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The International Conference Proceedings

**ENSURING THE RIGHTS
OF PERSONS WITH DISABILITIES
IN THE SUSTAINABLE DEVELOPMENT OF VIET NAM
AND
OTHER COUNTRIES OF THE WORLD**



SOCIAL SCIENCES PUBLISHING HOUSE



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**ENSURING THE RIGHTS
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SOCIAL SCIENCES PUBLISHING HOUSE

Hanoi - 2023

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**CỘNG HOÀ XÃ HỘI CHỦ NGHĨA VIỆT NAM
Độc lập - Tự do - Hạnh phúc**

Số: 4308 /UBND-VX

Bình Dương, ngày 23 tháng 8 năm 2022

V/v tổ chức Hội thảo khoa học quốc tế với chủ đề “Khoa học, công nghệ và giáo dục - Động lực phát triển nhanh và bền vững”.

CÔNG VĂN ĐẾN

.....Giờ.....Ngày...../...../.....

Kính gửi:

- Trường Đại học Bình Dương;
- Sở Ngoại vụ.

Xét đề nghị của Trường Đại học Bình Dương tại văn bản số 425/ĐA-ĐHBD ngày 20/7/2022 về việc tổ chức chuỗi Hội thảo khoa học quốc tế với chủ đề “Khoa học, công nghệ và giáo dục - Động lực phát triển nhanh và bền vững” và ý kiến của Sở Ngoại vụ tại Tờ trình số 794/TTr-SNgV ngày 18/8/2022 về việc cho phép tổ chức Hội thảo quốc tế; Chủ tịch Ủy ban nhân dân tỉnh có ý kiến như sau:

1. Chấp thuận cho Trường Đại học Bình Dương chủ trì phối hợp với các đơn vị có liên quan tổ chức chuỗi Hội thảo khoa học quốc tế với nội dung, thời gian, địa điểm, hình thức tổ chức, thành phần tham dự theo như đề nghị tại Tờ trình số 794/TTr-SNgV ngày 18/8/2022.

2. Trường Đại học Bình Dương liên hệ với Sở Ngoại vụ và các cơ quan, đơn vị có liên quan để được hướng dẫn, thực hiện thủ tục làm việc với người nước ngoài theo đúng quy định; đồng thời thực hiện đúng theo quy định về tổ chức và quản lý hội nghị, hội thảo quốc tế tại Việt Nam¹./. ld

Nơi nhận:¹

- CT, PCT VX;
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- LĐVP;
- Lưu VT, H, Giang, Khoa. 3

**KT. CHỦ TỊCH
PHÓ CHỦ TỊCH**



Nguyễn Lộc Hà

¹ Quyết định số 60/2020/QĐ-TTg ngày 21/02/2020 của Thủ tướng Chính phủ về tổ chức và quản lý hội nghị, hội thảo quốc tế tại Việt Nam.



AGENDA

INTERNATIONAL CONFERENCE ON

“Ensuring the rights of persons with disabilities in the sustainable development of Vietnam and other countries around the world”

Date: 08:00 A.M-12:00 P.M on Saturday 10 Sep 2022,

Venue: Binh Duong University, Binh Duong province

Zoom Meeting

<https://senbac.zoom.us/j/91835669933?pwd=WWJmWEZYOWcvR2VtcXdhNTVxQk96dz09>

Meeting ID: 918 3566 9933 Passcode: 605188

Objective:

The international scientific conference for around 100 participants will be organized on 10 September where global and Vietnamese scholars present their research findings on effectively mainstreaming PwDs in the national sustainable development. In particular, their knowledge products discuss:

- Promotion of the rights of PwD according to SDG
- Solutions to improve the legal framework and strengthen the enforcement of the rights of PwDs in Vietnam, while complying with international commitments, especially the CRPD implementation and accession to the Agreement of the Marrakesh Convention
- Contribution of propagating and disseminating the laws in the community; and will promote the goals and enhance the position of Binh Duong University, and UNDP in scientific research activities on human rights and sustainable development.

TIME	Content	Responsibility
07:45-8:00	Delegate registration and technical preparation	Binh Duong University
08:00-08:10	Introduce the program, introduce the delegates	MC Karen Hamilton Nguyen Director of the Institute of International Cultural Exchange



TIME	Content	Responsibility
08:10-08:20	Opening speech	Dr. Phan Thong Anh Representative of the Organizing Committee, Dean of Faculty of Law, Binh Duong University
08:20-08:30	Speech of the Chairman of the Conference	Diana Torres, Assistant Resident Representative. Head of Governance and Participation, UNDP Vietnam
SESSION 1. Hosts: Dr. Phan Thong Anh (Dean of Faculty of Law, Binh Duong University) Diana Torres, Assistant Resident Representative. Head of Governance and Participation, UNDP Vietnam; Dr. Nguyen Binh An (Faculty of Law, Binh Duong University).		
08:30-08:40	Presentation 1: The right to access and rights-based approach of persons with disabilities in Vietnam today	<i>Tran Thai Duong</i> Hanoi Law University, Vietnam
08:40-08:50	Presentation 2: The rights to education of children with disabilities – international standards, the law and practice in Vietnam	<i>Associate Prof. Dr. Tuong Duy Kien</i> Director of the Institute of Human Rights, Ho Chi Minh National Academy of Politics
08:50-09:00	Presentation 3: Removing barriers to accessing and enjoying human rights of women with disabilities in Vietnam today	<i>Associate Prof. Dr. Nguyen Thi Bao</i> Senior Lecturer, Institute of State and Law, National Academy of Politics.



TIME	Content	Responsibility
09:00-09:10	Presentation 4: Vietnam's policies and laws for persons with autism the autistic towards the goal of sustainable development	<i>Dr. Phạm Thị Thủy Nga</i> Vice Director, Institute of State and Law, Vietnam Academy of Social Sciences. <i>Dr. Hoang Kim Khuyen</i> Deputy Head of Economic Law Division, Institute of State and Law, Vietnam Academy of Social Sciences.
09:10-09:20	Presentation 5: Toward an Inclusive Society in Vietnam ~ From a Perspective of Barrier-free	<i>Dr. Uwano Toshi</i> Tokyo University
09:20-10:05	Discussion	
10:05-10:10	Break	
SESSION 2. Hosts: Diana Torres, Assistant Resident Representative. Head of Governance and Participation, UNDP Vietnam; Dr. Phan Thong Anh (Dean of Faculty of Law, Binh Duong University); Dr. Nguyen Binh An (Faculty of Law, Binh Duong University).		
10:10-10:20	Presentation 6: The welfare of Persons with Disabilities: Scope of International and Indian Legal Framework	<i>Dr. Aneesh V Pillai,</i> Assistant Professor, School of Legal Studies Cochin University of Science and Technology Kochi, India
10:20-10:30	Presentation 7: Looking into the amended law on intellectual property with the lens of the Marrakesh Treaty	<i>Dao Thu Huong</i> Disability Inclusion Officer– Governance and Participation United Nations Development Programme



TIME	Content	Responsibility
10:30-10:40	Presentation 8: Equal rights in labor of persons with disabilities under the laws of Vietnam and some other countries	<i>LLM. Lawyer Vu Thi Bich Hai</i> Lecturer of the Law Faculty – Van lang University. <i>Dr. Lawyer Phan Thong Anh</i> Dean of Law Faculty – Binh Duong University. <i>LLM. Le Ho Trung Hieu</i> Lecturer of the Law Faculty –Van Lang University. <i>LLM. Doan Kim Van Quynh</i> Lecturer of the Law Faculty –Van Lang University.
10:40-10:50	Presentation 10: Realization of rights of persons with disabilities in a smart city	<i>Maria Ablameyko</i> Associate Professor of the Faculty of Law of the Belarusian State University
10:50-11:50	Discussion	
11:50-12:00	Summary and Closing Closing speech by Conference Organizational Committee	Dr. Phan Thong Anh Representative of the Organizing Committee, Dean of Faculty of Law, Binh Duong University

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PREAMBLE

The international community acknowledges that persons with disabilities are entitled to equal rights in all aspects of society. However, their marginalised status requires a legal framework to protect and promote their rights. Ensuring the rights of persons with disabilities is a commitment under the Sustainable Development Goals (SDGs) and a moral obligation to leave no one behind.

In commemoration of Binh Duong University's 25th anniversary, the university partnered with the United Nations Development Programme (UNDP) in Vietnam and, with support from the United Nations Partnership on the Rights of Persons with Disabilities (UNPRPD) Joint Programme, organised the “Ensuring the Rights of Persons with Disabilities in Sustainable Development in Vietnam and Some Countries Around the World” conference on September 10th, 2022. After a year of joint efforts, the conference addressed theoretical and practical issues related to disability inclusion in the national SDGs and socio-economic development plan in Vietnam and other countries. The conference aimed to analyse gaps and provide policy recommendations on disability inclusion aligned with the UN Convention on the Rights of Persons with Disabilities (CRPD) and SDG standards while complying with international commitments, particularly CRPD and the Marrakesh Treaty. The conference proceedings provided a comprehensive overview of the legal framework and institutional arrangements for ensuring the rights of persons with disabilities in critical areas, such as political-civil, education-society, and healthcare.

This conference marked the Firstly collaboration between UNDP and Binh Duong University, allowing scientists and researchers to publish their studies and disseminate materials. The organisers express their satisfaction with the successful workshop and smooth cooperation, thanking the sponsor, researchers, and the disability community for their contributions and attention. They also sincerely thank the University's Board of Directors, especially Professor Cao Viet Hieu, for successfully organising the conference.

Finally, the organising team welcomes feedback to improve future publications and advance their ongoing efforts to ensure the rights of persons with disabilities in sustainable development.

Binh Duong University

LIST OF ACRONYMS

Acronyms	Full name
CRPD	International Convention on the Rights of Persons with Disabilities
PwDs	Persons with disabilities
OHCHR	Office of High Commissioner for Human Rights
UN	United Nations
OPD	Organizations of Persons with disabilities
HRBA	Human rights-based approach
USAID	United States Agency for International Development
CESCR	Committee on Economic, Social and Cultural Rights
ILO	International Labor Organization
CSR	Corporate social responsibility
ACDC	Action to the Community Development Institute
UDHR	Universal Declaration of Human Rights in 1948
CESCR	The International Covenant on Economic, Cultural and Social Rights 1966
CCPR	International Covenant on Civil and Political Rights

CHAPTER 1:

Overview of ensuring the rights of persons with disabilities in Sustainable Development in the world and Vietnam

Analysing several issues of human rights of persons with disabilities at the international level and the different ways of mitigating

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Abstract:

The CRPD is an ongoing agreement that establishes core international criteria of human rights distribution, awareness, and recognition for PwDs. “According to Article 1 of the CRPD, this Convention aims to promote the promotion, protection, and guarantee of “full and equal enjoyment” of all fundamental freedoms and human rights by all PwDs. Work allows people to earn a livelihood while also contributing to their communities. The CRPD instructs States parties to focus on “non-discrimination laws, accessibility, reasonable accommodations” and constructive efforts to implement the right to work for PwDs. This population minority has the “right to employment” on an equal basis with others, according to Article 27 of the CRPD. This research examines the present socio-economic and communal situation of PwDs, highlighting obstacles, equity drivers, and hurdles and outlining contemporary measures implemented at an international level to improve quality of life.

Keywords: PwDs, CRPD, OHCHR, UN Conventions, International, human rights, employment, discrimination, non-discrimination.

1. Theories and human rights framework for PwDs

1.1. ISL146 21 ER UN Conflict

Under the CRPD, disability is a term devoid of specific terminological definitions, providing a broader spectrum for wider inclusivity. The CRPD is an active agreement set out as fundamental universal standards of human rights distribution, awareness, and acknowledgment for PwDs. CRPD Article 1 states that this Convention's purpose is to promote, protect, and guarantee “full and equal enjoyment” of all fundamental freedoms and human rights by all PwDs [1]. It also promotes respect for PwDs' inherent dignity, comprising sensory, mental, long-term physical, and/or intellectual impairments, which are plausible interaction barriers driving “full or effective social participation” hindrance compared to others “on an equal basis”. According to Article 3 of the Convention, the principles are mandated to express respect for individual autonomy and inherent dignity, in addition to allowing all individuals the “freedom to make one's own choices” and “independence of persons” irrespective of their disabilities [2]. This article also prioritizes non-discrimination, accessibility, gender equality, and “equality of opportunity” of PwDs within the United Nations (UN) Convention regulations. Also termed as “ISL146 21 ER UN Conflict”, the Convention's Preamble Section (a) recalls the tenets of the “United Nations Charter”, which affirm that each and every member of the human community has inherent worth and dignity and that their “equal and inalienable rights” serve as the cornerstone of global freedom, justice, and peace.

