching and learning conditions" of inclusive education institutions. In addition, there is no provision outlining the responsibilities of local government in terms of budget allocation for the development of inclusive education institutions. Therefore, the Ministry of Education and Training cannot impose penalties, as a deterrent against violations, given that monitoring is ineffective and resources for improvement are unavailable.<sup>76</sup> Detailed criteria on what qualifies as accessible in terms of the educational environment should be defined to allow for the establishment of a rigorous monitoring mechanism for the right of PWDs to education.

### **3.3 Healthcare and rehabilitation**

Access to healthcare and rehabilitation is one of the most important rights of PWDs. The CRPD requires that States Parties take all appropriate measures to ensure gender-sensitive access for persons with disabilities to health services, including health-related rehabilitation (Article 25). The focus on rehabilitation in the Law on Persons with Disabilities appears to be largely physical in line with the current definition outlined under Article 25. This understanding needs to be 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 *"(t)he State shall invest in the construction of physical and technical foundations of public orthopaedic and functional rehabilitation facilities"*, this provision should lay more emphasis on the

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<sup>76</sup> Interview with Ms. Nguyen Thi Quy Suu, Primary Education Department, Ministry of Education and Training for this study, dated 18 September 2019. See Annex 4 for full list of interviews.

guarantee of accessibility of rehabilitation facilities and gender-sensitive rehabilitation and healthcare services, instead of just the development of infrastructure and facilities. Moreover, many basic assistive devices for PWDs, such as white canes and clutches, have not been covered by the state health insurance programme. These gaps in the law have contributed to the current situation where only a limited number of PWDs can access appropriate rehabilitation services, at only 2.3%, as mentioned above, thus creating further environmental and financial barriers to ensuring the full participation of PWDs in society, including by not facilitating their access to essential assistive devices.<sup>77</sup>

### **3.4 Construction and transportation**

The Law does not clearly define the responsibility of the private sector in providing accessible services, as Article 9.2 (b) of the CRPD requires. The Law on Persons with Disabilities only applies the accessibility standard in a narrow context, such as in limited circumstances in both the public transportation and public construction sectors. On the contrary, the CRPD requires the state members 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.

### **3.5 Information and communication**

The Law on Persons with Disabilities does not formulate a strict responsibility for ensuring access to information, technology and communication as Article 43.1 only “encourages” agencies, organizations, enterprises and individuals, operating in the information technology sector, to apply and develop their technology for PWDs. Therefore, it is difficult to impose administrative sanctions on organizations or individuals that do not provide PWDs with access to information technology and communication. 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. Currently only Braille and sign language are included in terms of modes of communication covered by the Law, as outlined under Article 43 of the Law. This should be expanded upon to ensure the law in Viet Nam responds to the rapid development of information technology.

### **3.6 Social allowance**

Currently, social protection policies, including the social allowance for PWDs and monthly care fees for their carers, have been applied based on the degree of disability, only serious and exceptionally serious disability. 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 programme, ‘Funds for Assistance of Persons with Disabilities’.<sup>78</sup> 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 programmes, this strengthening alignment with the CRPD.

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<sup>77</sup> Electronic Magazine of the Communist Party of Viet Nam, “Remaining Inequality for People with Disabilities”, 11 January 2019.

<sup>78</sup> Law on Persons with Disabilities (2010), Article 10(1).

### 3.7 Legal aid and access to justice

In order to protect the rights and legitimate interests of PWDs, individuals or organizations that commit discriminatory acts against PWDs shall have administrative sanctions or criminal penalties imposed against them. PWDs should be entitled to access legal services to enforce their rights in this regard. Access to justice should also cover the cases of PWDs who are criminally accused. 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”.<sup>79</sup> 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 staff.<sup>80</sup>

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.

### 3.8 Monitoring of implementation

As the CRPD stipulates, “State Parties shall also take appropriate measures to develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public” (Article 9(2)).

The Law on Persons with Disabilities does not include any direct provisions related to monitoring its implementation. Only Article 50 of the Law on Persons with Disabilities does provide for the general roles and responsibilities of ministries, ministerial-level agencies and People’s Committees at all levels, but does not specify mechanisms or measures to ensure effective monitoring of the Law. As mentioned above, MOLISA is responsible for examining and inspecting the implementation of the Law on Persons with Disabilities (50(1)(b)), with the Ministry of Finance responsible for allocating budget for investigations, surveys and statistics on PWDs under the state budget law (Article 50(9)). In addition, the Law on Persons with Disabilities does provide PWDs a role in monitoring the implementation of laws (Article 9(1)). However, there is no specific provision on the rights of PWDs in this regard, or obligations of state agencies, organizations, individuals in monitoring the process of formulation and implementation of the Law as well as penalties applied for violation of such obligations. Without the inclusion of mechanisms and clear measures such as those above, the monitoring roles for certain agencies and PWDs are ineffective.

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<sup>79</sup> CRPD (2006), Article 12(4).

<sup>80</sup> CRPD (2006), Article 13(2).

Misalignment with international standards can again be observed on the issue of monitoring, as Article 33(3) of the CRPD requires that “Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.”



# IV. INTERNATIONAL GOOD PRACTICES



Photo: UNDR Viet Nam/ Nguyễn Minh Châu

Although the Law on Persons with Disabilities in Viet Nam represents significant progress in the protection of the rights of PWDs, there remain significant gaps in terms of full implementation of the CRPD. This section will examine experiences in other countries, providing practical recommendations on revising the Law on Persons with Disabilities in an attempt to close the gaps between or bring into greater alignment, the CRPD and the Law on Persons with Disabilities.

## 4.1 Non Discrimination

Below are good examples of where Viet Nam can learn from other countries efforts through law and policy to regulate the protection of rights of PWDs in relation to non discrimination.

### 4.1.1 Legislation prohibiting all forms of discrimination

Direct discrimination against PWDs implies direct decision-making or policy based on either realities or stereotypes held against PWDs. Examples of such discrimination at the government policy-level would be the official exclusion of PWDs from schools or government workplaces based on flawed assumptions that individuals would be unable to perform the required tasks. Such discrimination is strictly forbidden under international and Vietnamese law.

Indirect discrimination in policy-making can be more subtle but no less devastating to PWDs. As mentioned above, this type of discrimination requires the adoption of policies that, while not specifically addressing PWDs, have profound impacts on the ways they can exercise their “political, civil, economic, cultural or social life.”<sup>81</sup> In using the two above examples, indirect discrimination would not require the explicit exclusion of PWDs from schools or government workplaces but instead could create accessibility issues that have similar results. For example, if classrooms are only accessible through stairs, certain PWDs may be unable to enter, thus excluding them from schools. The same could be true of government workplaces. Additionally, if official documents are not provided in Braille or otherwise accessible to the visually impaired, certain PWDs may be further excluded.

Indirect discrimination is fundamentally connected to the “social model” of disability, which posits that disability is not a physical matter, but a social construct based on “the disadvantage or restriction of activity caused by a contemporary social organization which takes little or no account of PWDs and thus excludes them from participation in the mainstream of social activities.”<sup>82</sup> Among the issues discussed above surrounding the definition of disabilities under the Law on Persons with Disabilities is its adoption of the “medical model of disability”, focusing on the impairments of individuals rather than the disadvantages created by social structures and a lack of accessibility. This model is disfavoured under the Convention and the definition should be changed to utilize the social model.

Indirect discrimination serves to reinforce disadvantages and restrictions for those with disabilities, further excluding them from participation in the mainstream of social activities. Indirect discrimination does not require malice or intent, merely a disparate impact on PWDs. Under the framework of the CRPD, national implementation through legislation “should include protection against all forms of

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<sup>81</sup> General Comment No. 6 on Equality and Non-Discrimination, Committee on the Rights of Persons with Disabilities, United Nations Office of the High Commissioner of Human Rights (2018), paragraph 18(b).

<sup>82</sup> Shakespeare, Tom, ‘The Social Model of Disability’, The Disability Studies Reader, Edition 4, Routledge (2013), page 215.

discrimination including direct and indirect discrimination”.<sup>83</sup> Such indirect discrimination is specifically prohibited under the law of the Republic of Korea. Under the law, “(a)pplying disability-blind standards that cause the disabled persons to be unfairly treated without justifiable grounds, despite the absence of explicitly unfavourable treatment, such as restriction, exclusion, segregation or denial” constitutes “discriminatory acts.”<sup>84</sup> As such, even if the standards applied are “disability-blind”, should they cause “disabled persons to be unfairly treated without justifiable grounds” they are discriminatory. This does not require such treatment to be explicit, or direct. This stands in contrast to the law in Viet Nam which requires an “act of shunning, refusing, maltreating, disparaging, showing prejudice against, or restricting the rights of, persons with disabilities because of their impairments” (emphasis added).<sup>85</sup> Under the Korean law no act, nor explicitly unfavourable treatment is required, merely disparate impact. In relation to the law in Viet Nam, no such prohibition exists.

### 4.1.2 Affirmative action

While the law in Viet Nam puts a significant focus on non-discrimination and legal equality measures, it lacks effective affirmative action measures that work towards substantive equality. Such measures are specifically sanctioned as non-discriminatory by the CRPD which reads “(s)pecific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.”<sup>86</sup> The United Nations Department of Economic and Social Affairs (UN DESA) views this provision expansively, concluding that “(b)oth ongoing and temporary special measures are permissible under the Convention and do not constitute discrimination as defined by the Convention. Indeed, both types of special measures might be necessary in order to achieve equality and therefore a State party will be obliged to adopt a range of special measures across different areas of social life.”<sup>87</sup> The Republic of Korea’s Act on the Prohibition of Discrimination against Persons with Disabilities, Remedy against Infringement of their Rights, incorporates this allowance for affirmative special measures by stating unequivocally that “(a)ffirmative measures taken for accomplishing genuine equality rights for, and eliminating discrimination against, the disabled persons in accordance with this Act, any other Acts or subordinate statutes shall not be deemed discrimination under this Act.”<sup>88</sup> In order to achieve substantive equality, a prohibition on discrimination is not enough. According to the Committee on the Rights of Persons with Disabilities, “positive measures are necessary.”<sup>89</sup> As such, the Law on Persons with Disabilities should ensure that positive measures are legally permissible and should incorporate international best-practices in their design, implementation and monitoring.

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<sup>83</sup> General Comment No. 6 on Equality and Non-Discrimination, Committee on the Rights of Persons with Disabilities (2018), paragraph 76(3).

<sup>84</sup> Act on The Prohibition of Discrimination Against Persons with Disabilities, Remedy Against Infringement of Their Rights, etc., Republic of Korea, Article 4(1)(2).

<sup>85</sup> Law on Persons with Disabilities (2010), Article 2(3).

<sup>86</sup> CRPD (2006), Article 5(4).

<sup>87</sup> ‘Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities’, United Nations Department of Economic and Social Affairs (UNDESA), Chapter 5 on National legislation and the Convention – The content of legislative measures.

<sup>88</sup> Act On The Prohibition Of Discrimination Against Persons With Disabilities, Remedy Against Infringement Of Their Rights, etc., Republic of Korea, Article 4(4).

<sup>89</sup> General Comment No. 6 on Equality and Non-Discrimination, Committee on the Rights of Persons with Disabilities (2018), Paragraph 10.

## 4.2 Education, Training and Employment

Below are good examples of where Viet Nam can learn from other countries efforts through law and policy to regulate the protection of rights of PWDs in relation to accessibility in education, training and employment.

### 4.2.1 Education

As with all resource-dependent elements of the CRPD, the accommodation of students in education is subject to progressive realization,<sup>90</sup> which allows “some flexibility in achieving the objectives of the Convention.”<sup>91</sup> Such flexibility is necessary in the education sector, as limited resources have significantly hampered inclusive education initiatives in many country contexts across the world.<sup>92</sup> However, the non-resource dependent elements should be addressed without delay. In one example, efforts have been made in Botswana to overhaul the teacher training system, including changes in curriculum to ensure educators can communicate with and understand the difficulties experienced by students with disabilities. However, such efforts should be monitored and evaluated, as similar efforts in Lesotho have been deeply individualized, with successful teachers “go(ing) an extra mile” rather than inclusivity and tolerance being the norm.<sup>93</sup> This allows for a greater understanding regarding the difficulties of students with disabilities in classrooms and a greater development of empathy. Directly addressing the issues present in Vietnamese classrooms, this would require training of teachers in alternative means of communication, such as sign-language and braille. It also requires the training of teachers in issues relevant to understanding the difficulties of students with disabilities. Such training have been widely examined throughout the globe, with one such study recommending “(t)he use of carefully selected non-fiction and fictional stories in teacher training that communicate complex issues, link thought and feeling, and stir people to confront detrimental policies and practices.”<sup>94</sup> This is particularly important in the Vietnamese context due to the limitations of education for PWDs. As less than 30% of all educational institutions have teachers with specialized skills for teaching children with disabilities, it is particularly important to work to integrate such skills into teacher training. Further, inclusive education programmes require individualized education programmes for PWDs, a requirement that has been sparsely followed. The development of empathy and understanding by teachers of barriers faced by students with disabilities will assist in the development of individualized programming. Currently, MOET issued Circular No. 03/2018/TT-BGDĐT on inclusive education for PWDs ensures full participation of PWDs in the development of an inclusive education system.

### 4.2.2 Vocational training

Under the Law in Viet Nam, the State “ensures that persons with disabilities are provided with free advice on vocational training, job selection, and learning according to their capability and ability on an equal basis like other persons” while “(v)ocational training establishments shall issue diplomas and certificates and

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<sup>90</sup> CRPD (2006), Article 4.

<sup>91</sup> United Nations Department of Economic and Social Affairs (UNDESA), Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities, Chapter 2.

<sup>92</sup> Chataika, T., Access to Education in Africa: Responding to the United Nations Convention on the Rights of Persons with Disabilities, Disability & Society 27 (2012), 385, 387-388.

<sup>93</sup> Ibid., 387.

<sup>94</sup> Reiser, R., Implementing Inclusive Education: A Commonwealth Guide to Implementing Article 24 of the UN Convention on the Rights of People with Disabilities, Commonwealth Secretariat (2008), 45.

recognize trained jobs when persons with disabilities finish their training programmes and fully satisfy the conditions prescribed by heads of state agencies managing vocational training.” The extent of the involvement of the Government of Viet Nam is in the certification and assistance to Vocational Training Establishments, which are to receive “preferential treatment.”<sup>95</sup> In contrast, the Republic of Korea assigns primary responsibility for Vocational Training to the Government.<sup>96</sup> This includes a guarantee that “(t)he State and local governments alike shall take measures for vocational rehabilitation, giving support to business owners, persons with disabilities, and other people concerned and considering the extraordinary conditions of persons with disabilities”<sup>97</sup> as well as financial responsibility for such measures.<sup>98</sup> The same is true for job placement, where the Law in Viet Nam specifies that “(j)ob placement organizations shall provide vocational training and job advice as well as job recommendation for persons with disabilities.” However, rather than putting that responsibility upon “job placement organizations” the Republic of Korea gives the responsibility to the Ministry of Employment and Labour. However, the Ministry “may, if necessary, entrust a competent specialized institution such as a vocational rehabilitation institution with part of his/her business affairs and pay the expenses incurred therefrom.”<sup>99</sup> While all economic rights are necessarily subject to available resources and progressive implementation, placing responsibility for Vocational Rehabilitation and job placement with the State has an important effect on justiciability. Where the Law in Viet Nam currently requires the State to certify and assist those primarily responsible for rehabilitation, the legislative model of Republic of Korea allows for the State to be forced to meet its obligations through the Courts. This is a substantial difference in types of accountability in implementation.

### 4.2.3 Rehabilitation and skills development

The International Labour Organization (ILO) has conducted extensive research into how best to utilize CBR programming for skills development and vocational training. The most successful programming has included guidance and counselling to allow PWDs to enter the workforce in roles in the mainstream economy while providing support to learn while working and, where possible, job coaching.

Among the specific roles suggested by the ILO for their successes were “convenience stores, fruit and vegetable stalls, restaurants, a coffee shop, and a light refreshment kiosk, healthy living special (sic) shops, a souvenir shop, eco-tourism, a cleaning service, and a property management service.”<sup>100</sup> Other successful ventures have included rearing and caring for livestock, hospitality, tax collection and others, depending on the type and depth of disability.<sup>101</sup>

One particularly successful program has been the training of PWDs as CBR workers. Mobility India is an organization that trains CBR workers and makes “prostheses, orthoses, and a range of other aids and appliances.”<sup>102</sup> The hiring of PWDs is prioritized. This practice allows for re-entry into the economy and aids in shared experiences. It also ensures accessibility of the workplace. Mobility also runs a CBR program where PWDs are among the community workers.<sup>103</sup>

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<sup>95</sup> Law on Person with Disabilities (2010), Article 32.

<sup>96</sup> Act on The Employment Promotion and Vocational Rehabilitation of Persons with Disabilities, Republic of Korea, Article 3-4.

<sup>97</sup> Ibid Article 3.

<sup>98</sup> Ibid Article 4.

<sup>99</sup> Ibid at 15(1), 15(3).

<sup>100</sup> International Labour Organization, Skills through Community Based Rehabilitation (CBR), (2008), 42.

<sup>101</sup> Ibid., 42 (See Case Studies Throughout).

<sup>102</sup> Ibid., 72.

<sup>103</sup> Ibid.

Another option has been encouraging entrepreneurship. One such mentoring program was run by the ILO in Cambodia from 2002-2007, working with small level entrepreneurs to coach and mentor persons with disabilities. This allowed the program to "cut through barriers of accessibility, attitudes and lack of services in remote villages by bringing the services of a peer directly to the individual's home, village or other nearby location." PWDs experienced entrepreneurial success by repeating the experiences and methods of mentors.<sup>104</sup>

Provided with adequate job coaching and opportunities to learn, the mainstream economy can be utilized in CBR vocational training methods. This further incorporates the community, including community resources and community volunteers (as job coaches). The social inclusion within mainstream economic activity also furthers the goals of communication and education about disabilities by ensuring steady interaction.

#### 4.2.4 Employment

In addition to specifically declaring special measures non-discriminatory and providing for vocational rehabilitation, the CRPD requires State Parties to take measures to ensure PWDs take part in employment and labour. This includes "(e)nsur(ing) that reasonable accommodation is provided to persons with disabilities in the workplace."<sup>105</sup> While Article 34 of the Law on Persons with Disabilities seeks to promote employment for PWDs, the Government assistance for accommodation is limited to "production and business establishments" that employ 30% or more employees who suffer from disabilities, as highlighted above.<sup>106</sup> While this will lead to some assistance, it does not cover PWDs working in organizations that are outside the production and business sectors or have less than 30% of employees with disabilities. The Government of the Philippines does not so limit the incentives like in Viet Nam, providing that "(p)riate entities that improve or modify their physical facilities in order to provide reasonable accommodation for disabled persons shall also be entitled to an additional deduction from their net taxable income, equivalent to fifty percent (50%) of the direct costs of the improvements or modifications..."<sup>107</sup> The Philippines allows "(p)riate entities that employ disabled persons who meet the required skills or qualifications, either as a regular employee, apprentice or learner...to an additional deduction, from their gross income, equivalent to twenty-five percent (25%) of the total amount paid as salaries and wages to disabled persons..."<sup>108</sup> The country also uses employment quotas, designating 5% "of all casual emergency and contractual positions in the Departments of Social Welfare and Development; Health; Education, Culture and Sports; and other government agencies, offices or corporations engaged in social development" for PWDs.<sup>109</sup> In addition to providing for accessibility on public transport, which is critical in further ensuring accessibility to employment, as is the case in most states including Viet Nam, the Government of Nepal requires public transportation to offer PWDs a 50% discount. Such transportation services are expansive, including "means such as bus, train, aeroplane."<sup>110</sup>

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<sup>104</sup> International Labour Organization, *Replicating Success: A Manual to Alleviate Poverty through Peer Training*, (2009), 4.

<sup>105</sup> CRPD (2006), Article 27(1)(i).

<sup>106</sup> Law on Person with Disabilities (2010), Article 34.

<sup>107</sup> Act No. 7277, Act Providing for The Rehabilitation, Self-Development and Self-Reliance of Disabled Persons and Their Integration Into the Mainstream Of Society and for Other Purposes, Philippines, Republic of, Section 8(c).

<sup>108</sup> Ibid at 8(b).

<sup>109</sup> Ibid at 5.

<sup>110</sup> Act prepared for the amendment and consolidation of the laws relating to the Rights of Person with Disability, Nepal, Article 37(2).

### 4.3 Coordination and Monitoring Mechanisms

The CRPD requires coordination between agencies and bodies of government to ensure best practices and efficiency in its implementation. In particular, the Convention requires State Parties to establish or designate “a coordination mechanism within government to facilitate related action in different sectors and at different levels.”<sup>111</sup> The Convention also urges State Parties to “maintain, strengthen, designate or establish...a framework, including one or more independent mechanisms...to promote, protect and monitor implementation...”<sup>112</sup> Under the Law on Persons with Disabilities, MOLISA is responsible for “performing the function of state management of affairs related to persons with disabilities.”<sup>113</sup> Within this designation, the Ministry is given the mandate to promulgate activities and design procedures as well as coordinate with other ministries and the international community.<sup>114</sup> This coordination is no small task, as the law mandates activities from the Ministry of Health, the Ministry of Education and Training, the Ministry of Culture, Sports and Tourism, the Ministry of Construction, the Ministry of Transport, the Ministry of Information and Communications, the Ministry of Science and Technology, the Ministry of Finance, the Ministry of Planning and Investment, and People’s Committees “at all levels”.<sup>115</sup> There is substantial variance in the makeup and mandate of bodies charged with implementing laws on PWDs and coordinating between agencies. While the mandate is often subject to administrative and executive revision and, as such, is removed from the legislation of many states across the region, the makeup and leadership are predominantly determined by law. This makes them an area of interest in legislative analysis. Additionally, as monitoring is an important part of such bodies’ mandates under the Convention, independence is of the utmost importance. Many monitoring bodies are positioned under coordinating ministries or agencies, creating serious questions about their independence.

#### 4.3.1 Makeup and leadership

As highlighted above, the Government of Viet Nam established the National Council Committee on Persons with Disabilityie (NCD) to coordinate activities across the relevant agencies. The NCD is chaired by the Minister of Labour, Invalids and Social Affairs and includes among its 18 members “12 Vice Ministers of related ministries and representatives of six central organizations of or for persons with disabilities.”<sup>116</sup> However, NCD cannot perform both roles (as indicated in the Decision 1717/QD-TTG on establishing the NCD). There should be both coordination inside and monitoring mechanisms outside the Government. In other words, the monitoring function should be separated as stipulated in Art 33(1) and (2) of the CRPD. Other states have organized their bodies differently, including the number of individuals, the ranks and levels of influence on government policymaking and from where they come.

In one model, Myanmar’s body is made up of high-level government actors, representatives from several government agencies and levels of government and

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<sup>111</sup> CRPD (2006), Article 33(1).

<sup>112</sup> Ibid.

<sup>113</sup> Law on Person with Disabilities (2010), Article 49(2).

<sup>114</sup> Ibid., Article 50(1).

<sup>115</sup> Law on Persons with Disabilities (2010), Article 50(2)-(10).

<sup>116</sup> Government of Viet Nam, Initial report submitted by Viet Nam under article 35 of the Convention, due in 2018, published by the United Nations Committee on the rights of Persons with Disabilities, 6 March 2019, paras. 21-22, 32. Accessed on 20 May 2020. Available at:

[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fVNM%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fVNM%2f1&Lang=en)

consists of “not more than 60 persons.”<sup>117</sup> The Philippines does not define the body charged with implementation and coordination in its national legislation, but an Executive Order creating the body takes a unique tract. Membership on the National Council on Disability Affairs is granted to Departments rather than individuals, and the Order specifies that “(t)he heads of the concerned departments and agencies shall as much as possible attend the meetings of the Council. In their absence, department heads shall designate permanent and alternate representatives, preferably with the rank of Undersecretary and Assistant Secretary.”<sup>118</sup> Nepal uses a similar model to the above, populating the body with government and NGO individuals, however, the Nepali law is also careful to ensure representation to give voice to the “double discrimination”<sup>119</sup> suffered by women with disabilities. At least half of the NGO representatives present on the body must be women. Further, both the Minister and the Secretary of the government ministry concerned with gender equality are included.<sup>120</sup> Various leadership models have been utilized for coordination and implementation bodies. High-level government officials lead in some states, including the Prime Minister in Thailand<sup>121</sup> and one of the two Vice Presidents in Myanmar.<sup>122</sup> Myanmar provides some balance by having as Vice-Chairs a Government Minister and the head of an NGO focused on PWDs. In contrast, the Chairperson of the body in the Philippines must come from a non-governmental organization.<sup>123</sup> While there is no objective best-practices makeup of the oversight body, there are several considerations that should be taken into account that is demonstrated by such bodies in other states. It is important that the body includes individuals of such seniority that they are able to affect government policy. Additionally, the body should include non-government officials who represent the interests of PWDs, such as OPDs. Finally, the number of individuals should be enough to gain a wide array of opinions, but not so many that coordination is impossible.