Article 4 of CRPD stated the General obligations under which Section 1(a) says that every State Party is liable to adopt all essential, immediate, and appropriate legislative, administrative, and others subject to rights recognition implementation in the PwDs-specific current Convention [3]. Section 1(b) requires taking appropriate legislation-inclusive measures for modifying or abolishing existing PwDs discriminatory practices, laws, customs, and regulations, with (c) noting that the associated authorities and federal bodies are obliged to take actions that account for human rights “protection and promotion” of PwDs in all proposed or approved “policies and programs”. Article 5(1) of the same, prioritizing “equality and non-discrimination”, notes that States Parties acknowledge that everyone is treated equally in front of the law and has a right to the same protection from it and

benefits from it without distinction [4]. Comprising Articles 1 to 60, the CRPD is identified as the “social model of disability”, recognizing that social exclusion of alienation of PwDs is directed by “barriers and hindrances” associated with the individual's full participation ability, as opposed to inherent participation inability results.

1.2. Right to Health

PwDs are rightful to “high attainment standards” enjoyment in healthcare services and health in general, without experiencing discrimination based on their disability, as stated under CRPD Article 25. The context defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or illness”. Here, the CRPD establishes that disability “is not necessarily” recognized under a medical condition, with the emphasis being subjected toward “environment and attitudinal barriers” in contrast to an impairment, resulting in hindrance causation in “full and effective participation” within respective social circles and surroundings with others on an equal footing. The “right to health” for PwDs specified that these individuals might require health services for their disability-related medical conditions. However, that should not be “presumed” as their only and primary health service needs. Article 3, mentioned in Chapter 1.1, is required to be applied as the “core principles outlined” for interpreting the recognition of the “right to health” under Article 25. The latter should also be established under the Article 4(2) provisions, requiring the progressive realization of the State regarding PwDs “economic and social rights”, which this right's appropriate recognition mandate for the state is paving toward implementation effort continuity, with timely progress and equal health service, opportunity and recognition scopes.

PwDs face extensive barriers in healthcare services accessibility, involving discrimination, costs, “service and resource” inadequacy, accessibility, and stigma. Inadequate or uncertain health access equality leads to “depleted social capital”, secondary co-morbidities, isolation, persistent abuse, and delayed diagnosis-associated serious risks in PwDs. In coordination with CRPD, the “Committee on Economic, Social, and Cultural Rights (CESCR)” also guides the meaning and understandability of accessibility in the health context [5]. In “General Committee 14”, the CESCR explains accessibility's 4 components on the “right to health”: information accessibility, non-discrimination, economic accessibility, and physical accessibility [6]. The latter is further explained in the mentioned provision as a critical component ensuring PwDs equal health care accessibility, with subsequent reduction of prevalent physical barriers. “Environmental and infrastructural barriers”, along with geographical barriers comprising examples such as “rural health centers accessibility”, are viewed as practical physical barriers. Established under Article 25(c) of CRPD, focused on “geographical access to health care”, State parties are mandated to provide essential health services closer to individual community locations, with rural area accessibility inclusion. The “2002-2004 World Health Survey” reported that affordability is a primary barrier that restricts PwDs “across gender and age groups” to receiving needed and primary health care, primarily in low-income countries [7]. Conducted among 51 countries worldwide, the “World Health Survey” recognized 32-33% of “persons without impairments” facing unaffordability, compared to almost 51-53% of PwDs.

1.3. Right to Work and Employment

The “right to labour and employment” is another social factor of health that must be examined in the context of overall health [8]. PwDs confront obstacles to obtaining work possibilities, most notably stigma and prejudice, an accommodation lack, a shortage of readily available transportation, and a refusal to provide them with “education or vocational training”. PwDs have “limited labour-force involvement” and, when working, are usually employed in low-wage occupations. As a result, it is not unexpected that PwDs are disproportionately impoverished or socially excluded. Work makes

earning a living and contributing to one's community possible [9]. To implement the right to work for PwDs, the CRPD directs States parties to concentrate on “non-discrimination laws, accessibility, reasonable accommodations”, and positive initiatives. Under Article 27 of the CRPD, this population minority has the “right to employment” on an equal footing with others, including the “right to the opportunity to earn a livelihood by work freely selected or accepted in an employment market and workplace atmosphere that is “open, inclusive, and accessible” to individuals with disabilities” [10]. These individuals have minimal labour-force involvement and, when working, are typically employed in low-wage occupations. As a result, unsurprisingly, this population is disproportionately poor and socially marginalized.

Work is defined as a crucial means of gaining a living and participation in one’s community, with CRPD Article 27 identifying PwDs’ “right to work on an equal basis with others” and the “right to independent living opportunity” through work “freely chosen or accepted” in the labour market. The article also specifies their right to a workplace environment accessible, open, and inclusive to PwDs [11]. The chosen population subset in this study is noted to face different barriers to employment opportunities, as indicated in the initial section of this subchapter. Under the CRPD guidelines, States Parties must focus on positive measures, non-discriminatory laws, “reasonable accommodation”, transportation accessibility, health services affordability, and general accessibility for PwDs. Industry 4.0 is a manufacturing industry model proposition that focuses on the prospect of PwDs’ work satisfaction and potential labour market candidate availability increase through their recognition as equal employees with persons without impairment, increasing self-esteem and independent well-being [12]. The State Parties are responsible for ensuring that PwDs are not held in terms of “slavery or servitude” and are protected from “forced or compulsory labour” equally compared to other individuals.

2. Current human rights issues for PwDs at an international level

2.1. Discrimination/ Social Exclusion

Social exclusion is identified as the involvement of “lack or denial” of essential resources, “goods and services, participation ability in normative “relationships and activities”, and rights available to the social majority, associated with political, social, economic, or cultural spectrums [13]. It tends to impact these individuals’ “quality of life” while also damaging social “equity and cohesion” as a unified entity. Currently, a significant human rights issue for PwDs, the potential and dominant social exclusion drivers are multifaceted and divisible under the social, political, economic, and cultural exclusion. For every social exclusion, such as reduction of employment opportunities and job requirement bias, the political exclusion is an active stimulant, such as “lack of policy” or their implementation in adherence to equality opportunities promotion in different workplaces. Under the “Social Exclusion Unit 2004a”, the “UK Social Exclusion Unit” identifies social policies, demographics, and the labour market as macro-drivers facilitating this differentiation, with the latter emerging as this factor's promoter through low pay increase and income disparity between varying social groups [14]. Demographics is a potential driver through high youth unemployment rate, lone parenting increase, “aging and migration”, with social policy initiating subsequent disparity through benefit changes, housing expenditure, and “health and social services”. Negative views held by PwDs’ relatives, and frequently by the PwDs themselves, prevent them from participating fully in their workplaces, families, and individual communities [15]. PwDs suffer discrimination daily. Persons with psychosocial disabilities confront misinformation, lack of recognition, medical deprivation, and significant social marginalization.

People's "exclusion of others" is often rooted in values, mental models, and outlooks being frequently unexpressed and/or "taken for granted" and the emotional recognition faculties of "difference or otherness". Other significant drivers for this approach include ideal social perception, understanding, and "valued or devalued roles" perception. These thinking patterns stem from centuries of exclusion based on qualities such as "race, gender, identity, handicap" or other inherent human attributes. Exclusion is sometimes motivated by perceptions of highly or lowly valued positions. People will treat people who play valuable jobs well, whereas those who fill undervalued ones will receive poor treatment from others [16].

A typical example of this is the identification of recognition of individuals exclusively based on their impairment terms, and the "typical worker notion" is a predictive catalyst of discriminatory behaviors. People who perform undervalued jobs frequently have disabilities, abnormal behaviors, and undesirable physical traits, may "rebel in some manner" against the social order, and are impoverished, unemployed, and "culturally unassimilated". The mental models mentioned are potent for social exclusion but also serve as trigger points for persecution, discrimination, and alienation, leading to career exclusion and low expectations from an achievable or skillset development point-of-view. Low income and employment are "socio-economic and structural" exclusion drivers. The former component identifies unemployment, down payment, and cost-oriented opportunities in other contexts as the associations and relevant impacts [17]. The latter noted the reduction in social networks and income sources, reduced employment opportunities for PwDs due to ability and/or disability perceptions, and "low education attainment" as direct impacts of social exclusion with associated actors.

2.2. Poor policy and scheme implementation

The inclusion of PwDs is hampered by inadequate "policy and program execution" internationally. Even though several statutes and plans have been enacted to empower the PwDs, their implementation faces numerous challenges [18]. Many healthcare services lack policies that address the needs of PwDs. Longer and more flexible appointment hours, outreach programs, and cost reductions for individuals with disabilities are just a few examples of such initiatives. PwDs frequently describe encounters with prejudice, stigma, and discrimination from healthcare professionals and other staff members at medical institutions [19]. Article 25 of the CRPD affirms the "right of PwDs" to the best possible level of health, free from prejudice. The United Nations "Department of Economic and Social Affairs Disability" department noted under resolution 37/52 of "World Programme of Action concerning PwDs (1992)" that globally ≥ 500 million individuals identify with disabilities due to sensory, mental, and/or physical impairment [20]. While expecting equal lifestyle, employment, health care, and education opportunities, this section witnesses extensive "physical and social barriers" due to the governmental or federal liability lack or weakness of more robust policies and schemes associated with this issue's mitigation. While many approaches have been taken worldwide, the lack of awareness and bias reduction programs result in a standardized or normalized stigma by other social groups, dominating and hindering equal opportunities for the noted minorities.

Policy barriers are substantially related to "awareness or enforcement" lack directed toward existing domestic or global "laws and regulations" under PwDs human rights category [21]. These application successes require appropriate accessibility and program availability for this population minority, which are noted to lack significantly [22]. The "Center for Disease Control and Prevention" article on "Disability and Health Promotion" notes that denying qualified PwDs participation opportunities in or be benefitted from federally-funded services, programs, and other benefits is a sub-standard policy barrier [23]. Another issue directed from poor PwDs policy is their experiencing denial of opportunity, services, and programs of benefits access in association with participation due to

physical barriers. Denying “reasonable accommodations” to ensure PwDs qualification, allowing them to perform essential workplace functions they applied for or were “hired to perform”, is a chronic yet significant policy implementation insufficiency experienced by this minority.

Furthermore, in programmatic or scheme applications, barriers are potential limiters of effective service deliverance related to “public health and healthcare programs” for PwDs with impairment differentiations. Due to the indefinite application of disability policy terms and definitions, major nations form policies and schemes for extreme disparities or socially stigmatized and biased conceptions of disability characteristics. Scheme implementation barriers include accessibility equipment lack, such as “mammography screening equipment”, inconvenient scheduling, limited or minimalized service user or participant communication, and service providers' understanding, attitude, and knowledge of PwDs.

2.3. Limited education and employment opportunities

PwDs face “wide-ranging human rights abuse”, including aspects of healthcare access lack, “stigma and discrimination”, isolation, “education and employment opportunities”, and institutionalization. “Right to Education” is stated under Article 24 of CRPD, focusing on prioritizing PwDs inclusion in the “general education system” [24]. An essential social determinant directed toward health, education lack is a substantial driver of limiting the rights enjoyment of this population minority to health and other “social and economic rights”. Lower education levels are generally determined as effective sources of poor health outcomes such as infantile mortality rate increase, illness, and malnutrition, highlighting the importance of increasing education accessibility and quality for all as a broader healthcare picture. Under the mentioned legislature, State Parties are dutied to enact legislation, implementing policies concentrated on developing evidentially and effective “inclusive education systems”. It further establishes that providing “free primary education” can reduce PwDs exclusion based primarily on their disability characteristics and the prejudices aligned with them [25]. Many schools internationally are observed to un-facilitate education for the PwDs, creating “academic and social development” barriers, which are quantifiably diverse, additionally denoting physical inaccessibility, curriculum issues, abuse, and inadequate teachers' training and support, pedagogy issues, labeling, bullying, attitudinal problems, and violence.