### 4.3.2 Independence and means of ensuring compliance

While there are significant differences in the mandates of such bodies across the region, one of the most important questions concerning the Vietnamese body is its independence. It is established within MOLISA, the agency that is also given “*prime responsibility*” for coordination and implementation of activities and programming concerning PWDs.<sup>124</sup> The body is also chaired by the Minister of Labour, Invalids and Social Affairs.<sup>125</sup> This level of interconnectedness with the Ministry causes significant questions concerning its independence. These questions are compounded as the Law requires MOLISA “*to examine and inspect the implementation of the law on persons with disabilities*”,<sup>126</sup> but nowhere specifies an independent or external monitoring. This is not an uncommon occurrence in such bodies across the region.<sup>127</sup>

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<sup>117</sup> The Rights of the Persons with Disabilities Law No. 30/2015, Myanmar, Article 4.

<sup>118</sup> Executive Order No. 709, Philippines, Section 3.

<sup>119</sup> A term referring to gender and disability discrimination. See Generally: de Silva-de Alwis, R., *The Intersections of the CEDAW and CRPD: Putting Women’s Rights and Disability Rights into Action in Four Asian Countries*, Nancy Gertner Human Rights Paper Collection, 2010, 1.

<sup>120</sup> Act prepared for the amendment and consolidation of the laws relating to the Rights of Persons with Disability, Nepal, Article 38.

<sup>121</sup> Persons with Disabilities Empowerment Act, Thailand, Section 5.

<sup>122</sup> The Rights of the Persons with Disabilities Law No. 30/2015, Myanmar, Article 4.

<sup>123</sup> Executive Order No. 709, Philippines, Section 3.

<sup>124</sup> Law on Persons with Disabilities (2010), Article 50(1)(b).

<sup>125</sup> Government of Viet Nam, Initial report submitted by Viet Nam under article 35 of the Convention, due in 2018, published by the United Nations Committee on the rights of Persons with Disabilities, 6 March 2019, para. 32.

<sup>126</sup> Law on Persons with Disabilities (2010), Article 50 (12)(h).

<sup>127</sup> Dinerstein, R., *Norm Diffusion and CRPD Implementation and ASEAN, Making Disability Rights Real in Southeast Asia: Implementing the UN Convention on the Rights of Persons with Disabilities In ASEAN (2017)*, 264.



Independence is paramount for agencies charged with monitoring government actions. The CRPD requires that national efforts include an internal body for coordination and an external body for monitoring of efforts.<sup>128</sup> As such, the coordination and monitoring functions should be split into different bodies, and the monitoring organization should be fully independent of government influence. Such independence while under the government's employ can be difficult to ensure, so the United Nations puts forth principles that can provide such a guarantee. These principles include statutory or constitutional guarantees of independence, pluralistic roles and membership, a broad mandate, adequate investigatory powers, adequate functioning, adequate and independent financing and accessibility to the public.<sup>129</sup> However, independence on its own does not guarantee effective monitoring. According to Professor Robert Dinerstein, Head of the Disability Rights Clinic at American University's Washington School of Law, two elements are necessary for a useful monitoring mechanism. The first is independence, while the second is the existence of a "meaningful process in place to assure that the appropriate entity takes steps to address (problems uncovered by the body)."<sup>130</sup> As seen in the above section, the leadership and makeup of several of the monitoring bodies are intimately linked to the body or agency charged with coordinating and implementation. This includes both institutional and personnel overlaps. As there are very few states in the Asian region with independent mechanisms for monitoring the Law on Persons with Disabilities, it is necessary to utilize other examples of independent institutions for legislative best-practices.

In one example, Nepal's National Human Rights Commission (NHRC) is tasked with conducting investigations and monitoring human rights compliance across the country, including in the promulgation of policy and legislation.<sup>131</sup> The independence and autonomy of the Commission are guaranteed by its foundational statute, which declares "*(t)he Commission shall be independent and autonomous in fulfilling (its) work.*"<sup>132</sup> Many similar independent commissions have their independence guaranteed by the country's constitution. In one example, South Africa's Constitution lists independent state institutions while declaring "*(t)hese institutions are independent and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favor or prejudice.*"<sup>133</sup> As to the second element for effective monitoring, the Nepali NHRC has a variety of means to ensure compliance, including the ability to provide opinions and consultations, convene commissions and task forces and publicize individuals and agencies that avoid implementing recommendations.<sup>134</sup> While there are substantial differences based on the subject matter, other independent commissions have the right to begin investigations and institute legal proceedings to ensure compliance. Commissions may also have advisory roles, where policy-making bodies, including legislatures, may be able to request comment on pending policy or legislation. These means of ensuring compliance and preventing impunity are a vital element of independent monitoring. That the same body is charged with designing and implementing programming for PWDs as well as monitoring the success of such programming calls

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<sup>128</sup> CRPD (2006), Articles 33(1)-(2).

<sup>129</sup> Principles Relating to the Status of National Institutions (Paris Principles), adopted by United Nations General Assembly Resolution 48/134 of 20 December 1993.

<sup>130</sup> Dinerstein, R., Norm Diffusion and CRPD Implementation and ASEAN, Making Disability Rights Real in Southeast Asia: Implementing the UN Convention on the Rights of Persons with Disabilities in ASEAN (2017), 266.

<sup>131</sup> National Human Rights Commission Act, 2068, Nepal, Article. 4.

<sup>132</sup> *Ibid* at 4(2).

<sup>133</sup> South Africa Constitution, Article 181(2).

<sup>134</sup> National Human Rights Commission Act, 2068, Nepal, Articles 6-8.

into question the independence of monitoring and evaluation efforts. Having at the head of the body charged with such monitoring the individual most likely to be held accountable for implementation failures compounds the concern. By providing constitutional or other guarantees of independence, other bodies across the region, such as Human Rights Commissions or Courts are able to adequately exercise their monitoring functions. This should be included in monitoring efforts for the Law on Persons with Disabilities in Viet Nam.

#### 4.4 Inclusion of persons with disabilities in policymaking and implementation

While legislation is important in protecting the rights of PWDs, gaps between legislative and policy language and the implementation can lead to extensive problems. Such gaps are particularly prominent in the early stages of a law's adoption, and efforts must be taken to ensure the on-the-ground reality reflects the law's language and spirit. This section will focus on best practices in ensuring participation in policymaking. The Preamble of the CRPD declares that *"...persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them."*<sup>135</sup> This statement begins an "emphasis on participation that runs throughout the Convention that embeds within it an advocacy role for civil society organizations representing disabled people, which also extends to disabled people themselves."<sup>136</sup> The inclusive nature of the document requires participation and consultation with PWDs and their representative organizations throughout the entire policymaking and implementation process, from the earliest stages of the programme and legislative design through to monitoring and evaluation.<sup>137</sup> The Committee on the Rights of Persons with Disabilities has also issued extensive guidelines on the participation of OPDs in reporting to the Committee itself.<sup>138</sup> Providing meaningful avenues for the participation of the public in policymaking is difficult, particularly in states with a limited history of civil society participation. Viet Nam's Law on Persons with Disabilities provides for Government-sanctioned OPDs but does not formalize their role in any processes.<sup>139</sup> The Initial State Report on Implementation to the Committee on the Rights of Persons with Disabilities provides greater insight into the role of OPDs, stating that there are many projects on capacity building and creation of OPDs and that reports are collected from such organizations in the drafting of the law and the report on implementation. The Report, however, does not provide significant information on the process or utilization of such reports other than to state categorically that "(t)hese comments and inputs were taken into serious consideration..."<sup>140</sup> The experience of Iceland demonstrates the particular importance of a formal and ongoing process by which OPDs may participate.

In the process by which Iceland's Law on Persons with Disabilities was passed, commentary was sought from the public, including OPDs. Additionally, two OPDs were included in the working group tasked with formally reviewing the draft legislation. While a wide variety of comments were provided by OPDs and other civil

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<sup>135</sup> CRPD (2006), Preamble.

<sup>136</sup> Laufey, L. et al, The Inclusion of the Lived Experience of Disability in Policymaking, 6 MDPI Open Access Journal 1, 1 (2017).

<sup>137</sup> CRPD (2006), Article 33(3).

<sup>138</sup> Guidelines on the Participation of Disabled Persons Organizations (DPOs) and Civil Society Organizations in the work of the Committee, CRPD/C/11/2, United Nations Office of the High Commissioner for Human Rights.

<sup>139</sup> Law on Persons with Disabilities (2010), Article 9.

<sup>140</sup> Government of Viet Nam, Initial report submitted by Viet Nam under article 35 of the Convention, due in 2018, published by the United Nations Committee on the rights of Persons with Disabilities, 6 March 2019, para. 39, 234.

society organizations, a significant proportion focused on the lack of meaningful participation. These complaints included a lack of participation in the drafting of the legislation; an unduly abbreviated time frame by which to provide commentary to the working group; and a lack of adequate representation on the working group itself (17% of the membership and legal exclusion of groups outside the two included).<sup>141</sup> Beyond participation in the draft and working group, OPDs in Iceland found a strong distinction between active and *pro forma* consultation. While there were areas required for consultation with OPDs and the participation of PWDs in the process, they described their experience as “not being ‘heard’ by the authorities and not being able to affect policy outcomes.” Such *pro forma* consultation undermines the spirit of the Convention and limits the inclusion of lived experiences of PWDs in shaping policy that affects them the most.<sup>142</sup> Learning from the experience of Iceland, it is important to formalize a process by which PWDs, through OPDs, may play multiple roles in the process. This includes a role in the revision and amendment of the Law on Persons with Disabilities, a role for OPDs in programme development, implementation and monitoring and a role in international participation and reporting. Further, this process should be designed with the input of PWDs to ensure that participation is adequate and avoid the mistakes of the Icelandic process.

#### 4.5 Ensuring rural accessibility

The expansion of accessibility and rehabilitation to rural areas is a significant issue for Viet Nam as 75% of the population of PWDs resides in rural areas, and the we have identified certain country contexts which have adopted effective practices in this regard.<sup>143</sup> In one study of the lives of rural PWDs in Viet Nam, diverse barriers to healthcare were discovered. Individuals interviewed cited a lack of transportation and/or insufficient public assistance as barriers to seeking healthcare.<sup>144</sup> Similar studies have yielded similar results, including in rural South Africa where transportation was seen as the primary barrier by four out of every five individuals surveyed.<sup>145</sup> In South Africa, poverty and education were also seen as barriers to access to healthcare among rural PWDs. Despite these broad barriers, interventions have tended to act narrowly, “focusing on alleviating immediate needs by providing nutritional support, small cash grants, and other individualistic interventions.” Additionally, “some organizations have sponsored surgeries and medicines to help correct impairments conditions that can be addressed with relatively minor medical intervention.”<sup>146</sup> The breadth of issues concerning accessibility in comparison to the limited focus of traditional interventions have significant lessons for the implementation of the Law on Persons with Disabilities in rural areas. Programming on accessibility for rural PWDs must be broad and include interventions on transportation, poverty and other “social and inclusion” barriers.

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<sup>141</sup> Love, L., The Inclusion of the Lived Experience of Disability in Policymaking, MDPI Open Access Journal (2017), 1, 6–9.

<sup>142</sup> Ibid., 9.

<sup>143</sup> Global Disability Rights Now!, “Disability in Viet Nam”, Accessed: 15 August 2019. Available at: <https://www.globaldisabilityrightsnow.org/infographics/disability-vietnam>

<sup>144</sup> Bogenschutz, M., Ecological Model of a Good Life for Persons with Disabilities in Viet Nam, Global Social Welfare 3 (2016), 243, 252.

<sup>145</sup> Vergunst, R., Access to Health Care for Persons with Disabilities in Rural South Africa, BMC Health Services Research 17 (2017), 1, 6.

<sup>146</sup> Bogenschutz, M., Ecological Model of a Good Life for Persons with Disabilities in Viet Nam, Global Social Welfare 3 (2016), 243, 252.