Institutionalized PwDs face varying challenges in exercising individual fundamental rights essential for community participation. They are denied full and/or equal access to “education and employment”, two crucial community participation components, being provided education system exclusion or seclusion, “poor quality education”, or segregated services as opposed to other sections of the society [26]. Likewise, PwDs are denied standards or preliminary opportunities in community work, with some programs providing employment opportunities with PwDs grouping and menial task assignment. These disregard individual choices, dissociating extensive community participation rights, which is pointed out by the CRPD, stating that the mechanisms subject to displacing institutionalization exhibit relatively less clarity [27]. Furthermore, studies note that effective deinstitutionalization comparatively necessitates an understanding on a social level of the “right to community living” for PwDs reaching beyond the pre-conceived notion of physical community placement. Instead, the Convention argues that the concept links community living with contemporary “autonomy and choice” issues. Another sphere of education expected to be accessible for PwDs is their “health care education” on the grounds of disabilities to increase risk awareness and health issue recognition to seek necessary services. Insufficient “healthcare education programs” for PwDs are a leading cause of minimal community members seeking medical services or assistance.

3. Mitigation measures against PwDs issues

3.1. PwDs as community-based disaster risk reduction actors

The Sendai “Framework for Disaster Risk Reduction” recognizes PwDs and their varying representative organizations as key disaster resilience-building contributing stakeholders at the community level [28]. The measure, introduced under the funding of “Indonesia Endowment Fund for Education (LPDP)” Scholarships, aims to increase “Organisations of PwDs (OPDs)” consciousness and potential encouragement from the latter to realize their right to protection in disaster situations. The study analyzed 3 disaster situations where OPDs successfully led initiatives toward disaster preparedness within their local communities. They also evidentially showed an instrumental approach to the collective community-based “disaster risk reduction” efforts, fighting against the previously assessed societal and legislative barriers contrasting their efforts. According to a study based in Japan, the “Tohoku earthquake and tsunami (2011)”, the fatality rate of PwDs increased 4 times compared to the general population.

PwDs are particularly vulnerable in disaster strikes from the viewpoint of possible “adverse socio-economic outcome” experience than “persons without impairment” in addition to primary constraints associated with their disabilities. It includes the high poverty rate in this population subset, with “poorly planned disaster responses” and underdeveloped recovery efforts identified as exacerbators of these disparities. It leaves PwDs to struggle both during and after the situational emergency. Advancing the “Global Disability Summit”, the “Global Facility for Disaster Reduction and the Recovery (GFDRR)”, in collaboration with the World Bank, recognized ensuring PwDs' right to a seat at the Summit table [29]. An example of this is set by the “Indonesian province of Central Java”, following collaborative disaster management, risk assessment, and reduction, with individual OPDs, as mentioned in the initial portion of this chapter.

3.2. OHCHR works on the rights of PwDs

To raise acknowledgment, awareness, and understanding of disability as a “human rights problem”, as identified explicitly by and focused in the CRPD, is among OHCHR's primary works [34]. Developing advice on the “rights of PwDs” and mainstreaming fundamental interests across the “United Nations organization”, especially through the “UN Disability Inclusion Strategy (UNDIS),” is another follow-up step [35]. The need to enhance learning access and value for all as part of a bigger healthcare picture is highlighted by the fact that reduced educational levels are typically proven to be effective sources of bad health outcomes such as an increase in infantile mortality rate, disease, and malnutrition. State Parties are required to pass laws and execute policies to build evidence-based and successful “inclusive education systems” under the statute. It also indicates that “free primary education” has the potential to reduce PwDs exclusion based primarily on their disability traits and biases associated with them. According to the Convention, the notion connects communal life with the contemporary themes of “autonomy and choice” [36]. As a specialized organization, OHCHR strives to foster and coordinate policy discussions on the rights of PwDs throughout intergovernmental organizations, as well as across “humanitarian and development” agendas, such as the “Sustainable Development Goals (SDGs)”. When PwDs work, they “limitedly participate in the labour force” and are typically employed in low-paying jobs [37]. Therefore, it is unsurprising that PwDs experience extreme poverty or social exclusion. Demographics, such as high young unemployment, a rise in lone parenting, and “aging and migration”, are possible drivers, with social policy causing further disparities through benefit adjustments, housing expenditure, and “health and social services.” PwDs prevented from fully engaging in their workplaces, family, and local communities due to the negative opinions that their relatives and frequently the PwDs themselves

have. These are critical foregrounds for OHCHR's efforts to develop a better performing and sociopolitically responsive equitable system through metrics of greater PwDs awareness and broad prejudice elimination.

Conclusion

According to the CRPD, disability is a word lacking exact terminological meanings, presenting a broader spectrum aimed at inclusion. The CRPD is an ongoing agreement establishing core international criteria for human rights dissemination, awareness, and recognition for PwDs.” Every State Party is required to adopt all necessary, prompt, and suitable steps, including legislative, administrative, and other measures subject to regulatory affairs and implementation under the PwDs-specific present Convention, under the General Obligations, outlined in Article 4 of the CRPD, Section 1(a). The potential and prevalent social exclusion factors are complex and may be divided into social, political, economic, and cultural exclusion categories. These human rights approach also acknowledged that this is now an essential human rights concern for PwDs. Political exclusion is an aggressive stimulant for every social isolation, such as “lack of policy” or their execution in adherence with equality chances promotion in various workplaces, as well as social exclusions like reduced employment possibilities and prejudice in job requirements. Lack of “knowledge or enforcement” of current local or international “rules and regulations” pertaining to PwDs' human rights significantly contributes to policy hurdles. These application accomplishments necessitate adequate program availability and accessibility for this demographic group, which are reported to be seriously lacking, as seen through research analysis.

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The right to access and rights-based approach of persons with disabilities in Vietnam today

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Abstract:

In order to be able to integrate into society and enjoy human rights on an equal basis with others, for PwDs, the right to access should be considered as an unenumerated right, which plays a particularly important role as the prerequisite to the enjoyment of their specific rights. However, the right to access has an organic relationship with the rights-based approach of PwDs. The article analyzes legal issues on the right to access. The rights-based approach makes general comments and proposes solutions to overcome limitations of the right of access and rights-based access for PwDs in Vietnam today.

Keywords: PwDs; law of Vietnam; access rights; rights-based access

Preamble

In the world and Vietnam, PwDs are a community of people, a social group accounting for a large proportion of the total population. Today, the world population is more than 7 billion people, of which more than 1 billion are PwDs (15%). It is predicted that the number of PwDs in the world will continue to increase in the future due to the aging of the population and the increasing incidence of non-communicable diseases[14]. According to the General Statistics Office, the average population of Vietnam in 2021 is 98.51 million[17]. According to the Ministry of Labor, War Invalids and Social Affairs, Vietnam currently has about 6.4 million PwDs, accounting for more than 7.06% of the population aged 2 years and older, of which persons with severe disabilities and persons with profound disabilities represent 28.9 %, about 10% of PwDs belong to poor households, most of the PwDs live in rural areas, have a particularly difficult life, especially PwDs affected by Agent Orange. According to the above data, Vietnam is one of the countries with a relatively high proportion of PwDs compared to the total population in the Asia-Pacific region[1]. To achieve the goal of socially sustainable development, the human community in general and each country need an appropriate strategy to ensure the rights of PwDs.

In terms of theoretical awareness, up to now, most of the studies on the rights of PwDs have yet to consider access as a right of PwDs corresponding to the obligations and responsibilities of the subjects carrying the obligations and responsibilities. At the same time, the human rights-based approach is mainly a method or principle in formulating United Nations (UN) development programs. Still, it has yet to be formally defined as a principle in the organization and operation of the state, a legal and ethical commitment, and a guideline of action by non-state actors. The organic relationship in a unified whole between access rights and a rights-based approach still needs to be adequately recognized and evaluated. This induces many gaps in awareness and action of both the obligee and the obligor in recognition, protection, and assurance of the rights of PwDs at the national level as a signatory to the Convention on the Rights of Persons with Disabilities (CRPD).

Based on the provisions and spirit of the CRPD, the UN's principle of a human rights-based approach, this study discusses legal issues on the right to access and rights-based approach of PwDs in Vietnam according to 3 contents, i.e.: (i) The right to access of PwDs; (ii) Rights-based approach for PwDs; (iii) Some comments and suggestions to ensure the right to access of PwDs.

1. The right to access of PwDs

Regarding semantics, access is understood as approaching, being in contact with things and phenomena in the objective world and social life in general. Access is recognized as a natural, inherent human right and is especially important for people in vulnerable groups such as PwDs. Because social barriers make them difficult to access compared to others in the community. If there are barriers to access, it is difficult to speak of equal enjoyment of human rights as other people. Access had existed since ancient times as an objective human need when people had difficulties, obstacles, and limitations in access, such as women, children, the elderly, and PwDs in disadvantaged or vulnerable groups. However, it was not until the twentieth century that the issue of accessibility for PwDs drew much international attention. The increasing attention of the social community, businesses, and countries to the issue of access is a process that takes time and effort. However, they have transitioned from awareness to action due to struggles, advocacy, and persuasion. For PwDs, barriers to access often exist in all areas of life, from the physical environment, products, goods, and services to social and political activities.

Human rights are expressed not only in terms of the rights of each individual but also in the rights of groups of people, especially the rights of vulnerable groups. The realization and recognition of the right to access represent a new and deeply humane perspective on human rights in general and the rights of PwDs in particular. Access is the core issue in enjoying, ensuring, and promoting the rights of vulnerable groups, especially PwDs. The right to access is a basic condition, a “key” to releasing the possibility of enjoying human rights for PwDs. In that spirit, the CRPD emphasizes that access is a fundamental right of PwDs in a full, complete, and equal manner with everyone, without stigmatization or discrimination. In its Preamble, the CRPD recognizes the importance of access to the physical, social, economic, and cultural environment, health and education, and information and communication in enabling PwDs to enjoy basic human rights and freedoms fully. Therefore, Firstly, the CRPD stipulates that “accessibility” is one of the eight general principles of the Convention, including:

- (a). Respect for inherent dignity, individual autonomy, including the freedom to make one's own choices, and independence of persons;
- (b). Non-discrimination;
- (c). Full and effective participation and inclusion in society;
- (d). Respect for difference and acceptance of PwDs as part of human diversity and humanity;
- (e). Equality of opportunity;
- (f). Accessibility;
- (g). Equality between men and women;
- (h). Respect for the evolving capacities of children with disabilities and the rights of children with disabilities to preserve their identities [2].

From the above analysis, it is possible to perceive the right of access to PwDs according to the following four basic legal signs:

One is: The rights holder, the right of access is held by the subject is a person with a disability (group of persons), including people with long-term physical, mental, intellectual, or sensory impairments that, when interacting with various barriers, may jeopardize their full and effective participation in the social life on an equal basis with others (Article 1).

Secondly: Duty bearers: It is possible to assert that the subjects that are obliged to recognize, respect, protect and guarantee or promote the right of access include the state (commonly referred to as the

Firstly and foremost), non-state actors such as social organizations, businesses, and other individuals. Here, the concept of obligation should also be conceived broadly, including what is required to do (obligation in the narrow sense) and the legal consequences the subject has to bear when there is a violation (responsibility).[3] It is worth noting that the right of access is the right of PwDs as a right of a group of people, so the obligation of PwDs is also understood as the obligation of all Persons without impairment to PwDs based on acknowledging that PwDs is an inherent and integral part of the human race. Moreover, to a certain extent, obligations are also understood as obligations towards themselves [26] because PwDs also need the right awareness and actions to actively participate, improve themselves, and overcome difficulties and obstacles to implement and protect their right to access. A joint statement on human responsibility issued by the Interaction Council submitted to the United Nations General Assembly in 1997 stated: *“All people, endowed with reason and conscience, must accept a responsibility to each and all, to families and communities, to races, nations, and religions in a spirit of solidarity: What you do not wish to be done to yourself, do not do to others”* (Article 4).[12]

Thirdly: Scope of the content of rights: On the general level, according to the principle of Equality and non-discrimination, the scope of the content of the right to access is all human rights recognized in the International Human Rights Law, including the Universal Declaration of Human Rights in 1948, the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights 1966. To live independently and to participate equally in all aspects of social life, the CRPD also outlines the most basic “accessibility” for PwDs, including the physical environment, transportation, 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, primarily with access to Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities, and workplaces; information, communications and other services, including electronic services and emergency services (Article 9).

Fourth: The method of exercising the right: Looking at the method of exercising the right, it can be seen that access includes direct and indirect access. Direct access is an approach that does not require any additional support. The environment and its design and formulation are accessible to PwDs. Indirect access (access to support) is an approach that requires additional adjustment, change, or additional adaptation for products, goods, and services to suit the needs and use of PwDs. For example, with the same type of design and manufacture, certain products, goods, or services have universal functions for persons without impairment and PwDs (for example, for building entrances, the ramp a slope and roughness suitable for wheelchairs is built instead of stairs). The CRPD fully embraces both types of approaches and provides conceptual definitions of “reasonable accommodation” which means *“necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to PwDs the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”*; “universal design” which means *“the design of products, environments, programs, 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 PwDs where this is needed”* (Article 2).

In addition to the above direct and indirect approaches, for the right to access information, PwDs will need to have double access, i.e. access to the right to access information, because, in essence, the right to access information is not simply to access or use information, access is only a necessary condition for enjoying the right to know, exploit, disseminate and share information [4]. As a general

rule, for PwDs, any rights that have obstacles to their enjoyment of their rights should be supported by the right of access in both direct and indirect ways. However, the two methods of exercising the right of access are also required to be appropriate to the characteristics of PwDs according to different types and degrees of disability.

From this, it can be affirmed that access is an unenumerated right among the human rights of PwDs. The common opinion of researchers in human rights law is that human rights can be classified into two types: explicit and unenumerated. Unlike explicit rights, which the United Nations explicitly state, other international organizations or states (for example, the rights to life, the inviolability of life, body, honor, and dignity; the right to vote, to stand for election,...). Unenumerated rights are rights that, though not explicitly stated, can be inferred from the context of existing regulations or the theory and practice of rights (for example, the right of people with serious illnesses to get help to death to release from impasse and pain; the right to marry and have a family of LGBT,...). While explicit rights have been universally accepted, many of the unenumerated rights are still the subject of controversy, both in their names and in their connotations [13]. Therefore, it is certain that the right of PwDs to access will be a matter of debate with diverse concepts in both theory and practice.

On the other hand, among the human rights of PwDs, the right to access is a specific right alongside the right to integration or inclusion (a right that everyone is eligible for). The special rights of PwDs are not priority or discrimination, but only necessary legal modification to create opportunities, accessibility, and community integration for socially vulnerable people in general and PwDs in particular to enjoy full, complete, and equal human rights. Combining integration rights and access rights as above creates harmony, stability, and sustainability of society in enjoying the natural and inherent rights of individuals and communities. A democratic and civilized society, for human happiness, is a society in which all rights of individuals, social groups, or communities must be recognized, respected and protected, and guaranteed to be effectively enforced [6].

Victor Santiago Pineda explains the issue of “access” of PwDs in his book “It is about Ability”. The provision on “accessibility” in Article 9 of the Convention was explained by him as follows: *“Government agrees to make it possible for PwDs to live independently and participate in their communities. Any place open to the public, including buildings, roads, schools, and hospitals, must be accessible by PwDs, including children. Suppose you are in a public building and need help. In that case, a guide, reader, or professional sign language interpreter should be there to assist you”*. What about technology? He continued: *“Telephones, computers, and other technology should be easy to use for people with different disabilities. For example, websites can be designed so that people with difficulty using keyboards, seeing, or hearing can enjoy the information in a different format. A computer can have a Braille keyboard or a speech synthesizer to speak words that appear on the screen”* [27].

Recently, a training document on the CRPD, compiled by the United States Agency for International Development (USAID), the Ministry of Labour, Invalids and Social Affairs, and the Vietnam Assistance for the Handicapped, explained that access is one of 8 principles of the Convention as follows:

“Emphasize the importance of access to the physical, social, economic, and cultural environment, health and education, and information and communication so that PwDs fully enjoy all human rights and fundamental freedoms.

Stemming from the fact that the majority of PwDs live in poverty and therefore recognizing the urgency to address the negative impacts of poverty on PwDs, to ensure the accessibility of PwDs to social services version” [24]

In Vietnam, the Law on PwDs 2010 officially explains the concept of access in Clause 8, Article 2, according to which “*Access is that PwDs use public facilities, means of transport, information and communication technology, cultural, sports, tourism and other services that are suitable for them to integrate into the community*”. In general, all regulations on the rights of PwDs in Vietnam are built based on comprehensive and specific access awareness.

Vietnam signed the CRPD in 2008, and the Law on PwDs, promulgated in 2010, oriented to the spirit and content of the Convention, which is great progress compared to the 1998 Ordinance on PwDs. However, The Law on PwDs 2010 was promulgated before the 2013 Constitution before Vietnam officially ratified the Convention (2014), so the recognition of the right to access compared to the 2013 Constitution and the CRPD also has certain limitations. Specifically, the following outstanding limitations can be mentioned:

Firstly, the concept of a person with a disability under the Law on Disabilities 2010 is still leaning towards a medical perspective or model [11], while the concept of a person with a disability under the CRPD is built on a social perspective or model, emphasizing social barriers in access for PwDs.

Secondly, the Law on PwDs does not fully stipulate general principles such as the spirit and provisions of the CRPD, especially respecting differences and accepting PwDs as part of diversity and humanity, fully and effectively participating and integrating into social life, and guaranteed access.

Thirdly, the concept of access under the Law on PwDs 2010 is still limited to several specific material objects and fields; consequently, the scope of regulations on access rights is limited, while access, in the light of the CRPD, is unrestricted, although it is advisable to focus on some basic approaches in the short term.

Fourth, in terms of approaches, the 2010 Law on PwDs does not comprehensively and fully focus on direct and indirect approaches [23], while the CRPD stipulates both “universal design” and “reasonable accommodation” to fully and comprehensively recognize the right of access of PwDs.

Fifth, on the principle of Equality and non-discrimination in access, the Law on PwDs 2010 only prescribes a few discriminatory acts of individuals and does not stipulate discriminatory acts of organizations.

The shortages, as mentioned above in the law on the rights of PwDs, are also the common limitations of the current law on the rights of vulnerable groups and are the cause of limitations in awareness and practice in compliance with obligations and responsibilities of access based on human rights in general, rights of vulnerable groups and PwDs in particular.

2. Access based on the rights of PwDs

The United Nations (through the Office of the High Commissioner for Human Rights) has adopted a human rights-based approach (HRBA) to highlight the obligations and responsibilities towards human rights in general [15]. This is considered an orthodox, relatively comprehensive, and widely cited concept [18]. Originally, the HRBA was the principled view used by United Nations agencies to formulate and implement development programs or projects. Up to now, countries have adopted HRBA as a principle in public policy-making and enforcement. HRBA is interested in achieving the set goals and the processes and procedures to achieve those goals [9]. Therefore, HRBA is an advanced approach with many advantages over other approaches, such as the needs-based approach [10]. Concerning the right of access of PwDs, if the right of access of PwDs is considered as an unenumerated right, which is open to the enjoyment of specific rights, then the HRBA must Firstly be considered as a type of obligation, unenumerated and underlying responsibility for the performance of a range of obligations and responsibilities to recognize, respect, protect and secure all specific rights of PwDs.

As mentioned above, the core of solving the disability problem is solving the problem of access or removing barriers, creating accessibility for PwDs. In recent decades, in many countries, the rights-based approach of PwDs has received considerable attention. Under the provisions of the Americans with Disabilities Act of 1990, new construction, both public and private, must be accessible to PwDs. In Australia, the Anti-Discrimination Act 1992 contains provisions on access. The UK's Equity Act 2010 also embraces many provisions on access. Japan's Comprehensive Barrier-Free Traffic Law of 2000 is the result of 14 marches on the topic of accessible transportation held on "Japan Day for PwDs" (annual November). In Canada, the Accessibility for Ontarians with Disabilities Act (AODA) was enacted by the Ontario Legislature in 2005. The Act aims to improve accessibility standards for Ontario residents with physical and mental disabilities to all public facilities by 2025. [7]

Today, in developed countries, HRBA of PwDs are paid more and more attention by the state and society, from seemingly small and daily things such as arranging convenient and close parking spaces for PwDs when they are in and out of buildings or supermarkets to designing an accessible website for the visually impaired, to organize elections conveniently, to create the best conditions for PwDs to participate in social, political, cultural, educational, sports activities... Some companies in the US, Japan, and Taiwan, such as Kempf, Toyota, Daihatsu, and PGO [28]... specialize in research and manufacture of additional mounting parts to adjust the means of transport (such as cars, motorbikes) which are designed for the Persons without impairment into vehicles so that PwDs can also easily control. 3-wheeled motorcycles MP3 of Piaggio, Tricity of Yamaha... not only for persons without impairment but also for people with mobility disabilities and weak legs to use. Important aspects of human life, such as political and social activities, elections, or the operation of the administrative and judicial apparatus in these countries, are also often organized reasonably so that people with different types and levels of disabilities can participate according to their actual health and capacity. In the US, in 1993, the House of Representatives passed the "Wheel Voter Act" or the "Motor Voter Act". One of the purposes of this Act is to make it easier for everyone, including PwDs, to register to vote [8]. In Thailand, PwDs have gathered to lobby, persuade the Government to revise the laws that discriminate against them, and introduce laws that allow PwDs to have identity cards, driver's licenses, the right to vote, and to join the Government. These campaigns and persuasion put pressure on and force the Government to promulgate and enforce laws that guarantee the rights of PwDs [16]. However, it is important (and also extremely difficult) that in the production, business, and supply of goods and services, the producer, trader, and supplier must already have a universal and applicable viewpoint and policy of access and implementation in practice. Developing and implementing viewpoints and policies on access based on the rights of PwDs is an obligation and responsibility of all actors, especially non-state actors today. This is not simply a moral and philanthropic obligation and responsibility but must be considered a legal obligation and responsibility (soft law). Indirect access (or assisted access) is an approach that requires an adjustment, change, or additional adapt for products, goods, and services to fit the needs and usability of PwDs. For example, Persons without impairment's motorized vehicles have been renovated or fitted with additional auxiliary equipment so PwDs can use them. Albeit this method of ensuring access can entail certain inconveniences and costs to society, in return, the benefits are much greater, which is an inclusive social environment (the sustainable basis for stability and development), that is creating opportunities for PwDs to enjoy human rights on an equal basis with other members. In order to ensure the access rights of PwDs in a comprehensive, complete, and effective manner in all aspects of social life, both direct and indirect approaches must be combined and applied synchronously and flexibly.

In Vietnam, the HRBA, in general, and the rights of PwDs, in particular, have been initially constitutionalized and legalized. The 2013 Constitution, for the Firstly time in Vietnam's

constitutional history, demonstrated the obligation and responsibility of the state to recognize, respect, protect, and ensure the implementation of human and political, civil, economic, cultural, and social rights according to the Constitution and law; Human rights and citizens' rights may only be restricted according to the provisions of law, in case of necessity for reasons of national defense, security, social order and safety, social ethics, public health (Article 14). Vu Cong Giao (2019) states that the 2013 Constitution has demonstrated a human rights-based approach to determine outcomes and take human rights principles as conditions and frameworks for state management. The Constitution has set a new requirement for policy and law-making activities, which is to show the spirit of human rights right in formulating policies and laws, not just the goals or results of the process. This requirement has been specified in the Law on Promulgation of Legal Documents 2015. [9] However, perhaps the provisions of the Constitution, the law on the Promulgation of Legal Documents, and the laws in general in Vietnam could be more precise and complete about HRBA in general, HRBA of PwDs in particular in development, issuance, and enforcement of policies and As noted by Vu Cong Giao, in general, the policy and legal development process in Vietnam is still biased towards an approach based on state management requirements, a rights-based approach is still vague. Meanwhile, clearer and more specific orientations or regulations on applying HRBA in developing policies and laws still need to be clearer and more specific. While developing policies and laws in Vietnam today, human rights issues are mainly discussed by state agencies but rarely actively initiated and discussed by citizens, businesses, or social organizations. [9] Because this is also a relatively new issue, from awareness to practical action, HRBA in Vietnam still needs a fundamental approach to formulating and implementing policies and laws. The researchers also have only a few analyses on HRBA, mainly from the perspective of human rights, not focusing on the obligations and responsibilities of the duty bearers, especially the state. In the textbook Law on the Constitution of Vietnam compiled by Hanoi Law University, the principle of recognizing, respecting, protecting, and ensuring human rights and citizenship (according to Article 3 of the 2013 Constitution) is considered one of six general principles on organization and operation of the state apparatus of the Socialist Republic of Vietnam, in addition to the principles of human rights, civil rights in politics, civil, economy, culture, and society, which are recognized, respected, protected and guaranteed according to the Constitution and the law (according to Article 14 of the 2013 Constitution) as a principle of the institution of human rights and fundamental rights of citizens.[22] The spirit of the approach based on human rights and citizenship has been analyzed regarding the organization and operation of the state apparatus as prescribed for the Firstly time in Vietnam's constitutional history in the 2013 Constitution. Organizational laws such as the Law on Organization of the National Assembly, the Law on Organization of the Government, the Law on Organization of the People's Courts, the Law on Organization of the People's Procuratorate, and the Law on Organization of Local Governments have all shown the spirit of respecting, protecting and ensuring human rights and citizens' rights following the principles prescribed by the Constitution. However, to build national governance in the current conditions, there should be a provision in the Constitution on HRBA as a basis for implementing the principle of national governance in the direction of modernity based on constitutional requirements in Vietnam [5].