# V. CONCLUSION AND RECOMMENDATIONS



Photo: UNFPA Vietnam/ Nguyễn Minh Đức

In general, the Law on Persons with Disabilities 2010 has made significant contributions in protecting the fundamental rights of PWDs and further aligning Viet Nam with international standards, in particular the CRPD. The law and policies in relation to PWDs have been changed from a charity approach to a human-rights based approach. As a result, PWDs can exercise their rights and move towards full accessibility to society.<sup>147</sup> However, PWDs still face challenges and barriers in accessing education, healthcare, rehabilitation, vocational training and employment, public transport and construction and justice. PWDs' capacity has not yet been developed to ensure their full and effective participation in decision-making and monitoring process.

After 10 years of implementation of the Law on Persons with Disabilities, it is essential to review the Law and related regulations in comparison with international standards, as well as experiences from other countries, to identify the barriers, challenges and the gaps in order to make recommendations for the effective implementation of the CRPD in Viet Nam. Through efforts to strengthen the alignment of domestic laws and policies with the CRPD, the Government of Viet Nam can further build on the significant improvements made over the last 10 years in enabling PWDs to participate fully in society.

The following recommendations have been identified based on analysis of the main issues faced by PWDs, as outlined in the relevant sections above, and focus on revising the Law on Persons with Disabilities in Viet Nam:

### **(1) Adopting the social model of disability:**

The Law should reflect the definition of PWDs used in the CRPD, adopting the social model instead of the medical model currently in effect, in order to ensure that all forms of disabilities are covered and can obtain an official disability certificate for accessing essential social services. The procedure and administration of the disability certificate system should ensure the full accessibility of all PWDs, regardless of location or disability. Capacity building in disability assessment should be conducted regularly for the local council on disability to accurately and adequately cover all types of disabilities in every locality.

### **(2) Revising the concept and application of discrimination:**

The concept of discrimination should be expanded to indirect as well as direct discrimination and discrimination committed by organizations in addition to by individuals. Stricter sanctions on discrimination against PWDs should be stipulated clearly in the Law on Persons with Disabilities and other relevant legislation, together with the development of enforcement mechanisms and effective remedy for victims of discrimination.

### **(3) Revising standards in public transportation and construction:**

The responsibilities of the private service providers in transportation and construction should be stipulated in the law. Concepts of "reasonable accommodation" and "universal design" should be added as standards for renovation and construction.

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<sup>147</sup> Interview with Mr. Dang Van Thanh, Vice-president of Viet Nam Federation for People with Disabilities, for this study, dated 16 October 2020.

#### **(4) Adopting CRPD definitions for communication and access to information:**

The definition of communication and its variety of modes and accessible formats should be added to Law on Persons with Disabilities of Viet Nam as outlined in CRPD. Moreover, the obligations of organizations and individuals in providing accessible information for PWDs should be clearly defined in the law.

#### **(5) Inclusion of fundamental principles from CRPD in national law:**

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 adopted in the Law on Persons with Disabilities.

#### **(6) Ensuring 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 and rehabilitation. The State should hold primary responsibility in providing vocational training and should utilize a human-rights based approach in crafting vocational training policies, including by tailoring programmes to the individual needs of PWDs, and students should receive the necessary supports to effectively facilitate their study.

#### **(7) Guaranteeing access to healthcare and rehabilitation:**

Healthcare facilities should bear responsibility for ensuring the accessibility of PWDs to healthcare and rehabilitation services. Basic assistive devices for PWDs should be covered under the state health insurance programme.

#### **(8) 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.

#### **(9) Strengthening monitoring of the implementation of laws and policies:**

The Law should clarify the responsibilities of the government at all levels when making policies and decisions related to PWDs. Coordination and monitoring responsibilities should be divided, and the independence of monitoring institutions should be guaranteed.

### **(10) Enhancing the participation of PWDs in decision-making and monitoring:**

OPDs and PWDs must be properly trained in monitoring the protection and promotion of their own rights, in both the implementation of the CRPD and in domestic law, and mechanisms must be developed to ensure their effective participation in decision-making processes, ensuring that the diversity of their needs are met in the regulatory framework. Moreover, the monitoring role of PWDs, as provided for under the CRPD, must be defined in the Law on Persons with Disabilities, with the establishment and operations of OPDs clearly provided for in the Law.

### **(11) Reducing the gap between urban and rural service provisions:**

The Government of Viet Nam should work to shrink the gap in accessibility, rehabilitation and education between urban and rural Vietnamese, especially in policy-making process. The special programmes 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.

### **(12) Developing a network of OPDs across the country:**

Facilitate the coming together of urban-based OPDs together with rural-based organizations, providing knowledge and resource sharing opportunities between OPDs to strengthen capacity, coordinating campaigns and advocacy across the country. The National Committee on Disability should take primary responsibility in supporting the development of a network of OPDs, in strengthening coordination and collaboration between local and regional OPDs.

## **VI. REFERENCE DOCUMENTS**



- 1) Act on The Employment Promotion and Vocational Rehabilitation of Persons with Disabilities (Republic of Korea)
- 2) Act prepared for the amendment and consolidation of the laws relating to the Rights of Person with Disability (Nepal)
- 3) Committee on the Rights of Persons with Disabilities General Comment on Equality and Non-Discrimination
- 4) Executive Order No. 709 (Philippines)
- 5) Guidelines on the Participation of Organizations of Persons with disabilities (OPDs) and Civil Society Organizations in the work of the Committee (CRPD/C/11/2)
- 6) Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities, UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS: DISABILITY, Chapter 5. National legislation and the Convention – The content of legislative measures
- 7) Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities, UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS: DISABILITY, Chapter 2. The Convention in detail – Obligations of States parties under the Convention
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- 11) Matthew Bogenschutz et al, *Ecological Model of a Good Life for Persons with Disabilities in Viet Nam*, 3 Global Social Welfare 243, 252 (2016)
- 12) Rangita de Silva de Alwis The Intersections of the CEDAW and CRPD: Integrating Women's Rights and Disability Rights into Concrete Action in Four Asian Countries etc.
- 13) Regina Célia Fiorati et al, Anticipated Barriers to Implementation of Community-Based Rehabilitation in Ribeirão Preto, Brazil, 29 Disability, CBR and Inclusive Development 5, 7 (2018)

- 14) Report on Assessment of Social Protection, Ministry of Labour, Invalid and Social affairs, 2016.
- 15) Report on evaluation of education for PWDs 2012-2020 period, Ministry of Education and Training, dated 28/10/2019
- 16) Republic Act No. 7277 An Act Providing For The Rehabilitation, Self-Development and Self-Reliance of Disabled Persons and Their Integration Into the Mainstream Of Society and for Other Purposes (Philippines) sec. 8(c)
- 17) Richard Reiser, Implementing Inclusive Education: A Commonwealth Guide to Implementing Article 24 of the UN Convention on the Rights of People with Disabilities, COMMONWEALTH SECRETARIAT (2008) at 45
- 18) Richard Vergunst et al, *Access to health care for persons with disabilities in rural South Africa*, 17 BMC Health Services Research 1, 6 (2017)
- 19) Robert Dinerstein, *Norm Diffusion and CRPD Implementation and ASEAN*, in MAKING DISABILITY RIGHTS REAL IN SOUTHEAST ASIA: IMPLEMENTING THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES IN ASEAN (Lexington Books 2017)
- 20) Skills through Community Based Rehabilitation (CBR), INTERNATIONAL LABOR ORGANIZATION, 2008 at 42
- 21) The National Survey on People with Disabilities, General Statistic Office, 2016
- 22) The Rights of the Persons with Disabilities Law No. 30/2015 (Myanmar)
- 23) Thi Van Nguyen et al, Community-based rehabilitation for people with disabilities in Viet Nam: Two models for one target, 61 Annals of Physical and Rehabilitation Medicine 509 (2018)
- 24) Tom Shakespeare, The Social Model of Disability, in THE DISABILITY STUDIES READER ed. Lennard J. Davis (2013)
- 25) Tsitsi Chataika et al, *Access to education in Africa: Responding to the United Nations Convention on the Rights of Persons with Disabilities*, 27 Disability & Society 385, 387-388 (2012)
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# **APPENDIX 1: LEGAL FRAMEWORK ON PERSONS WITH DISABILITIES**

## **1. Key legal documents on persons with disabilities**

1.	Law on Persons with Disabilities (No. 51/2010/QH12);
2.	National Assembly Resolution 84/2014/QH13 on ratification of the United Nations Convention on the Rights of Persons with Disabilities;
3.	Decree 28/2012/ND-CP dated April 10 <sup>th</sup> 2012 of the Government guiding the implementation of some articles of the Law on Persons with Disabilities;
4.	MOLISA Circular 26/2012/TT-BLDTBXH dated November 12 <sup>th</sup> 2012 guiding the implementation of some articles under Decree 28/2012/ND-CP dated April 10 <sup>th</sup> 2012 of the Government guiding the implementation of some articles of the Law on Persons with Disabilities;
5.	MOLISA Circular 01/2015/TT-BLDTBXH dated January 6 <sup>th</sup> 2015 on case management for persons with disabilities;
6.	MOLISA Circular 01/2019/TT-BLDTBXH dated January 2 <sup>nd</sup> 2019 on disability determination by communal Disability Determination Council.
7.	The Directive 39CT/TW on enhancing the Party's Leadership in supporting People with Disabilities

## **2. Legal documents on disability determination and healthcare – rehabilitation for persons with disabilities**

8.	Inter-Circular 37/2012/TTLT-BLDTBXH-BYT-BTC-BGDDT dated December 28 <sup>th</sup> 2012 of MOLISA, MOH, MOF, MOET guiding disability determination by communal Disability Determination Council.
9.	Inter-Circular 34/2012/TTLT-BYT-BLDTBXH dated December 28 <sup>th</sup> 2012 of MOH and MOLISA guiding disability determination by Medical Examination Council.
10.	Inter-Circular 28/2013/TTLT-BYT-BLDTBXH dated September 27 <sup>th</sup> 2013 of MOH, MOLISA on the percentage of body injuries as a result of accidents, diseases, impairments and occupational diseases.
11.	Inter-Circular 20/2016/TTLT-BYT-BLDTBXH dated June 30 <sup>th</sup> 2016 of MOH and MOLISA guiding medical examination of diseases and impairments related to exposure to toxic chemicals of revolutionists and their children.
12.	Circular 18/TT-BYT dated June 30 <sup>th</sup> 2016 of MOH regulating the list of technical rehabilitation services, the list of rehabilitation devices and rehabilitation daycare payment reimbursable by health insurance.

### 3. Legal documents on social assistance and allowance

13.	Decree 136/2013/ND-CP dated October 21 <sup>st</sup> 2013 of the Government regulating social assistance policies for social protection recipients
14.	Inter-Circular 29/2014/TTLT–BLDTBXH–BTC dated October 24 <sup>th</sup> 2014 of MOLISA, MOF guiding the implementation of some articles of Decree 136/2013/ND-CP dated October 21 <sup>st</sup> 2013 of the Government regulating social assistance policies for social protection recipients
15.	Inter-Circular 06/2016/TTLT-BLDTBXH-BTC dated May 12 <sup>th</sup> 2016 of MOLISA and MOF on supplementing and amending Inter-Circular 29/2014/TTLT–BLDTBXH–BTC dated October 24 <sup>th</sup> 2014 of MOLISA, MOF guiding the implementation of some articles of Decree 136/2013/ND-CP dated October 21 <sup>st</sup> 2013 of the Government regulating social assistance policies for social protection recipients.
16.	Circular 15/2014/TT-BTP dated May 20 <sup>th</sup> 2014 of Ministry of Justice guiding the finding of overseas substitute families for children with disabilities, children with severe illnesses, children 5 years of age or older, siblings who are looking for substitute family.
17.	Inter-Circular 19/2015/TTLT-BKHCHN-BLDTBXH dated October 31 <sup>st</sup> 2015 of Ministry of Science and Technology and MOLISA encouraging scientific research, technology transfer and application in production of products supporting persons with disabilities.

#### 4. Legal documents on educational support for persons with disabilities

18.	Decree 61/2006/ND-CP dated June 20 <sup>th</sup> 2016 of the government on policies for teachers and administrators working in special schools or schools in regions of extremely difficult socio-economic conditions.
19.	Decree 86/2015/ND-CP dated October 2 <sup>nd</sup> 2015 regulating tuition fee collection and management by public educational facilities, tuition fee and educational expense exemption and reduction from 2015-2016 to 2020-2021 academic years.
20.	Prime Minister Decision 53/2015/QĐ-TTg dated October 20 <sup>th</sup> 2015 on boarding applied for college and post-secondary students.
21.	Inter-Circular 58/2012/TTLT-BGDĐT-BLDTBXH dated December 28 <sup>th</sup> 2012 of MOET, MOLISA guiding the requirements and procedures for establishment, operation, suspension of operation, reorganization and dissolution of Inclusive Education Development Support Centers.
22.	Inter-Circular 42/2013/TTLT-BGDĐT-BLDTBXH dated December 31 <sup>st</sup> 2013 guiding educational policies for persons with disabilities.
23.	Circular 11/2014/TT-BGDĐT dated April 18 <sup>th</sup> 2014 of MOET regulating upper-secondary and high school enrolment.
24.	Circular 07/2016/TT-BGDĐT dated March 22 <sup>nd</sup> 2016 regulating the conditions, content, procedures for recognition of universal education, illiteracy eradication.
25.	Inter-Circular 09/2016/TTLT-BGDĐT-BTC-BLDTBXH dated March 30 <sup>th</sup> 2016 of MOET and MOLISA guiding some articles of Decree 86/2015/ND-CP dated October 2 <sup>nd</sup> 2015 regulating tuition fee collection and management by public educational facilities, tuition fee and educational expense exemption and reduction from 2015-2016 to 2020-2021 academic years.
26.	Inter-Circular 19/2016/TTLT-BGDĐT-BNV dated June 22 <sup>nd</sup> 2016 regulating job titles of educational staffs supporting children with disabilities in public educational facilities.
27.	Circular No. 03/2018/TT-BGDĐT dated January 29 <sup>th</sup> 2018 of MOET on inclusive education for persons with disabilities
28.	Circular No.32/2018/TT – BGDĐT dated December 26 <sup>th</sup> 2018 of MOET on educational program.

## 5. Legal documents on employment and vocational training

29.	Decree 218/2013/ND-CP dated December 26 <sup>th</sup> 2013 guiding the implementation of the Law on Enterprise Income Tax
30.	Circular 78/2014/TT-BTC dated June 18 <sup>th</sup> 2014 of MOF guiding the implementation of Decree 218/2013/ND-CP dated December 26 <sup>th</sup> 2013 guiding the implementation of the Law on Enterprise Income Tax
31.	Decree 61/2015/ND-CP dated July 9 <sup>th</sup> 2015 of the government guiding the implementation of <b>job creation policies and the National Employment Fund.</b>
32.	MOLISA Circular 45/2015/TT-BLDTBXH dated November 11 <sup>th</sup> 2015 guiding the implementation of some articles under Decree 61/2015/ND-CP dated July 9 <sup>th</sup> 2015 of the government guiding the implementation of <b>job creation policies and the National Employment Fund.</b>
33.	Prime Minister Decision 46/2015/QD-TTg dated September 28 <sup>th</sup> 2015 regulating policies to support short-term vocational training (under 3 months)
34.	Decree 113/2015/ND-CP dated November 9 <sup>th</sup> 2015 of the government regulating allowances, preferential allowances for teachers working in public vocational training facilities.
35.	Inter-Circular 112/2010/TTLT-BTC-BLDTBXH dated July 30 <sup>th</sup> 2010 of MOF and MOLISA guiding budget management and use under the “Vocational training for rural laborers until 2020” National Plan, approved under Prime Minister Decision 1956/QD-TTg dated November 27 <sup>th</sup> 2009.

## 6. Documents on information and communication, cultural, sports and tourism activities

36.	Circular 28/2009/TT-BTTTT dated September 14 <sup>th</sup> 2009 of Ministry of Information and Communication regulating standards and technologies supporting persons with disability in access to and use of ICT.
37.	Decree 43/2011/ND-CP dated June 13 <sup>th</sup> 2011 of the government regulating the provision of information and online public services on the websites and portals of government agencies.
38.	Circular 01/2015/TT-BVHTTDL dated March 30 <sup>th</sup> 2015 of Ministry of Culture, Sports and Tourism regulating rewarding of athletes and coaches for excellent performance in international sports tournaments.
39.	Decree 109/2015/ND-CP dated October 20 <sup>th</sup> 2015 of the Government regulating supports for best performed artists living in difficult circumstances.
40.	Circular 27/2013/TT-BTC dated March 12 <sup>th</sup> 2013 of Ministry of Finance regulating the collection, management and use of entrance fees into Museum of Vietnamese Ethnic Culture

## 7. Documents on accessibility to public buildings and transportation

41.	Decree 86/2014/ND-CP dated September 10 <sup>th</sup> 2014 of the Government on business requirements of car transportation companies.
42.	Decree 14/2015/ND-CP dated February 13 <sup>th</sup> 2015 of the Government guiding the implementation of the Law on Railways.
43.	Decree 99/2015/ND-CP dated October 20 <sup>th</sup> 2015 of the Government guiding the implementation of the Law on Housing.
44.	Decision 13/2015/QD-TTg dated May 5 <sup>th</sup> 2015 of the Prime Minister approving policies for development of bus transportation.
45.	Decision 47/2015/QD-TTg dated October 15 <sup>th</sup> 2015 of the Prime Minister approving policies for development of inland water transportation.
46.	Circular 20/2011/TT-BGTVT dated March 31 <sup>st</sup> 2011 of Ministry of Transportation regulating inland water transportation
47.	Circular 67/2011/TT-BGTVT dated December 29 <sup>th</sup> 2011 of Ministry of Transportation on approval of 03 national codes on railway transportation.
48.	Circular 39/2012/TT-BGTVT dated September 24 <sup>th</sup> 2012 of Ministry of Transportation guiding the implementation of national codes on transportation infrastructures, assistive equipment and policies to support persons with disabilities to participate in public transportation.
49.	Circular 48/2012/TT-BGTVT dated November 15 <sup>th</sup> 2012 of Ministry of Transportation enacting national codes on land terminals/stations.
50.	Circular 49/2012/TT-BGTVT dated December 12 <sup>th</sup> 2012 of Ministry of Transportation enacting national codes of coach stops.
51.	Circular 62/2014/TT-BGTVT dated November 7 <sup>th</sup> 2014 of Ministry of Transportation on national codes of city buses accessible for persons with disabilities.
52.	Circular 21/2014/TT-BXD dated December 29 <sup>th</sup> 2014 of Ministry of Construction enacting national codes of construction buildings accessible for persons with disabilities.
53.	Circular 12/2017/TT-BGTVT dated April 15 <sup>th</sup> 2017 of Ministry of Transportation regulating <i>training, examination and granting of driver license</i> .

## 8. Legal documents on legal assistance and handling violations of disability policies

54.	Decree 144/2017/ND-CP dated December 15 <sup>th</sup> 2017 of the Government guiding the implementation of some articles under the Law on Legal Aid.
55.	Decree 14/2013/ND-CP dated February 05 <sup>th</sup> 2013 of the Government amending some articles of Decree 07/2007/ND-CP dated January 12 <sup>th</sup> 2007 of the government guiding the implementation of some articles under the Law on Legal Aid.
56.	Decree 144/2013/ND-CP dated October 29 <sup>th</sup> 2013 of the Government regulating handlings of administrative violations in social protection, social relief, protection and taking care of children.
57.	Decree 45/2016/ND-CP dated May 26 <sup>th</sup> 2016 of the Government regulating handlings of administrative violations in land transportation and railway transportation.

## 9. Legal documents on budgeting and financial issues

58.	<i>Decree 100/2016/ND-CP dated July 01<sup>st</sup> 2016 guiding the implementation of some articles under the Law on Value-Added Tax, Law on Special Consumption Tax and Law on Tax Administration.</i>
59.	<i>Circular 130/2016/TT-BTC dated August 13<sup>th</sup> 2016 guiding the implementation of Decree 100/2016/ND-CP dated July 01<sup>st</sup> 2016 guiding the implementation of some articles under the Law on Value-Added Tax, Law on Special Consumption Tax and Law on Tax Administration and revision of some articles in several Circulars on taxation.</i>
60.	Inter-Circular 112/2012/TTLT-BTC-BLDTBXH dated July 18 <sup>th</sup> 2012 of MOF, MOLISA regulating budget management and use in the National Plan on social assistance and community-based rehabilitation for persons with mental disorders during 2011- 2020
61.	Inter-Circular 48/2013/TTLT-BTC-BLDTBXH dated April 26 <sup>th</sup> 2013 of MOF and MOLISA regulating budget management and use in the National Action Plan to support persons with disabilities.
62.	Inter-Circular 213/2013/TTLT-BTC-BLDTBXH dated December 30 <sup>th</sup> 2013 of MOF and MOLISA regulating budget management and use in the National Plan to support orphans, abandoned children, children living with HIV/AIDS, children affected by toxic chemicals, children with severe disabilities and children affected by natural disasters during 2013-2020



# SECTOR LAWS RELATED TO PERSONS WITH DISABILITIES

## **I. LAWS ENACTED PRIOR TO THE ENACTMENT OF THE LAW ON PERSONS WITH DISABILITY:**

1. Youth Law 2005;
2. Law on Medical Examination and Treatment 2009;
3. Law on Information Technology 2006;
4. Law on Civil Aviation 2006;
5. Law on Domestic Violence Prevention and Control 2007;
6. Law on Road Traffic 2008;
7. Law on Enterprise Income Tax 2008;
8. Law on Red Cross activities 2008.

## **II. LAWS ENACTED AFTER THE ENACTMENT OF THE LAW ON PERSONS WITH DISABILITY:**

1. Adoption Law 2010;
2. Labor Code 2012; amended 2019;
3. Law on policy dissemination and education 2012;
4. Advertising Law 2012;
5. Law on Handling Administrative Violations in 2012;
6. Law on Employment 2013;
7. Law on Procurement 2013;
8. Law on Reconciliation at grassroots level 2013;
9. Law on amendment of the Law on Residence 2013;
10. Law on Natural Disaster Prevention 2013;
11. Law on Professional Education 2014;
12. Construction Law 2014;
13. Investment Law 2014;
14. Law on amendment of the Civil Aviation Law 2014;
15. Law on Civil Status 2014;
16. Notarization Law 2014;
17. Law on Marriage and Family 2014;
18. Law on Temporary Detention and Custody 2015;
19. Law on Referendum 2015;
20. Law on Administrative Proceedings 2015;
21. The Law on Charges and Fees 2015;
22. The Law on Occupational Safety and Health 2015;
23. Law on Military Service 2015;
24. Law on Organization of the Government 2015;
25. Law on Organization of Local Government 2015;
26. Law on the election of the National Assembly and People's Councils 2015;
27. The Penal Code 2015; amended 2017;
28. The Criminal Procedure Code 2015;
29. Civil Procedure Code 2015;
30. Law on access to information 2016;
31. Children Law 2016.
32. Law on Physical Training and Sports 2006; amended 2018;
33. Enterprise Law 2014;
34. Housing Law 2014;
35. Law on Education, 2019

## APPENDIX 2: REVIEWING THE LAW ON THE RIGHTS OF PERSON WITH DISABILITIES

CRPD Articles	Articles in the Law on PWDs	Recommendations
<p><b>Article 1- Purpose</b> The purpose of the present Convention 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. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.</p> <p><b>Article 2 - Article 1 - Purpose</b> The purpose of the present Convention 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. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.</p> <p><b>Article 2 – Definitions</b> For the purposes of the present Convention: “Communication” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology; “Language” includes spoken and signed languages and other forms of non-spoken languages;</p>	<p><b>Article 2. Interpretation of terms</b> In this Law, the terms below are construed as follows: 1. Person with disabilities means a person who is impaired in one or more body parts or suffers functional decline manifested in the form of disability which causes difficulties to his/her work, daily life and study. 3. Discrimination against persons with disabilities means the act of shunning, refusing, maltreating, disparaging, showing prejudice against, or restricting the rights of, persons with disabilities because of their impairments. 8. Access means that persons with disabilities may use public facilities, means of transport, information technology, cultural, sports, tourist and other suitable services so as to be able to integrate into the community.</p>	<p><b>Revise article 2 of Law on PwDs:</b> In this Law, the terms below are construed as follows: 1. Person with disabilities means a person who is impaired in one or more body parts or suffers functional decline manifested in the form of disability which causes difficulties to his/her work, daily life and study. 3. Discrimination against persons with disabilities means the act of shunning, refusing, maltreating, disparaging, showing prejudice against, or restricting the rights of, persons with disabilities because of their impairments. 8. Access means that persons with disabilities may use public facilities, means of transport, information technology, cultural, sports, tourist and other suitable services so as to be able to integrate into the community.</p>