In fact, from previous years, social mobilization work towards ensuring accessibility for PwDs in Vietnam has also made a certain transformation. The “Accessibility Map Project” launched by the Center for Disability and Development (DRD) in 2012 is one of the specific examples of this activity in Vietnam. Through the content, the program works with the results, book, and exhibition. The project team and the companions have devoted an extremely meaningful voice to the whole society on access issues and access solutions for PwDs. HRBA for the political rights of PwDs is a matter of

great significance and has been initially researched. Sponsored by the United States Agency for International Development (USAID), the Hanoi Center for Independent Living has executed the project “Research on access to voting rights of PwDs in Vietnam” with the content: investigation, collection of information on the rights and access of PwDs to voting; developing a report on access to the right to vote of PwDs. From the HRBA perspective on the right to access the knowledge of PwDs, in a recent study aimed at expanding the service of information users at Vietnamese library facilities, Tran Thi Thanh Van (2018) identified the information needs of persons with visual impairment. With the form of direct information search, PwDs themselves perform the search operations, which are: Look up on computers (52.9%), look up the black text table of contents (13.1%), and manually look up the braille index (38.6%). A very optimistic and new sign is that PwDs developed the habit of looking up information on computers, with the largest fraction of nearly 53%. PwDs can easily exploit and look up information like border population with a networked computer with support software and speakers installed. This is an important factor that helps PwDs access most agencies' and libraries' documents. At the same time, it is also a measure to remove the confusion of information agencies and libraries in serving PwDs while those units need documents specifically for them. The current trend of information agencies and libraries is to gradually develop a modern search engine, digitize documents, and build electronic and digital libraries. Therefore, being able to serve PwDs in a modern way will ensure fairness in accessing information. Through indirect search, PwDs ask librarians, acquaintances, and friends to search for help. The percentage of people who depend on others to look up to access information used by PwDs is very high, of which the highest is PwDs in the Central region (57.1%) [25].

From the HRBA perspective on the right to access public administrative services, the Research Report on Access to Public Administrative Services for PwDs conducted by the Center for Education Promotion and Empowerment of Women in 2020 has unambiguously indicated the hindrances to the accessibility of public administrative services of PwDs, including social barriers and barriers in local policy implementation [19].

In general, such survey projects and research topics have offered scientific and practical arguments to promote HRBA's obligations and responsibilities of the state and society and enhance the accessibility of PwDs.

Legally, promulgating general principles and specific regulations to ensure access to PwDs is an important and necessary requirement. With the spirit of proactive and active enforcement of international commitments, Vietnam has now implemented policies and laws to ensure the access rights of PwDs. According to the Law on PwDs 2010, access is “usable” across specified areas such as traffic, construction, apartment buildings, employment, education, culture, health, sports... and other services. Vietnamese law also assures the right of PwDs to access socio-political life fields such as elections, access to justice (legal aid), access to their rights in civil fields, marriage and family, and administrative procedures.

However, in order to further enhance the effectiveness and practicality of the system of policies and legislation on the rights of PwDs, especially in the context that the CRPD has been ratified and Vietnam officially entered into a legally binding relationship before the international community within the framework of the United Nations, Vietnam needs to further supplement and perfect regulations that concretize general principles on the rights of PwDs, especially highlighting the HRBA, providing a system that synchronizes norms and standards of access to ensure the meanings and values of the approach in a substantive, complete and comprehensive manner in the spirit of the CRPD.

Implementing policies and laws to ensure the right of access for PwDs in Vietnam has attained remarkable achievements so far. However, there are still many difficulties, obstacles, and inadequacies. The results of a number of recent sociological surveys and investigations show that the situation of “inaccessibility” is still quite common in the physical environment, products, goods, and services in many areas of the economic, political, and social life. For example, the Project “Accessibility Map” implemented by the Center for Disabilities and Development (DRD); the assessment survey of accessibility to public works in Ba Vi district, Hanoi city by an independent team consisting of members from such units as APCD/JAIF Project Representative; Action to the Community Development Institute (ACDC), People's Committee and Association of PwDs of Ba Vi district; The project “Research on the right of PwDs to vote in Vietnam” is implemented by the Center for Independent Living of PwDs, Hanoi, with funding from the United States Agency for International Development (USAID). The results of the above project, “Research on access to the right to vote of PwDs in Vietnam” show that although the electoral law does not discriminate against PwDs, in reality, the implementation is not good, so PwDs are still facing many difficulties and obstacles in exercising their right to vote. Difficulties in voting access of PwDs can be perceived through the main manifestations: difficulties in walking, crossing names, signing and voting; no helpers; Inaccessible polling station facilities (no wheelchair ramp, many three-step stairs, the tall ballot box, voter list posted at a high position, a tall ballot writing desk is not wide enough for wheelchair voters, no braille for the blind, no language interpreter for the deaf); PwDs are not provided with sufficient information about the candidate, especially the candidate’s platform of action; Polling station staff are not enthusiastic and are also obsessed with achievements; The discriminatory attitude of people around causes PwDs to be afraid, not confident [21]

Research and survey results of the action of the Community Development Institute (ACDC Institute) since 2016 on HRBA on aspects of medical access, physical access, and the participation of organizations of PwDs in the monitoring of accessibility policies of PwDs shows that besides the positive and progressive points, the implementation of HRBA for the rights of PwDs also has many shortcomings and limitations, especially physical access and even access to important services such as health services, vocational training services, job placement for PwDs.[20]

This situation challenges the social integration of PwDs, especially those living in rural, mountainous, remote, and isolated areas with socio-economic difficulties.

Currently, in addition to the activities of state agencies, the survey and evaluation of the accessibility of PwDs from the social organizations of and for PwDs have great significance and role. This activity must be conducted regularly to create a direct impetus to promote the cause of securing and developing access rights. However, as mentioned above, it is necessary to develop progressive norms and standards in line with international practices to form a toolkit for evaluating accessibility and HRBA obligations and responsibilities objectively, accurately, and efficiently. The state and society have obligations and responsibilities to ensure the right of access of PwDs, but PwDs themselves (and organizations of and for them) must also be fully aware of their rights; must proactively and actively participate in the development and use of these common norms and standards to assess the approach and implementation of HRBA in order to promote the assurance and protection of the rights of PwDs practically.

3. Some general comments and suggestions

Through studying the right of access and HRBA for the rights of PwDs, instead of conclusions, some general comments can be made as follows:

Firstly, the right to access of PwDs as an unenumerated right plays an important role in opening up the possibility of enjoying specific rights of PwDs. Despite the fact that it demonstrates many advantages and advances in Vietnamese policies and laws, it still needs to be completed and incomprehensive in the spirit of the CRPD.

Secondly, as a relatively new issue in Vietnam, HRBA in general and HRBA for the rights of PwDs in Vietnam have yet to officially become a fundamental principle in the organization and operation of the government apparatus. The content of the policy shows the obligations and responsibilities of non-state actors for the rights of PwDs.

Thirdly, besides the remarkable achievements, access to the rights of PwDs in an equal and non-discriminatory manner still has many difficulties and challenges. Moreover, the obligations and responsibility for access based on the rights of the duty bearers have not yet been officially defined as a principle in the formulation and implementation of the state's policies, laws, programs, targets, and actions of organizations, businesses, and individuals.

In order to perfect the legal system to create a solid legal basis and be compatible with the CRPD, to improve accessibility and social integration for PwDs, it is necessary to focus on several fundamental solutions as follows:

Firstly, amending and supplementing the Law on PwDs in 2010 towards a full and comprehensive spirit of Equality, non-discrimination, and accessibility as in the content of the CRPD. It is necessary to directly recognize the right of access and HRBA to the rights of PwDs to all duty bearers, not just state agencies, organizations, cadres, and civil servants.

Secondly, the strategy of building a society that respects the law, the rule of law, and modern national governance, together with the official regulation of HRBA directly into the principles of organization and operation of the state apparatus, should affirm that it is also a requirement for all duty bearer for human rights in general, including the rights of PwDs in particular; amending and supplementing specific tasks, powers, duties, and responsibilities of HRBA of state agencies, institutions, socio-political organizations in respective laws and other relevant laws. Violations of the provisions of the law and non-compliance with HRBA must also be considered violations of human rights and civil rights.

Thirdly, amending and supplementing the Law on Promulgation of Legal Documents in the direction of clearly and fully expressing the obligations and responsibilities of HRBA of relevant entities in the process of formulating and promulgating policies and legislation, especially ensuring the right of access and participation of PwDs and their organizations in the process of forming guidelines, policies, and laws, especially those that directly affect their rights, interests, and lives.

Fourth, amending and supplementing procedural law provisions in criminal, civil, administrative, and administrative law to ensure the right to access procedural activities, administrative procedures, and public and private services of PwDs and HRBA obligations and responsibilities of relevant entities.

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Removing barriers to accessing and enjoying human rights of women with disabilities in Vietnam today

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Abstract:

As members of the human community, women with disabilities have equal opportunities to access and enjoy human rights in civil, political, economic, social and cultural terms. Ensuring the human rights of women with disabilities is important for sustainable development in Vietnam. However, as a dual vulnerability group, women with disabilities face many barriers to accessing and enjoying human rights. The article will take a human rights-based approach to i) identify some barriers to accessing and enjoying the human rights of women with disabilities in Vietnam today; ii) propose solutions to remove barriers so that women with disabilities in Vietnam have equal opportunities to access and enjoy human rights.

Keywords: Women with disabilities; human rights, the rights of women with disabilities; the opportunity to access rights; barriers to access to rights; remove barriers to access to rights.

Introductions:

As a member of the CRPD, Vietnam has made great efforts to respect, protect and ensure the human rights of women with disabilities. However, women with disabilities in Vietnam still face many barriers to accessing and enjoying their rights. Therefore, identifying barriers and proposing solutions to remove barriers so that women with disabilities have equal opportunities to access and enjoy their rights are urgent issues in theory and practice today.

1. Identify some barriers to accessing and enjoying the human rights of women with disabilities in Vietnam today.

Women with disabilities have equal opportunities to access and enjoy human rights in civil, political, economic, social and cultural matters. However, as a dual vulnerability group, women with disabilities worldwide, including Vietnam, face many barriers to accessing and enjoying human rights.

According to the national survey on PwDs in Vietnam conducted by the General Statistics Office, Vietnam has about 6.2 million PwDs, accounting for 7.06% of the population aged 2 years and over, including 58% female [6, p.8].

With the view of leaving no one behind, the Party and State of Vietnam have been deeply aware of the significance of ensuring the human rights of PwDs, which will make an important contribution to inclusive and sustainable development. Therefore, many efforts have been made to respect, protect and ensure the human rights of PwDs, including women with disabilities. However, for various reasons, women with disabilities face many barriers to accessing and enjoying human rights, which are reflected in the following aspects.

1.1. Barriers to accessing and enjoying the human rights of women with disabilities from the cultural framework

Thoughts of respecting men, disdaining women, gender stereotypes, stigma and discrimination based on disability have been deeply ingrained in the thinking, behaviour and manners of both men and women, even many leaders and managers. This is the biggest barrier limiting the opportunities to access and enjoy human rights of women with disabilities in civil and political, economic, social and cultural fields.

Firstly, barriers to accessing and enjoying the civil rights of women with disabilities.

One is, Women with disabilities face many difficulties accessing the right to *legal aid* to enjoy equality before the law, freedom and personal safety, and the right to privacy.

Legal aid is the state's responsibility to help the weak and vulnerable, including women with disabilities, in case they cannot afford to hire a lawyer when dealing with legal problems to ensure social justice and equality. However, women with disabilities encounter many challenges in terms of legal advice. Because they do not have access to knowledge about legal consulting services. Because communication is not appropriate and precise, women with disabilities are unlikely to have access to this service. In addition, if officials performing the duty of providing legal advice to women with disabilities are prejudiced, have an inadequate awareness of the rights of women with disabilities, or lack professional conscience, it will lead to indifference, irresponsibility, the compulsive and permissive performance of counselling duties, which consequently hinders women with disabilities from accessing to equality before the law and having their fundamental rights protected in the process of participating in legal proceedings.