CRPD Articles	Articles in the Law on PWDs	Recommendations
<p>“Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;</p> <p>“Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;</p> <p>“Universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.</p>		
<p><b>Preamble:</b></p> <p>(e) Recognizing that disability is an evolving concept and that disability results <b>from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.</b></p> <p>(j) Recognizing the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support.</p>	<p><b>Article 3: Forms and degrees of disability</b></p> <p>1. Forms of disability include:</p> <ul style="list-style-type: none"> <li>a/ Physical disability;</li> <li>b/ Sensory disability;</li> <li>c/ Visual disability;</li> <li>d/ Mental and psychiatric disability;</li> <li>e/ Intellectual disability;</li> <li>f/ Other disabilities.</li> </ul> <p>2. Persons with disabilities are classified by degree of disability as follows:</p> <ul style="list-style-type: none"> <li>a/ Persons with exceptionally serious disabilities are those whose impairments render them unable to perform by themselves their personal daily-life activities;</li> <li>b/ Persons with serious disabilities are those whose disabilities render them unable to perform some of their personal daily-life activities;</li> <li>c/ Persons with mild disabilities are those who do not fall into the cases defined at Points a and b of this Clause.</li> </ul> <p>3. The Government shall detail the forms and degrees of disability defined in this Article.</p>	<p><b>Revise Article 3 of the Law on PwDs</b></p> <p>To include the terms “more intensive support” in Article 3 in accordance with social model for determining the forms of disabilities.</p> <p>To include autism as a form of disability.</p> <p><b>Revise the Law on PwDs</b> to reform the examination procedure of the forms and degree of disabilities, including leaders of local organizations of persons with disabilities and representatives of the education, employment, information and technology sectors in the Disability Determination Council.</p>

<b>CRPD Articles</b>	<b>Articles in the Law on PWDs</b>	<b>Recommendations</b>
	<p><b>Article 17. Methods of determining degrees of disability</b></p> <p>1. The determination of degrees of disability defined in Clause 1, Article 15 of this Law is carried out by the method of direct observation of persons with disabilities through their simple activities of serving their personal daily-life, the use of a set of questions under medical and social criteria and other simple methods to conclude on the degree of disability of each person.</p>	<p><b>Revise Article 17 of the Law on PwDs</b></p> <p><b>(i)</b> To eliminate direct observation as a method of determining degree of disability and instead using of a set of questions under medical and social criteria. It is essential to use multiple disability measures to meet different policy objectives. The CRPD observes that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.</p>
<p><b>Preamble:</b></p> <p>b. Recognizing that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,</p> <p>c. Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,</p>	<p><b>Article 4. Rights and obligations of persons with disabilities</b></p> <p>1. Persons with disabilities are guaranteed the following rights:</p> <p>a/ To participate on an equal basis in social activities;</p> <p>b/ To live independently and integrate into the community;</p> <p>c/ To enjoy exemption from or reduction of certain contributions to social activities;</p> <p>d/ To be provided with healthcare, functional rehabilitation, education, vocational training, employment, legal assistance, access to public facilities, means of transport, information technology and cultural, sports, tourist and other services suitable to their forms and degrees of disability;</p> <p>e/ Other rights provided by law.</p> <p>2. Persons with disabilities shall perform civic obligations under law.</p>	<p><b>Revise the Law on PwDs:</b></p> <p>To ensure the PwDs are entitled to all the rights and freedoms set forth therein, without distinction of any kind</p> <p>To include regulation on the personal assistance profession, which is one of official occupation to provide support services for PwDs.</p>

<b>CRPD Articles</b>	<b>Articles in the Law on PWDs</b>	<b>Recommendations</b>
<p><b>Article 5. Equality and non-discrimination</b></p> <ul style="list-style-type: none"> <li>- States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.</li> <li>- States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.</li> <li>- In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.</li> <li>- Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention</li> </ul>	<p><b>Article 14. Prohibited acts</b></p> <p>(8) Showing stigma or discrimination against persons with disabilities.</p> <p>(9) Infringing upon physical body, dignity, honor, property or legitimate rights and interests of persons with disabilities.</p> <p>(10) Enticing or forcing persons with disabilities to violate laws or social ethics.</p> <p>(11) Abusing persons with disabilities, organizations of persons with disabilities, organizations for persons with disabilities, images, personal information and status of persons with disabilities for personal profits or commission of violations.</p> <p>(12) Failing to perform or to fulfill the responsibility to nurture and take care of persons with disabilities by persons who have the responsibility to nurture and take care of persons with disabilities.</p> <p>(13) Obstructing the right of persons with disabilities to marriage or child adoption.</p> <p>(14) Being dishonest in determining the degrees of disability or granting disability certificates</p>	<p><b>Revise Article 14 of the Law on PWDs</b></p> <p>To expand the concept of discrimination against PwDs to include not only discriminatory acts of individuals but also organizations, as well as indirect discrimination. It is possible to study experiences of Korea in combating indirect discrimination.</p> <p><b>Revise the Law on PwDs</b></p> <p>To adopt 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". The principle of accessibility should be adopted as the fundamental principle in making policies related to PwDs in all aspects including education, healthcare, transportation, public construction.</p> <p>To define the responsibility of all relevant organizations and individuals to take all appropriate steps to ensure that reasonable accommodation is provided.</p>
<p><b>Article 9- Accessibility</b></p> <p>1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:</p> <p>(a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;</p> <p>(b) Information, communications and other services, including electronic services and emergency services</p>	<p><b>Article 39. Condominiums and public works</b></p> <p>1. The approval of designs, construction and check-and-takeover of new constructions, renovation and upgrading of condominiums, offices and technical and social infrastructure facilities must comply with national technical standards on construction in order to ensure access by persons with disabilities.</p> <p>2. Condominiums, offices and public technical and social infrastructure facilities built before the effective date of this Law which fail to meet the conditions on access by persons with disabilities shall be improved and upgraded to meet these conditions according to the schedule defined in Article 40 of this Law.</p> <p><b>Article 40. Schedules for improvement of condominiums and public works</b></p> <p>1. By January 1, 2020, the following public works must satisfy the conditions on access by persons with disabilities:</p>	<p><b>Revise Articles 39-40 of the Law on PwDs</b></p> <p><b>(v)</b> To revise the terms "condominiums, offices public technical and social infrastructure" to include all public constructions which should meet standards of accessibility. This term could be altered to "condominiums and public works."</p> <p><b>Revise the Law on PwDs</b></p> <p><b>(vi)</b> To determine the responsibility of state agencies in issuing permission, monitoring the implementation of accessibility standards.</p> <p><b>(vii)</b> To ensure persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.</p>

<b>CRPD Articles</b>	<b>Articles in the Law on PWDs</b>	<b>Recommendations</b>
<p>2. States Parties shall also take appropriate measures:</p> <p>(a) To develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;</p> <p>(b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;</p> <p>(c) To provide training for stakeholders on accessibility issues facing persons with disabilities;</p> <p>(d) To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;</p> <p>(e) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;</p> <p>(f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;</p> <p>(g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;</p> <p>(h) To promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.</p>	<p>a/ Offices of the agencies;</p> <p>b/ Railway stations, car terminals and ports;</p> <p>c/ Medical examination and treatment establishments;</p> <p>d/ Educational and vocational training establishments;</p> <p>e/ Cultural, physical training and sport works.</p> <p>2. By January 1, 2025, all condominiums offices, public technical infrastructures and social infrastructure facilities other than those defined in Clause 1 of this Article must satisfy the conditions on access by persons with disabilities.</p> <p>3. The Government shall detail the implementation of the schedules for improvement of each type of works defined in Clauses 1 and 2 of this Article</p>	
	<p><b>Article 41. Movement of persons with disabilities</b></p> <p>1. Personal vehicles of persons with disabilities, when moving on the road, must satisfy national technical standards and be suitable to their health conditions. With regard to personal vehicles requiring driver licenses, persons with disabilities shall be trained in driving and granted driver licenses.</p> <p>2. Persons with disabilities, when using means of mass transit, may use supporting facilities or rendered corresponding assistance: and carry along appropriate means or supporting facilities and be exempt from charges there for.</p> <p>3. Persons with exceptionally serious disabilities and persons with serious disabilities are entitled to exemption from or reduction of fares or service charges when using certain means of mass transit under the Government's regulations.</p> <p>4. Persons with disabilities are given priority in ticket purchase, assisted and arranged for convenient seats when using means of mass transit</p> <p><b>Article 42. Means of mass transit</b></p> <p>1. Means of mass transit must be built with priority seats for persons with disabilities; with instruments that allow convenient mounting and dismounting or render assistance suitable to the characteristics of persons with disabilities.</p>	<p><b>Revise Articles 41 and 42 of the Law on PwDs</b></p> <ul style="list-style-type: none"> <li>- To ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;</li> <li>- To ensure renovations for means of transport to meet accessibility standards are financially supported by the government</li> </ul>

<b>CRPD Articles</b>	<b>Articles in the Law on PWDs</b>	<b>Recommendations</b>
	<p>2. Means of mass transit to be accessible by persons with disabilities must satisfy national technical standards on accessible transportation promulgated by competent state agencies.</p> <p>3. Mass transit units shall invest in and arrange means up to technical standards on accessible transportation on transport routes according to the rates prescribed by the Government in each period.</p> <p>4. Produced or imported means of mass transit satisfying national technical standards on accessible transportation are entitled to tax exemption or reduction under tax law.</p>	
	<p><b>Article 43. Information technology and communication</b></p> <p>1. The State encourages agencies, organizations, enterprises and individuals operating in information technology to apply and develop information technology reserved for persons with disabilities.</p> <p>2. Mass media agencies have the responsibility to cover the material and spiritual life of persons with disabilities.</p> <p>Vietnam Television Station shall broadcast programs with Vietnamese subtitles and sign language for persons with disabilities according to regulations of the Minister of Information and Communications.</p> <p>3. The State shall adopt policies on tax exemption and reduction, concessional loans and other supports for research into, manufacture or production of equipment, provision of services and supply of equipment to enable persons with disabilities to access information technology and communication: and support the collection, compilation and publication of documents printed in Braille for persons with visual disabilities, reading documents for persons with sensory and intellectual disabilities.</p>	<p><b>Revise Article 43 of the Law on PwDs</b></p> <ul style="list-style-type: none"> <li>- To eliminate the term “encourages” and define obligations of state agencies, organizations, and individuals in developing technology for ensuring accessibility of PwDs.</li> <li>- To replace “documents in braille for people with visual disabilities” with “documents in accessible formats for people with print disabilities”.</li> </ul>

CRPD Articles	Articles in the Law on PWDs	Recommendations
<p><b>Article 13- Access to justice</b></p> <p>1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and a g e - a p p r o p r i a t e accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.</p> <p>2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff</p> <p><b>Article 24 – Education</b></p> <p>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, States Parties shall ensure an inclusive education system at all levels and lifelong learning</p> <p>2. In realizing this right, States Parties shall ensure that:</p> <p>(a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;</p> <p>(b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;</p> <p>(c) Reasonable accommodation of the individual’s requirements is provided;</p> <p>(d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;</p> <p>(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.</p>	<p><b>Article 27 Education for persons with disabilities</b></p> <p>The State shall create conditions for persons with disabilities to study in conformity with their own needs and capabilities.</p> <p>Persons with disabilities shall be <b>provided with equipment and materials in support of their exclusive learning in case of necessity</b>; persons with sensory disabilities may have their learning in sign language, persons with visual disabilities may have their learning in Braille under the national standards. Modes of education applicable to persons with disabilities</p> <p>1. Education applicable to persons with disabilities includes integrative education, semi-integrative education and exclusive education.</p> <p>2. Integrative education is the main mode of education for persons with disabilities.</p> <p>Semi-integrative education and exclusive education will be implemented if conditions for persons with disabilities to study by integrative education are not yet fully met.</p> <p>3. Persons with disabilities, their parents or guardians shall opt for modes of education suitable to the personal development of persons with disabilities. Families shall create favorable conditions and opportunities for their members with disabilities to study and develop according to their personal capabilities.</p> <p>The State encourages persons with disabilities to learn by the mode of integrative education.</p> <p><b>Article 29. Teachers, education administrators and education support personnel</b></p> <p>1. Teachers and education administrators participating in the education of persons with disabilities and personnel supporting the education of persons with disabilities shall be trained and updated in profession and skills to meet the requirements of education of persons with disabilities.</p> <p>2. Teachers and education administrators participating in the education of persons with disabilities and personnel supporting the education of persons with disabilities are entitled to allowances and incentives under the Government’s regulations.</p>	<p><b>Revise Articles 27, 29-31 of the Law on PwDs</b></p> <ul style="list-style-type: none"> <li>• To add appropriate measures for recruiting teachers, including teachers with disabilities, who have professional skills in teaching students with different learning needs and in using sign language or Braille at all levels.</li> <li>• To force educational institutions to take effective individualized support measures to maximize academic and social development for PwDs, consistent with the goal of full inclusion.</li> <li>• To determine responsibility of educational institutions in providing reasonable accommodation of the individual’s requirements.</li> <li>• To clearly determine the responsibilities of local governments in allocating budgets for inclusive education for PwDs.</li> <li>• To revise paragraph “Persons with disabilities shall be provided with equipment and materials in support of their exclusive learning in case of necessity; persons with sensory disabilities may have their learning in sign language, persons with visual disabilities may have their learning in Braille under the national standards” by using the language of the CRPD: “Persons with disabilities receive the support required, within the general education system, to facilitate their effective education”</li> <li>• To adopt a policy giving priority to the development of training of sign language interpreters to support people with disabilities.</li> <li>• To delegate power to the Government to provide detailed guidelines for implementation of this matter.</li> <li>• To clearly determine the responsibility of educational insitutions by including prohibited act such as refusing PwDs to enroll in educational institution without reasonable grounds.</li> </ul>



<b>CRPD Articles</b>	<b>Articles in the Law on PWDs</b>	<b>Recommendations</b>
<p>3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:</p> <p>(a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;</p> <p>(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;</p> <p>(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.</p> <p>4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.</p> <p>5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.</p>	<p><b>Article 30. Responsibilities of educational institutions</b></p> <p>1. To ensure teaching and learning conditions suitable to persons with disabilities, to be disallowed to refuse admission of persons with disabilities in contravention of law.</p> <p>2. To renovate and upgrade physical teaching and learning foundations which fail to meet the conditions on access by persons with disabilities.</p> <p><b>Article 31. Integrative education development support centers</b></p> <p>1. Integrative education development support centers are establishments which provide teaching and learning programs, equipment, documents as well as education consultancy services and support, or organize education, suitable to the characters and circumstances of persons with disabilities.</p> <p>5. The Minister of Education and Training shall assume the prime responsibility for, and coordinate with the Minister of Labor, War Invalids and Social Affairs in, specifying the conditions for establishment and operation of integrative education development support centers defined in Clause 3 of this Article.</p>	

<b>CRPD Articles</b>	<b>Articles in the Law on PWDs</b>	<b>Recommendations</b>
<p><b>Article 25 - Health</b> States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:</p> <p>(a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;</p> <p>(b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;</p> <p>(c) Provide these health services as close as possible to people’s own communities, including in rural areas;</p> <p>(d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;</p> <p>(e) P r o h i b i t discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;</p> <p>(f) P r e v e n t discriminatory denial of health care or health services or food and fluids on the basis of disability.</p>	<p><b>Article 21 - Primary healthcare at places of residence</b> 1. Commune-level health stations shall:</p> <p>a/ Apply various forms of propagation, education and popularization of general knowledge of healthcare and disability prevention and minimization; guide persons with disabilities in methods of disease prevention, healthcare and functional rehabilitation;</p> <p>b/ Compile dossiers for health monitoring and management of persons with disabilities;</p> <p>c/ Give medical examination and treatment as suitable to their professional scope to persons with disabilities.</p> <p>2. The fund for materialization of Points a and b, Clause 1 of this Article shall be provided from the state budget.</p> <p><b>Article 22. Medical examination and treatment</b> 1. The State guarantees that persons with disabilities have access to medical examination and treatment as well as appropriate medical services.</p> <p>2. Persons with disabilities are entitled to health insurance under the law on health insurance.</p> <p>3. Families of persons with disabilities shall create favorable conditions for such persons to receive medical examination and treatment.</p> <p>4. A person with disabilities who suffers a menial disease, being in the state of incitement or depression, having the idea and/or act of committing suicide or posing danger to other persons, shall be provided with supports in daily-life allowance, travel and hospitalization expenses in the period of compulsory treatment at medical examination and treatment establishments.</p> <p>5. Organizations and individuals are encouraged to provide medical examination and treatment as support to persons with disabilities.</p> <p><b>Article 23 - Responsibilities of medical examination and treatment establishments</b> 1. To apply appropriate medical examination and treatment measures to persons with disabilities. 2. To prioritize medical examination and treatment for persons with exceptionally serious disabilities,</p>	<p><b>Revise Articles 21-25 of the Law on PwDs</b> <b>(iii)</b> To clearly determine the responsibility of healthcare institutions in ensure PwDs to access healthcare services; Healthcare institutions shall adopt reasonable accommodation for ensuring accessibility of PwDs. <b>(iv)</b> To provide coherence by moving the clause in Article 21(1)(a) on “disability prevention and minimalization” In Article 21(1)(a) to the Law on Health.</p>

<b>CRPD Articles</b>	<b>Articles in the Law on PWDs</b>	<b>Recommendations</b>
	<p>persons with serious disabilities as well as children, elderly persons and pregnant women with disabilities in accordance with the law on medical examination and treatment.</p> <p>3. To advise on prevention and early detection of disability; determine congenital disability in infants in order to apply appropriate measures for treatment, orthopedic operations and functional rehabilitation.</p> <p>4. To renovate and upgrade physical foundations for medical examination and treatment which are not yet accessible to persons with disabilities.</p>	
<p><b>Article 26 - Scientific research, training of experts and technicians, manufacture of equipment for persons with disabilities</b></p> <p>The State shall provide funding supports under projects for agencies or organizations conducting scientific researches in persons with disabilities and training orthopedic and functional rehabilitation experts and technicians.</p> <p>Establishments manufacturing orthopedic instruments, functional rehabilitation facilities and equipment for daily-life activities, learning and work of persons with disabilities are entitled to concessional loans and tax exemption or reduction under law. Orthopedic instruments, facilities and equipment for functional rehabilitation, daily-life activities, study and work of persons with disabilities, which come from non-refundable aid programs or projects or are donated by foreign organizations and individuals, are entitled to tax exemption or reduction under the tax law.</p>	<p><b>Article 24. Orthopedic and functional rehabilitation establishments</b></p> <p>1. Orthopedic and functional rehabilitation establishments are those which provide orthopedic operations and functional rehabilitation services for persons with disabilities.</p> <p>2. Orthopedic and functional rehabilitation establishments include:</p> <ul style="list-style-type: none"> <li>a/ Orthopedic and functional rehabilitation institutes;</li> <li>b/ Orthopedic and functional rehabilitation centers;</li> <li>c/ Convalescence and functional rehabilitation hospitals;</li> <li>d/ Functional rehabilitation departments of medical examination and treatment establishments;</li> <li>e/ Functional rehabilitation sections of social relief centers;</li> <li>f/ Other establishments.</li> </ul> <p>The setting up and operation of orthopedic and functional rehabilitation establishments comply with law.</p> <p>The State shall invest in the construction of physical and technical foundations of public orthopedic and functional rehabilitation facilities.</p> <p><b>Article 25. Community-based functional rehabilitation</b></p> <p>Community-based functional rehabilitation means a measure to be implemented at communities with a view to transferring knowledge on disability, rehabilitation skills and positive attitudes to persons with disabilities, their families and communities in order to create equality in opportunity and community integration for persons with disabilities.</p>	<p><b>Revise Articles 24-25 of the Law on PwDs</b></p> <p>(5) To clearly determine the responsibility of the Government in providing detail guidelines on community – based rehabilitation model.</p> <p>(6) To define community-based rehabilitation the primary rehabilitation method instead of institutionalizing PwDs in social welfare centers.</p> <p>To align with the Law on Health Insurance which ensures "basic assistive devices" should be included in health insurance.</p>

<b>CRPD Articles</b>	<b>Articles in the Law on PWDs</b>	<b>Recommendations</b>
	<p>Persons with disabilities shall be given conditions and supports for community-based functional rehabilitation.</p> <p>Families of persons with disabilities shall create favorable conditions for such persons to have community-based functional rehabilitation.</p> <p>Orthopedic and functional rehabilitation establishments shall participate in guiding professional activities of community-based functional rehabilitation.</p> <p>People's Committees at all levels shall formulate and realize programs on community-based functional rehabilitation; and create conditions for agencies, organizations and individuals to organize or participate in community-based functional rehabilitation activities.</p>	
<p><b>Article 27 - Work and employment</b></p> <p>1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:</p> <p>(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;</p> <p>(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;</p>	<p><b>Article 32. Vocational training for persons with disabilities</b></p> <p>1. The State ensures that persons with disabilities are provided with free advice on vocational training, job selection and learning according to their capability and ability on an equal basis like other persons.</p> <p>2. Vocational training establishments shall issue diplomas and certificates and recognize trained jobs when persons with disabilities finish their training programs and fully satisfy the conditions prescribed by heads of state agencies managing vocational training.</p> <p>3. Vocational training establishments which organize vocational training for persons with disabilities must meet the conditions on vocational training for persons with disabilities and are entitled to preferential policies under law.</p> <p>4. Persons with disabilities who are vocational trainees and teachers providing vocational training to persons with disabilities are entitled to regimes and policies prescribed by law.</p> <p><b>Article 33. Employment for persons with disabilities</b></p> <p>1. The State shall create conditions for persons with disabilities to have their working functions rehabilitated, to receive free job advice, to be employed and perform jobs suitable to their health and characteristics.</p>	<p><b>Revise Articles 32-35 of the Law on PwDs</b></p> <p><b>(i)</b> To provide for the responsibility of the State in vocational training and job placement for PwDs instead of delegating responsibility on a third party (vocational training schools) (refer to Korea's Act on The Employment Promotion and Vocational Rehabilitation of Persons with Disabilities, article 3-4).</p> <p><b>(ii)</b> To use the human rights-based approach to protect every PWD's rights in vocational training and employment rather than giving priority policies for certain types of enterprises.</p> <p><b>(iii)</b> To list prohibited acts such as: State agencies, organizations, and individual shall not refuse to employ PwDs who meet work requirements or set up a recruitment criteria in conflict with the laws.</p> <p><b>(iv)</b> To determine obligations of the public sector to recruit PwDs with a minimum quota (3%, for example).</p> <p><b>(v)</b> To reduce the percentage of employees with disabilities required for assistance in an enterprise to under 30%, or increase the level of support in accordance with the number of PwDs employed in an enterprise.</p>

CRPD Articles	Articles in the Law on PWDs	Recommendations
<p>(c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;</p> <p>(d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;</p> <p>(e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;</p> <p>(f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;</p> <p>(g) Employ persons with disabilities in the public sector;</p> <p>(h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;</p> <p>(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;</p> <p>(j) Promote the acquisition by persons with disabilities of work experience in the open labour market;</p> <p>(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.</p> <p>2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.</p>	<p>2. Agencies, organizations, enterprises and individuals may neither refuse to recruit persons with disabilities who fully satisfy the recruitment conditions nor set recruitment criteria in violation of law in order to restrict working opportunities of persons with disabilities.</p> <p>3. Agencies, organizations, enterprises and individuals employing persons with disabilities shall, depending on their specific conditions, arrange jobs and ensure the working conditions and environment suitable to these persons.</p> <p>4. Agencies, organizations, enterprises and individuals employing persons with disabilities shall comply with the labor law concerning employees with disabilities.</p> <p>5. Job placement organizations shall provide vocational training and job advice as well as job recommendation for persons with disabilities.</p> <p>6. Self-employed persons with disabilities or households creating jobs for persons with disabilities may borrow loans at preferential interest rates for production and business activities and to be guided in production, technology transfer and receive support in product sales according to regulations of the Government.</p> <p><b>Article 34. Production and business establishments employing many persons with disabilities</b></p> <p>Production and business establishments which employ persons with disabilities accounting for 30% or more of their total employees may receive supports for improvement of their working conditions and environment suitable to persons with disabilities; be exempt from enterprise income tax; borrow loans at preferential interest rates under production and business development projects; receive priority in land, ground and water surface lease and be exempt from rents of land, ground and water surface to serve production and business activities in proportion to the percentage of employees with disabilities, the degree of their disabilities and the size of enterprises.</p>	