Two is, barriers from the cultural framework lead to women with disabilities having difficulty accessing and enjoying the *right to freedom and personal safety*. Women and girls with disabilities are three times more likely to become victims of gender-based and domestic violence than victims of violence [4]. They find it hard to access services to support victims of abuse. Due to the stereotype that women with disabilities do not have sexual needs, they are often “neglected” in this regard. Some people, including family members, often allow themselves the right to abuse and maltreat women and girls with disabilities.

The research and survey results of the Action to the Community Development Institute (ACDC) on “The situation of sexual violence against women and girls with disabilities in Hanoi and Da Nang”, published in 2021, has shown: “Out of 10 women and girls with disabilities, there are 04 people who have experienced at least 01 form of sexual violence; 11.7% of women and girls with disabilities have been forced to have sex, 59% of them have never shared it with anyone, only 1 person denounced to the local authorities/authorities. In particular, 80.4% have never participated in any education to equip PwDs with knowledge and skills to prevent, avoid or deal with sexual violence; 50% of respondents said that they do not know the skills to avoid the risk of sexual violence” [19]. Public opinion is very upset because of the case of stepfather Nguyen Van Binh (born in 1979, from Phu Yen province) sentenced to 18 years in prison for raping a girl under 16 years old who is the stepchild of his “unofficial” wife who is a person with severe disability for 4 consecutive years [18]; Nguyen Thanh Tam (43 years old) was sentenced to 3 years in prison and Nguyen Huu Thanh (20 years old) was sentenced to 9 years in prison for raping Ms DTTN (20 years old) who has an intellectual disability and is their relative in Tan Lap commune, Ham Thuan district, Binh Thuan province [16]; etc.

Secondly, the barrier from the cultural framework that affects the opportunities for women with disabilities to access and enjoy political rights is gender stereotypes that lead to the notion that women with disabilities have no or little ability to work as leaders or managers; Therefore, women with disabilities have little chance to become leaders and managers. In Vietnam, it is rare for women with disabilities to be nominated/elected for leadership and management positions. The National Assembly of Vietnam has undergone 15 elections, but there are not any reports or sources showing the number and percentage of delegates with disabilities participating in terms of the National Assembly and the People's Council at all levels. PwDs themselves, including women with disabilities, are very eager to participate in leadership and management to assert themselves.

According to the “Quick Assessment Report on Survey Results on the Readiness of PwDs to run for the National Assembly and People’s Councils at all levels” of UNDP Vietnam, up to 98.2% of

respondents wish to have deputies with disabilities in the National Assembly deputies and People's Council deputies; 44.9% of surveyed women with disabilities wanted to become elected representatives; 42.3% said that PwDs have difficulties in proving their capacity and health, 16.2% do not understand clearly about the nomination process. PwDs shared that their Firstly challenge stems from the barrier of prejudice against PwDs; The second challenge is that since most PwDs are freelancers, they do not have a fixed workplace to get the confidence vote [3].

Thirdly, barriers to accessing and enjoying the economic, social and cultural rights of women with disabilities

One is, stigma and discrimination lead to the perception that women with disabilities are burdens of the family and society. Their lives depend on the giving and donation of the state, almsgiving, and taking care of their families and benefactors, so just assuring their minimum needs for food and accommodation is good enough. This concept induces impediments for women with disabilities to access opportunities for health care, cultural studies, job search, etc., so they have to rely on their family, feel avoidance, and social inferiority, have no opportunity to go to school, no access to vocational training and employment as well as sightseeing, tourism etc.

Two is, stigma and discrimination in the concept of gender trigger barriers for women with disabilities to access and enjoy their rights to marriage and family: PwDs, especially those with congenital disabilities and severe disabilities, are often treated as genderless. Their gender identity is often overlooked.

In marriage, women with disabilities suffer a double disadvantage. Women with disabilities experience all kinds of problems of gender inequality in marriage and family, such as violence, weakness, and unequal division of labour. Most of them rarely have the opportunity to get married and build a home for themselves. Gender stereotypes suggest that women with disabilities lack the qualifications and ability to be a wife and a mother. They might inherit the disability to future generations, cannot take care of children, and cannot earn money, so they should be deprived of the right to build a family and the opportunity to be a wife and mother [14]. It is difficult for women with disabilities to access and enjoy the right to marry, but it is even harder for them when giving birth; 13.4% of women with disabilities were not encouraged to have children, 7.5% were criticized for wanting to have children, and even 6% were forbidden to have children [13].

1.2. Barriers to accessing and enjoying the human rights of women with disabilities from policies and laws

Firstly, barriers from policies and laws in accessing and enjoying civil rights, especially the right to the personal safety of women with disabilities.

One is, the Law on PwDs 2010 does not yet contain regulations on policies to ensure special support for women with disabilities, while they are at a higher risk of domestic violence and violence than women without disabilities [8].

Secondly is, the policy of preventing and combating sexual violence against women and girls in Vietnam does not have a uniform definition for certain forms of sexual violence, and terms in the legal documents, such as "sexual provocation", have not been explained in Clause 9, Article 3 of the Labor Code 2019, Clause 3, Article 52 of Decree 167/2013/ND-CP stipulating penalties for administrative violations... of domestic violence prevention and control. In addition, there is a lack of specific legal policies for women with disabilities in preventing and combating sexual violence. The law on Prevention and Control of Domestic Violence in 2007, the Law on Prevention of Human Trafficking in 2011, and the Law on Children in 2016, when regulating the protection and support measures, have not considered women and girls with different forms of disability. In the Law on

Gender Equality in 2006 and Law on Marriage and Family in 2014, women and girls were not specified as specific subjects. Law on prevention and combat of domestic violence 2007 does not embrace regulations on ensuring access to work, so it is difficult for women with disabilities to take refuge in domestic violence victim support facilities. [19]

Barriers from policies and laws in accessing and enjoying the political rights of women with disabilities

Legal documents on the election of deputies to the National Assembly and People's Councils lack regulation on the proportion of delegates who are PwDs, including women with disabilities; regulations on the percentage of women participating in the party committee, election and candidacy for state management positions at all levels have not referred to women with disabilities. In other words, Vietnam's current policies and laws have not focused on recognizing opportunities for women with disabilities to participate in politics.

Barriers from policies and laws in accessing and enjoying the economic, cultural and social rights of women with disabilities

One is, the right to education of women with disabilities: In the Law on PwDs 2010, the regulations on state's "encouragement" and "facilitation" for the right to access education of PwDs, including women with disabilities, have not yet precisely stated that the state is obliged to "ensure an inclusive education system at all levels and lifelong learning" as indicated by the CRPD; have not demonstrated the equal rights between PwDs and persons without impairment in education; have not yet defined the responsibility of the state to ensure that PwDs are not excluded from the education system [15].

Two is, regarding the right to marry and establish a family of women with disabilities: There are no separate provisions on the protection of the marriage rights of women with disabilities in legal documents on gender equality and PwDs [7].

Three is, regarding the labour rights of women with disabilities: Some policies in the field of vocational training and employment in the Law on PwDs 2010 and a number of related documents only focus on stipulating policies to support PwDs who work in the "private sector", not yet for the "public sector". Tax incentives can not be applied to small and micro enterprises, so they do not want to employ PwDs [1].

Four is, regarding the right to participate in public works, culture, sports, entertainment and tourism of women with disabilities: The Law on PwDs 2010 has not yet stipulated binding legal obligations of the business establishments related to cultural, sports, entertainment and tourism activities in ensuring favourable conditions for women with disabilities to access and enjoy the right to participate in cultural and sports activities, leisure and tourism [9].

1.3. Barriers to accessing and enjoying the rights of women with disabilities from self-esteem stigma of PwDs woman herself

The influencing factors on self-stigmatization of women with disabilities include objective factors, i.e. social prejudices, family and subjective factors, i.e. self-consciousness and self-perception of PwDs women.

Women with disabilities feel they are looked down upon, disrespected, and not acknowledged by others. They are victims of discrimination rather than being masters of themselves and rarely decide their destinies. They have low self-esteem and guilt, not realizing what their true needs are, not knowing who they are, look at themselves and others in a negative direction; always feel inferior, unhappy and lonely; always feel like a burden to the family and society; have pessimistic predictions

and live in fear. This is an attitude of self-discrimination, leading to not promoting their abilities, even having negative thoughts that want to destroy themselves: Fear of communication, fear of crowds, feelings of inferiority in social relationships, self-suggestion that they are useless, worthless, that they are incapable of anything, so it is easy to lead to deviant behaviours and affect the lives of women with disabilities.

In addition, because of many difficulties in accessing information and communication, women with disabilities lack life skills, skills to deal with problems in life; they consider themselves to have no voice, no right to express opinions in social groups and relationships, have no talent or ability to do anything; not to be healthy enough; do not want to go to school for fear of being ridiculed by friends. [17].

Self-stigmatization by women with disabilities has created barriers and deprived them of opportunities to access and enjoy basic human rights. Hence, most women with disabilities deprive themselves of their rights to marriage and family because of low self-esteem, so they do not want to get married [14].

2. Solutions to remove barriers for women with disabilities in Vietnam to have equal opportunities in access to and enjoyment of human rights

2.1. Solution to remove barriers from the cultural framework

Firstly, to eliminate the ideology of respect for men, contempt for women, gender stereotypes, stigma and discrimination based on disability for women, the state needs to develop and implement a national communication strategy to change gender-biased social norms and attract men to participate actively. The communication strategy must pay special attention to raising awareness of society, families and women with disabilities about gender equality and empowerment of women with disabilities. Communication to raise awareness about the harmful effects of stigma and discrimination against women with disabilities will affect the country's sustainable development goals. Raising awareness of the objective necessity to eliminate the idea of respecting men, disdain for women, gender stereotypes, stigma, discrimination and self-stigmatization based on disability in thinking, behaviour and manners of both men and women, of leaders and managers at all levels and of women with disabilities themselves to eradicate barriers and create equal opportunities for women with disabilities to access and enjoy human rights.

Secondly, promote the roles and responsibilities of relevant entities in communication activities of all levels and sectors; of family, school and society; focus on the role of organizations of and for women with disabilities, including the role of Women's Unions at all levels, Vietnam Fatherland Front and member organizations; Office for Coordination of Support Activities for PwDs in Vietnam, Vietnam Federation of PwDs's Associations, Vietnam Association of the Blind; etc.

There should be a mechanism to synchronize the activities of organizations of and for PwDs to achieve the best possible effect in pursuing the goal of raising awareness about equal rights in accessing and enjoying the rights of women with disabilities; The meaning of empowering women with disabilities is to reduce burden and pressure on families and society, creating joy and happiness not only for women with disabilities but also for their families and the community; contributing to sustainable development for the country and nation.

Pay special attention to the role of media agencies and press; communicators must be educated to raise awareness of the human rights-based responsibilities of women with disabilities to provide appropriate and effective communication content and forms. The communication must ensure that gender-sensitive messages are not delivered to women and girls with disabilities. Building communication groups pioneering change in the community, implementing communication

campaigns to eliminate gender stereotypes and prejudices, building a safe living environment for women and girls with disabilities, organizing events, contests/festivals of creative and effective models in eliminating gender stereotypes and domestic violence against women and girls with disabilities.

Thirdly, the content of education on gender equality and empowerment of women and girls with disabilities must be emphasized in the main educational contents and be mainstreamed in the curricula of all levels in the national education system according to Decision 1309/QĐ-TTg dated September 5, 2017, of the Prime Minister, approving the Scheme to incorporate human rights contained in the educational program in the national education system.

Fourthly, conduct training courses for women with disabilities to equip women with knowledge and raise awareness of human rights for women with disabilities; equip themselves with skills on how to protect themselves, recognize, prevent and deal with acts of domestic violence, especially sexual violence. To raise awareness and create confidence for women with disabilities to strive to rise, overcome inferiority complex and self-deprecating fate to master their lives, and affirm their useful existence in the family and society. At the same time, communicate to encourage organizations of PwDs to actively innovate and improve the quality and effectiveness of their operations under the motto “Strengthen solidarity, proactively rise, equalize and integrate into the community”. Uphold the responsibility and initiative of organizations of PwDs in implementing tasks, movements and campaigns for PwDs. Regularly introduce and propagate to replicate good nationwide practices in organizations of PwDs; exemplary examples of PwDs and women with disabilities who have successfully overcome difficulties of [2].

2.2. Solutions to remove barriers from policies and laws

Firstly, remove barriers from policies and laws in accessing and enjoying the political rights of women with disabilities

It is essential to review legal documents on the election of deputies to the National Assembly and People's Councils at all levels to supplement regulations on the proportion of National Assembly deputies and People's Councils who are PwDs in the election, including women with disabilities. At the same time, amend regulations on the percentage of women participating in the party committee, election and candidacy for state management positions at all levels in the direction of referring to women with disabilities to create equal opportunities for women with disabilities to access and enjoy political rights (political participation).

Secondly, remove barriers from policies and laws in accessing and enjoying the civil, economic, social and cultural rights of women with disabilities.

It is essential to complete the Law on PwDs 2010 as soon as possible to overcome the shortcomings; promptly concretize the views of the Party and State of Vietnam on the rights of vulnerable social groups, including the rights of women with disabilities expressed in the Document of the 13th Party Congress; especially in Directive No. 39-CT/TW dated November 1, 2019, of the Secretariat on strengthening the leadership of the Party in the work of PwDs, which is: “*Raising awareness and responsibility of all levels of party committees, party organizations, agencies, organizations and people in implementing the Party's guidelines and views, and the state's policies and laws on assisting PwDs; ... promoting the roles and responsibilities of the Vietnam Fatherland Front, socio-political*

organizations and social organizations towards organizations of PwDs; improving the quality and operational efficiency of organizations of PwDs “ [2].

Simultaneously, legislate the state's policy on promoting the rights of PwDs, including women with disabilities, following the provisions of Decision No. 1190/QĐ-TTg dated August 5, 2020, of the Prime Minister approving the program to assist PwDs between 2021 and 2020. Specifically:

*One is, concerning the civil rights of PwDs, it is necessary to add the general policy of the State towards PwDs into the Law on PwDs: **Take priority measures to protect and support women with disabilities in the prevention of acts of domestic violence and violence.***

Two is, supplementing the provisions of the law specifically for women with disabilities related to gender equality in marriage and family, such as: affirming that the marriage and birth of children of women with disabilities are sacred, inherent and equal rights as others in the Law on Marriage and Family, the Law on PwDs, etc., emphasizing the state's responsibility in formulating policies and implementing organizations to ensure equal rights of women with disabilities in marriage and family matters.

*Three is, supplementing provisions on the right to education of women with disabilities: stipulating that PwDs have the right to study and education on an equal basis with those without disabilities; practical support; supplementing the principle provisions: PwDs have the right to lifelong learning, not be excluded from the general education system because of a disability” under the spirit of Article 24 of the CRPD. Moreover, it is necessary to amend and supplement regulations on the responsibilities of educational institutions in accepting PwDs to admission in Clause 1, Article 30 of the Law on PwDs in the direction of clearly affirming the responsibility of the educational institution in accepting the admission of PwDs; stipulate **handling sanctions to strictly** enforce illegal acts of refusing to admit PwDs to admission.*

Four is, to ensure the employment rights of women with disabilities, The relevant provisions of the Law on PwDs 2010 need to be amended and supplemented with the following provisions: i) For vocational and vocational training institutions for PwDs: Supplementing regulations on strengthening the responsibility of vocational guidance of counseling institutions for PwDs; regulations to encourage forms of connection between vocational training institutions for PwDs and production and business establishments in order to create a mechanism to ensure employment for PwDs after vocational training; ii) For agencies, units, production and business establishments employing PwDs: regulations on prohibiting agencies, organizations and enterprises from refusing to recruit PwDs in order to bolster the responsibilities of agencies, organizations and businesses, and at the same time ensure the compatibility of policies for employees who are PwDs in the Law on PwDs in Vietnam with relevant provisions of the CRPD and Convention No. 159 of the International Labor Organization (ILO). Furthermore, add a clause that prescribes the standard for accepting the minimum number of employees with disabilities in an enterprise/organization, especially state agencies and organizations receiving state budgets [1].

Five is, to ensure the right to participate in public works, culture, sports, entertainment and tourism of women with disabilities.

Amend Clause 2, Article 36 of the Law on PwDs 2010 in the direction of: assigning the Government to stipulate the exemption and reduction of ticket prices for some cultural, physical training, sports, entertainment and tourism services for PwDs to ensure certain preferential policies for people with mild disabilities in cultural, sports and tourism activities of PwDs, including women with disabilities, creating a legal basis to encourage women with disabilities to access and enjoy the right to access and enjoy culture, sports, tourism entertainment to integrate and be more confident in life.

Research and supplement regulations on the (mandatory) responsibility of cultural, sports and tourist facilities to publicly and transparently disclose information on the extent to which access conditions are ensured for PwDs. Review, amend and supplement synchronous policies incorporated in several laws related to the rights of PwDs, including women with disabilities in culture, sports and entertainment, and tourism [9].

2.3. Solution to remove barriers from self-esteem stigma of PwDs woman herself

Firstly, each woman with disabilities herself (except for women with intellectual disabilities who have no cognitive ability) must be fully aware of their gender roles and human rights to seize opportunities towards gender equality. Every woman with disabilities must make multifaceted efforts to overcome the barriers of self-stigmatization and psychological well-being; constantly strive to learn and receive support from family and society to affirm their ability to contribute and make a good presence in the family and society. Promote their forte and short to dedicate and enjoy.

Because when women with disabilities dare to think, dare to do, and dare to believe in themselves, they can certainly prove to their family and society their ability to create and maintain a happy family and contribute more to the cause of gender equality, making an important contribution to the cause of national construction and development.

There have been many examples of women with disabilities overcoming their fates in life, such as: i) The case of Ms Nguyen Thi Thu Hien, 37 years old with the same height as a 5-year-old child but with extraordinary strength, Ms Hien overcame her fate, became a business owner and actively participated in charity work. Ms Hien is the Director of Production - Service and Trading Co., Ltd., and the head office address No. 41A Doi Cung 1 Street, Dong Tho Ward, Thanh Hoa City, Thanh Hoa. Her company has annual revenue of billions of dong. With tireless efforts and resilience, she has received many certificates of merit and commendation from all levels, departments, central agencies and Thanh Hoa province. In addition to managing all production and business activities of Suri Company, she also regularly participates in social activities for PwDs. She is currently a member of the Executive Committee of the Association for the Protection of PwDs and Orphans; Standing Chairman of the Association of PwDs and Chairman of the Club of Youth and Students with Disabilities in Thanh Hoa Province, a member of the BNI Association - connecting business and global trade [5]; ii) The case of Master Le Thi Nhat, born in 1983 in Hanoi, was completely paralyzed in one leg, but with her extraordinary energy and the encouragement and support of her family, she overcame the fate to receive a Trade Union degree, a Master's degree in Development Studies from the University of Melbourne, Australia. She became a Project Manager of the International Committee of the Red Cross Movement Rehabilitation Program [12].

Secondly, to remove barriers to the self-stigmatization of women with disabilities, the attention and support of family, community and society, especially the state, is required.

One is, families must change their awareness and education orientation for girls with disabilities. Instead of being discouraged, stigmatized, and frustrated when thinking that girls with disabilities are a lifelong burden and hopeless, there is no need for children to study and integrate; spend financial resources for their children to enjoy life; Parents and family members should adopt positive recognition, support, and encouragement for their daughters to try, strive to study and integrate into the community; orient children to develop their forte to have a career so that they feel useful and are not a burden on the social family.

Two is, the community must raise awareness that women with disabilities are equal to other women. Community recognition of women with disabilities is an important source of encouragement for

women with disabilities to have confidence in themselves and society, helping them to overcome the barriers of attitudes from stigma.

Three is, the state and society create conditions to provide financial support for organizations of PwDs to open life skills and vocational training courses to help women be confident in themselves, accompanying, supporting and motivating the implementation of startup ideas, turning passion into reality. Once they have a stable career, women with disabilities will overcome the barrier of self-stigmatization because they find themselves useful.

At the same time, create conditions to increase the participation of women with disabilities in community activities and social organizations, organizations of PwDs; participate in development programs; have access to social services, service facilities and transportation. Assist women with disabilities in forming self-help groups to speak up together confidently; provide them with the opportunity to work to earn income/contribute to the family economy; proactively improve life independently; the most supportive technology application is to promote the features of information technology; confidently, actively participate and contribute ideas in the process of developing policies, programs, project/program activities related to the rights of PwDs and women with disabilities.

Fourth, a necessary resource to accompany women with disabilities to integrate into the community and be confident in themselves is to connect to the network to seek help from the state and the community to find job opportunities. Because more than anyone else, women with disabilities need a network connection to support startups. Along with organizations accompanying PwDs, the Women's Union at all levels is also one of the important connection channels, which practically supports women with disabilities to start their businesses and helps them confidently overcome self-doubt barriers and have equal opportunities to access and enjoy their basic human rights.

Conclusion

Although the Party and State have made great efforts in ensuring the rights of women with disabilities, women with disabilities in Vietnam still face many barriers to accessing and enjoying human rights. Therefore, the state, society, family and women with disabilities themselves need to raise their awareness and take responsibility for synchronously implementing solutions to remove barriers from the cultural framework; *policies, laws, and self-stigmatization so that women with disabilities have equal opportunities in accessing and enjoying human rights, contributing to helping Vietnam achieve its goal that in the 2021-2025 period, 80% of women with disabilities receive assistance in different forms and the period 2026-2030 this rate will increase to 100% [11], inclusive and sustainable development, bringing happiness to everyone, leaving no one behind.*

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Ensuring the rights of persons with disabilities – human values in the context of achieving Sustainable Development Goals in Vietnam today

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Abstract:

The article briefly analyzes the status of PwDs, the Party's guidelines, and policies and laws of the State of Vietnam on ensuring the rights of PwDs and the human value of ensuring the rights of PwDs. The article also analyzes and evaluates the current situation of ensuring the rights of PwDs in our country, and points out the achievements, limitations and shortcomings, thereby proposing some solutions to contribute to guaranteeing the rights of PwDs in Vietnam's journey to achieve sustainable development goals in the upcoming time.

Keywords: disability; PwDs; ensure; humanities; sustainable development.

1. The current situation of PwDs in Vietnam

In the world and Vietnam so far, there has not been a unified concept of disability and PwDs. Domestic and foreign researchers still have different views on this issue. This is attributed to the differences in history, culture, economy, society, awareness, understanding and attitudes towards PwDs between countries. Some arguments on PwDs have been based on approaches such as signs of health status, psychology, and characteristics. Although the viewpoints are varied, each point of view is formed by logical, scientific and reasonable arguments. To be concluded, PwDs can be understood as follows:

A person with a disability is a person who has a defect in one or more body parts or a functional impairment that leads to difficulties and limitations in his/her own daily life and participation in social activities together with other subjects.

PwDs are one of the largest minorities in the world. Due to physical or functional impairments, it is difficult for them to have equal opportunities to participate in social activities. They often endure many disadvantages, facing the alienation, contempt, and discrimination of those around them.

About the situation: In our country, the proportion of PwDs tends to be higher than in other countries. This derives from many reasons, such as war (injured soldiers, people infected with Agent Orange), labour accidents, traffic accidents, diseases, and congenital. Currently, there are about 7.2 million PwDs, including approximately 5 million people of working age (15-60 years old) and nearly 1.5 million people of working age who are still able to work [1], 28,3% are children, nearly 29% are persons with severe disabilities and persons with profound disabilities (nearly 1 million persons with severe disabilities and persons with profound disabilities [2]. It is quite common for a person to have many different forms of disability simultaneously. By the end of 2020, our country will have nearly 3 million PwDs granted disability certificates [3]. According to the results of the National Survey on PwDs published in January 2019 conducted by the General Statistics Office in 2016 and 2017, when being asked about their views on hiring PwDs to work, the answer of employers are as follows: 54.8% do not hire; 24.4% desire to rent; 1.4% prefer to hire PwDs; 19.4% refused to answer [4]. The above survey results display that it is not easy for PwDs in our country to find suitable jobs.

About characteristics: PwDs have specific characteristics in mind, physiology and health compared to those without disabilities. The health and communication ability of PwDs is often worse than that of persons without impairment. In addition, they feel inferior, have low self-esteem, are vulnerable, and are not confident when integrating into society. When conflicts occur in the labour relationship, the ability of PwDs to resist and fight is often low. They easily become weak, being exploited as a money-making tool for dishonest people. Compared to other entities, PwDs have

more need for assistance. The support they need includes health, education, employment/livelihood, financial assistance, and social assistance.