CRPD Articles	Articles in the Law on PWDs	Recommendations
	<p><b>Article 35. Policies for recruitment of persons with disabilities</b></p> <p>1. The State encourages agencies, organizations and enterprises to employ persons with disabilities. Enterprises employing many persons with disabilities are entitled to preferential policies provided in Article 34 of this Law.</p> <p>2. The Government shall detail policies of encouraging agencies, organizations and enterprises to employ persons with disabilities under Clause 1 of this Article.</p>	
<p><b>Article 28 - Adequate standard of living and social protection</b></p> <p>1. 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.</p> <p>2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:</p> <p>(a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;</p> <p>(b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;</p> <p>(c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;</p> <p>(d) To ensure access by persons with disabilities to public housing programmes;</p>	<p><b>Article 44 - Monthly social allowances and care-taking fund supports</b></p> <p>1. Entitled to monthly social allowance are:</p> <p>a/ Persons with exceptionally serious disabilities, except for the cases defined in Article 45 of this Law;</p> <p>b/ Persons with serious disabilities.</p> <p>2. Entitled to monthly care-taking fund supports are:</p> <p>a/ Families of persons with exceptionally serious disabilities that are directly nurturing and taking care of these persons;</p> <p>b/ Persons who undertake to nurture and take care of persons with exceptionally serious disabilities;</p> <p>c/ Persons with disabilities defined in Clause 1 of this Article, who are pregnant or nursing children under 36 months old.</p> <p>Persons with disabilities defined at Clause 1 of this Article, who are children or elderly are entitled to allowances higher than others of the same degree of disability.</p> <p>The monthly social allowance level and monthly care-taking fund support level for each type of beneficiary under this Article shall be set by the Government.</p> <p><b>Article 45 – Nurture of persons with disabilities in social-relief establishments</b></p> <p>1. Persons with exceptionally serious disabilities without anyone to support or without ability to take care of themselves shall be admitted to social-relief establishments.</p> <p>2. The State shall provide social relief centers with funds for nurturing persons with disabilities defined in Clause 1 of this Article, including:</p> <p>a/ Monthly nurturing allowance;</p> <p>b/ Procurement of personal articles and utensils for daily-life activities;</p>	<p><b>Revise Article 44 of the Law on PWDs</b> to ensure social assistance is determined by financial condition rather than degree of disability in line with the CRPD.</p> <p><b>Revise Article 51 of the Law on PWDs</b> to clarify the terms “may enjoy only one policy of highest assistance” to ensure PwDs can benefit from multiple programs, such as social allowance and tuition fee exemption, at the same time.</p> <p><b>Revise the Law on PwDs</b> to include provisions on the personal assistance profession including: standards, conditions, policies for developing individual supported staff.</p>

<b>CRPD Articles</b>	<b>Articles in the Law on PWDs</b>	<b>Recommendations</b>
<p>(e) To ensure equal access by persons with disabilities to retirement benefits and programmes.</p>	<p>c/ Purchase of health insurance; d/ Purchase of common curative medicines; c/ Purchase of instruments and facilities for functional rehabilitation; f/ Funeral upon death; g/ Monthly personal hygiene for women with disabilities. 3. The Government shall prescribe the monthly nurturing allowance and funding levels defined at Clause 2 of this Article.</p> <p><b>Article 51: Application of law</b> 1. Persons with disabilities currently enjoying preferential policies towards people with meritorious services to the revolution or currently enjoying pensions or monthly social allowances are not entitled to the policies defined in Clause 1, Article 44 of this Law, but may enjoy the policies prescribed in this Law if the law on people with meritorious services to the revolution or the law on social insurance has not so provided for. 2. Persons with disabilities entitled to various policies on assistance to social relief beneficiaries of the same category may enjoy only one policy of highest assistance. 3. Persons with disabilities currently enjoying the regime of nurture and care at social relief centers before this Law takes effect may enjoy continued nurture and care at these social relief centers under Clause 2, Article 45 of this Law.</p>	
<p><b>Article 33 - National implementation and monitoring</b> 1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels. 2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or</p>	<p><b>Article 49 - State management agencies in charge of affairs related to persons with disabilities</b> 1. The Government shall perform the unified state management of affairs related to persons with disabilities. 2. The Ministry of Labor, War Invalids and Social Affairs is answerable to the Government for performing the function of state management of affairs related to persons with disabilities. 3. Ministries and ministerial-level agencies shall, within the ambit of their tasks and powers, coordinate with the Ministry of Labor, War Invalids and Social Affairs in performing the state management of affairs related to persons with disabilities. 4. People’s Committees at all levels shall, within the ambit of their tasks and powers, perform the state management of affairs related to persons with disabilities.</p>	<p><b>Revise Article 50 of the Law on PWDs</b> to clearly define the coordination role of the National Council on Disability under the Ministry of Labour, Invalids, and Social Affairs. In addition, stipulate the foundation and maintenance of an independent monitoring mechanism of disability rights with the maximum participation of PWDs outside the government in compliance with the Article 33(2) of CRPD. <b>Revise the Law on PwDs</b> to clearly determine the responsibilities of local government at all levels when making policies and decisions related to PwDs and must ensure the participation of PwDs and organizations of PwDs to ensure the diverse needs of persons with disabilities are adequately met.</p>

CRPD Articles	Articles in the Law on PWDs	Recommendations
<p>establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.</p> <p>3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.</p> <p><b>Article 34 – Committee on the Rights of Persons with Disabilities</b></p> <p>1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as “the Committee”), which shall carry out the functions hereinafter provided.</p> <p>2. The Committee shall consist, at the time of entry into force of the present Convention, of twelve experts. After an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six members, attaining a maximum number of eighteen members.</p> <p>3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the present Convention. When nominating their candidates, States Parties are invited to give due consideration to the provision set out in article 4, paragraph 3, of the present Convention.</p> <p>4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.</p> <p>5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties from among their nationals at meetings of the Conference of States Parties. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the</p>	<p><b>Article 50. Responsibilities of ministries, ministerial-level agencies and People’s Committees at all levels</b></p> <p>1. The Ministry of Labor, War Invalids and Social Affairs has the following responsibilities:</p> <p>2. The Ministry of Health has the following responsibilities:</p> <p>3. The Ministry of Education and Training has the following responsibilities:</p> <p>4. The Ministry of Culture, Sports and Tourism shall perform the state management of cultural, sports, entertainment and tourist activities for persons with disabilities; and direct, guide and organize activities to raise the cultural and spiritual life of persons with disabilities.</p> <p>5. The Ministry of Construction shall assume the prime responsibility for, and coordinate with relevant ministries and ministerial-level agencies in, promulgating, guiding and organizing the application of national technical standards on construction of condominiums, offices, technical and social infrastructure facilities meeting the conditions on access by persons with disabilities.</p> <p>6. The Ministry of Transport shall assume the prime responsibility for, and coordinate with relevant ministries and ministerial-level agencies in, promulgating, guiding and organizing the application of national technical standards on transport infrastructure, supporting facilities and priority policies for persons with disabilities in mass transit.</p> <p>7. The Ministry of Information and Communications shall promulgate, guide and organize the application of, national technical standards on access to information for persons with disabilities; direct and guide mass media agencies to propagate and disseminate policies and law on persons with disabilities.</p> <p>8. The Ministry of Science and Technology shall assume the prime responsibility for, and coordinate with relevant ministries and ministerial-level agencies in, promulgating, guiding and organizing the realization of regulations on promotion of research into, production and application of products to support persons with disabilities.</p>	



<b>CRPD Articles</b>	<b>Articles in the Law on PWDs</b>	<b>Recommendations</b>
<p>largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.</p> <p>6. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the States Parties to the present Convention.</p> <p>7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in paragraph 5 of this article.</p> <p>10. The Committee shall establish its own rules of procedures.</p>	<p>9. The Ministry of Finance shall allocate budgets for the materialization of policies, programs, schemes and projects on assistance to persons with disabilities and allocate budget for investigations, surveys and statistics on persons with disabilities under the state budget law.</p> <p>10. The Ministry of Planning and Investment shall appraise and approve state-invested projects on care for, nurturing of, orthopedic operations and functional rehabilitation for, persons with disabilities; and assume the prime responsibility for, and coordinate with the Ministry of Labor, War Invalids and Social Affairs in, conducting investigations, surveys and statistics on persons with disabilities.</p> <p>11. People's Committees at all levels shall, within the ambit of their tasks and powers, perform the state management of activities related to persons with disabilities: incorporate activities related to persons with disabilities into local social-economic development plans; ensure conditions for persons with disabilities to exercise their rights and fulfill their obligations and responsibilities; create conditions for organizations and individuals assisting persons with disabilities</p>	

# APPENDIX 3: INTERVIEW QUESTIONS

## I. Interview questions for Ministerial level agencies, local government, DPOs, and CSOs.

### 1. General question

- (1) Do you think the Law on PWDs has any impact on the life of PWDs? If yes, has that impact been positive or negative? What has been positive or negative? Could you please provide some example about the changes in the life of PWDs since the Law on PWDs was promulgated?
- (2) How government ensure the rights of PWDs in both the legal framework and implementation monitoring mechanism?
- (3) How PWDs are protected by laws? What are the legal protection measures often used by the PWDs?
- (4) What are the main challenges in implementing the Law on PWDs in Vietnam?
- (5) What is the priority challenge in implementing the Law on PWDs in Vietnam? (biggest issues)
- (6) What are the main challenges for example in accessibility, participation in society, employment, or study?
- (7) What are possible solutions for dealing with the mentioned challenges?
- (8) Are there any differences in implementing the law on PWDs at urban and rural areas? What are the key differences in implementing the law on PWDs at big cities and provinces?
- (9) What is the role of your organization in monitoring the implementation of the Law on PWDs?
- (10) How does your organization coordinate with other organizations and agencies on this goal? What are the difficulties? How could it be improved?
- (11) What are the main challenges in ensuring PwDs participation in implementing and monitoring the Law on PwDs/CRPD? What is the priority challenge?
- (12) How does the government ensure the full participation of PWDs in the implementation and monitoring of the Law on CRPD? (For ministries)
- (13) Do you have any suggestion to enhance PWDs /DPOs' participation in the policy making process?
- (14) Would you be interested in consulting with PWDs in making policies related to PWDs?
- (15) Do you think the regulations of the PWDs are consistent with the CRPD?
- (16) Do you have any recommendations for revising the Law on PWDs?
- (17) Do you recommend any best practices for the Law on PWDs?

### 2. Specific questions related to field management agencies

- (1) Can PWDs access to education/vocational training and employment/transportation/health care system /information and technology /legal aid / support services /cultural and social activities at both national and local level? What are challenges in these areas of accessibility?
- (2) What are the current issues in implementing the law on PWDs?
- (3) What are responsibilities of your agency in promoting the accessibility of PWDs in society?
- (4) How does your agency coordinate with other agencies on this goal? What are the difficulties? How could it be improved?
- (5) What should be improved in the legal framework /law implementation to better mainstream /include PWDs in the area you are in charge?

### **3. Specific question for local authorities and field management agencies (DOLISA, Department of Education, Transportation, Healthcare)**

- (1) Do you think the Law on PWDs is suitable with local context?
- (2) What are the key challenges in implementing the Law on PWDs at your province?
- (3) How the Law on PWDs have been implemented in your provinces? What are the remained issues that not yet implemented effectively?
- (4) Do you think the Law on PWDs should be revised for implementing effectively at local level?
- (5) What policy should be addressed for promoting effectiveness of law implementation?

## **II. Interview questions for PWDs**

- (1) Do you know about the rights of PWDs? If yes, how do you know about your rights?
- (2) Do you know about the Law on PWDs? If yes, do you think this law have any impacts on the life of PWDs? Please give specific examples of positive and negative impacts?
- (3) Have you been supported by local authorities/family members/community in daily life? If yes, can you give us some examples?
- (4) What are the main challenges facing PwDs in society today? Do you have any difficulties in access to education, healthcare, transportation?
- (5) What is the priority challenge facing PwDs in society?
- (6) Does the Government facilitate the full participation of PWDs in the implementation and monitoring of the Law on PWDs/CRPD?
- (7) Do you face with any difficulties in participation in society, especially in education/vocational training and employment /transportation/health care system /information and technology /legal aid / support services /cultural and social activities?
- (8) Have you ever faced with any forms of violence or discrimination? If yes, did you ask for legal support in order to protect your rights and interest? If no, why you did not ask for legal aid?
- (9) Have you ever taken part in making policy on PWDs? If yes, how can you participate?
- (10) What are the main challenges in ensuring PwDs participation in implementing and monitoring the Law on PwDs/CRPD? What is the priority challenge?
- (11) Would you be interested in talking with government sectors about policies related to PWDs?
- (12) What should be addressed in the Law on PWDs?
- (13) What are your recommendations for revising the Law on PWDs?

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