About life: Most PwDs live in rural areas (87%) and encounter many difficulties [5], especially persons with profound disabilities, women and children with disabilities. Many people live in poverty and must live off family, relatives and state subsidies. Currently, the number of PwDs being taken care of at social protection facilities is small, and the facilities are still inadequate. The level of social allowance for PwDs is slowly adjusted. PwDs also confront difficulties in marriage. Their families and relatives fiercely oppose love and marriage by PwDs. There are many reasons why it is difficult for PwDs to get married. Many families oppose the love of PwDs for reasons such as: 1. worry that PwDs will not be able to give birth; 2. the ability to care for children; 3. unsatisfactory financial circumstances; 4. children may be born with disabilities like their parents, especially in cases where both parents have disabilities; 5. shame before society. This induces many of them to decide to live alone without getting married. The rate of widowhood and divorce or separation is also higher for PwDs than for persons without impairment. Especially, groups of women with deaf, blind, and intellectual disabilities often face sexual harassment and sexual abuse due to limited communication skills.

Regarding education and employment: Due to defects in one or more parts of the body, low culture and limited health, job opportunities for PwDs are also scarcer than those without disabilities. PwDs are less likely to complete their education than others and more likely to drop off school. The reported data on vocational training and job creation for PwDs in 2018 reveals that: 41.01% of PwDs from the age of 6 are illiterate, 19.5% graduate from junior high school or higher, 93.4% of people without professional and technical qualifications are 16 years old or older, only 6.5% of people have degrees from certificates or higher [6]. Children with disabilities are less likely to attend school than their peers. Children often have low self-esteem about their appearance, fear, lack of confidence in their abilities, and get angry easily with relatives, even themselves.

Disability causes PwDs to suffer many disadvantages in all aspects of social life. Therefore, the community and society need to have plans and measures to help, ensure the equal participation of everyone, and implement the motto “leaving no one behind”.

2. Guidelines and policies of the Party and the State of Vietnam towards ensuring the rights of PwDs.

Over the years, the Party, State, and functional agencies have always paid attention to, cared for, promoted and protected the rights and interests of PwDs based on equality and non-discrimination. The Party, State, ministries, branches, localities, agencies and organizations always pay attention to PwDs and other disadvantaged groups. In the revolution and national construction career, our Party and State always strive for the ultimate goal: “rich people, strong country, democracy, equality, civilization, everyone has a prosperous and free life, happiness, and conditions for comprehensive development”. This is also explicitly expressed in the Platform for building the country during the transition to socialism in 1991 (supplemented and developed in 2011): “People are the centre of the development strategy, and at the same time, people are the subject of development. Respect and protect human rights, anchor human rights with the rights and interests of the nation, the country and the people's mastery”. Inheriting the previous Platforms, the Platform adopted by the 11th National Congress of Deputies affirms: “The socialist society that our people build is a society: Rich people, strong country and democracy, equality and civilization, owned by the people”; “The Party and State create conditions for: the Vietnam Fatherland Front and mass organizations to operate effectively, perform the role of social supervision and criticism...” [7], the

Platform also emphasizes: “The State respects and guarantees human rights and citizens' rights; takes care of the happiness and free development of each person” [8]. Recently, in the Document of the 13th National Congress of Deputies, our Party asserts: “The people are the centre and the subject of the renovation, construction and defence of the Fatherland” [9]. People-centred means that all undertakings and policies of the Party and policies and laws of the state are derived from the needs and aspirations of the People; consider the People as the resource and driving force of innovation, construction and defence of the Fatherland, unleashing all potentials, strengths and creative abilities of the People in all fields of social life. From there, it is required that “*the Party and State promulgate policies and laws to create a political and legal foundation that respects, ensures and protects the people's right to mastery*”. To concretize the Party's policy and the provisions of the 2013 Constitution on the protection and assurance of human rights and citizens' rights, the National Assembly has issued new and amended and supplemented many legal documents in this field, typically: Civil Code, Penal Code, Criminal Procedure Code, Labor Code, Law on Access to Information, Law on Children, Law on PwDs, etc. During the law-making process, draft codes and laws are widely publicized, solicit comments from the masses of the people, and are revised based on the people's comments. With the desire to protect and further promote the rights of PwDs, Vietnam ratified the International CRPD in 2014 and is actively preparing to ratify the ILO Convention on Vocational Rehabilitation and Employment (PwDs) (Convention No. 159). To fulfil the responsibilities of a member of the Convention, the Ministry of Labor, War Invalids and Social Affairs has submitted to the Prime Minister for promulgation Decision No. 1100/QĐ-TTg, dated June 21, 2016, approving the implementation of the Convention aims to institutionalize its provisions into the system of policies and laws, continue to study and join other international treaties in the field of PwDs. The Government also established a National Committee on PwDs in Vietnam (Decision No. 1717/QĐ-TTg, dated October 6, 2015, of the Prime Minister). Then, on May 10, 2017, the Prime Minister issued the National Action Plan for implementing the 2030 Agenda for Sustainable Development, including targets on supporting PwDs to continue access to basic services and social inclusion. In addition, all levels, branches and agencies have executed a wide range of activities to assist PwDs, promoting the responsibility of organizations and individuals in taking care of the lives of PwDs. Thanks to the attention of the Party, State, local authorities, organizations, and businesses that care for PwDs, the work of caring for PwDs has markedly changed, and the lives of PwDs have improved significantly. In 2020, the state budget allocated to localities was 17,696 billion VND to implement Decree No. 136/2013/NĐ-CP dated October 21, 2013, of the Government and 374 billion VND to carry out support policies on health education for PwDs [10]. In 2021, the state budget allocated 18,546 billion VND to provide monthly allowances and buy health insurance cards for social protection beneficiaries and over 356 billion VND to perform education support policies for PwDs [11]. According to data from the Vietnam News Agency, the country currently has 1912 vocational education institutions, with 3359 teachers engaged in vocational training for PwDs. Training occupations for PwDs are also quite diverse, including tailoring, car repair, electromechanical, toothpick making, electrical machinery, makeup, and jobs associated with local traditional craft villages. In 2021, there were 1,138 projects of employees with disabilities that received loans, creating jobs for about 10,000 employees with disabilities [12].

The number of students with disabilities attending school in 2012-2020 increased tenfold compared to 2000-2010 (13). Annually, the state spends about 15,000 billion VND to support and settle monthly social allowances for about 1.1 million PwDs; supporting 20,000 PwDs to access vocational training and employment; 1.2 million students with disabilities to attend school; the rate of PwDs accessing health

insurance is up to 95%. The above figures reflect the continuous efforts and attempts of the Party, State, and people in that the economy still faces many difficulties and funding is still limited.

Apart from achievements, there are many difficulties and shortcomings in protecting and ensuring the rights of PwDs, specifically:

Firstly, at present, our country needs a national specialized human rights agency, so the general guarantee and promotion of human rights, including the rights of PwDs and other disadvantaged groups in society, revealed problems with under-expected results.

Secondly, society also appears contemptuous, stigmatizing, alienating and discriminating against PwDs.

Thirdly, a number of legal documents have been enacted for a long time, showing limitations and backwardness, causing difficulties in the process of protecting, ensuring and promoting the rights of PwDs in practice.

Fourthly, PwDs still need help finding suitable jobs. Although many programs and plans have been launched, many policies and schemes to support PwDs are overlapping, not fully effective, and failing to meet the expectations of PwDs. Especially in the last two years, under the impact of the Covid-19 pandemic, about 30% of PwDs lost their jobs, nearly 50% had their working hours reduced, and nearly 60% had their wages cut. (14).

Fifthly, some PwDs still need help accessing the state's health, education, vocational training, employment, and credit support policies.

Sixthly, there is a lack of physical facilities at the supporting establishment for PwDs, especially medical equipment for rehabilitation for PwDs and psychotherapeutic services (15).

3. Human value of ensuring the rights of PwDs in the context of achieving sustainable development goals in Vietnam

Ensuring the rights of PwDs has profound human values:

Firstly, ensuring the rights of PwDs, proving the concern of the Party, State, ministries, branches, localities, agencies, organizations and enterprises towards PwDs and other disadvantaged groups in society.

The Vietnamese state always puts people at the centre of all policies, considering people as the crystallization of the noblest social values. All aspects of the work of PwDs are always implemented synchronously and proactively with the attention and promotion of the responsibilities of ministries, branches, localities and concerned organizations. The effective implementation of the program to assist PwDs over the past time has affirmed the inevitability and superiority of the regime and the deep concern and responsibility of our Party and State for PwDs. That concern is accepted and recognized by society and is enthusiastically welcomed by PwDs.

Secondly, ensuring the rights of PwDs has practical significance for PwDs.

PwDs are the most disadvantaged in society. The extent of disability and social barriers often makes PwDs self-esteem, inferiority complex, and hurt. Human rights and the rights of PwDs are only potential needs and abilities and cannot become a reality without the conditions and prerequisites for implementation. Ensuring the rights of PwDs is extremely important in creating conditions and preconditions, providing opportunities for them to exercise their rights, and protecting their rights in practice as a constituent part of the human rights holder. Thereby encouraging and stimulating the participation of PwDs in all areas of social life. It should be aware that PwDs are not only beneficiaries of rights but also potential people who contribute materially and spiritually to society and strive towards the sustainable development of Vietnam. For PwDs, having their rights protected and

guaranteed will drive them to overcome barriers and difficulties, strive to integrate into society, and contribute to the country's development.

Thirdly, show deep humanity and advance the good tradition of solidarity of the Vietnamese nation. From the beginning, the Vietnamese have formed a way of life of kindness, altruism, respect for humanity, love for people, sharing, relying on, caring for each other, and living with virtue and *love*. Human love is not a giving or pity but a unity integration: “Love others as if you love yourself”. Human love is expressed in relationships: friends, comrades, and brothers. Among those relationships, you must be strict with yourself but generous and tolerant with others. Must have a respectful attitude towards people and seek to support people, especially PwDs, the elderly, women and children. Ensuring the rights of PwDs endorses profound humanity and deepens the good tradition of solidarity among the Vietnamese people.

Fourthly, arousing moral values and spreading love and kindness in every citizen toward the goal of sustainable development in Vietnam.

Kindness is a way of giving love, giving each other happiness, caring, helping, sharing and sympathizing with the joys and sorrows of others. Kindness is an extremely noble quality, a criterion to consider and evaluate each person's personality. Kindness is only really meaningful when it is community-based and widespread. Even the smallest actions, kindness and love, make people in difficult and vulnerable situations feel warm and happy when they are helped. Respecting and helping PwDs is a beautiful, civilized act that evokes moral and human values that should be encouraged and praised.

Fifthly, contributing to mobilizing the participation of the whole political system and the whole society, taking advantage of all resources of society to implement effective programs and plans to support and help PwDs.

Protecting and promoting the rights of PwDs is not only the responsibility of the state, nor is it the responsibility of the families of PwDs, but the responsibility of many entities such as the state, the family, schools, businesses, individuals, and socio-political organizations. Depending on their functions and positions, the entities take different responsibilities in promoting, protecting and ensuring human rights. In which the responsibility, Firstly and foremost, rests on the state. In addition, it is necessary to mobilize the participation of the political system and society. Solidarity, the promotion of all resources, and the sense of responsibility of social actors are essential to implement programs effectively and plans to help PwDs.

Sixthly, showing the good nature of the State of Vietnam as a socialist rule of law State of the People, by the People, and for the People.

Ensuring human and citizens' rights, including PwDs, is a consistent goal of the Party and State of Vietnam throughout history. Our state is a socialist rule of law state of the people, by the people, and for the people. Being the rule of law, the recognition, respect, protection and assurance of human rights and citizens' rights must be concerned and promoted in practice. The comprehensive integration of PwDs and other disadvantaged groups into social life is a good idea that every civilized, progressive and democratic society aspires to.

In the coming time, under the negative impact of the global economic crisis, food crisis, epidemics, climate change, and environmental pollution, implementing human rights will become increasingly challenging. This requires further research to develop more appropriate and practical solutions in the future.

4. Some solutions to improve the effectiveness of ensuring the rights of PwDs in the context of implementing sustainable development goals in Vietnam

To contribute to further improving the effectiveness of ensuring the rights of PwDs in the context of achieving sustainable development goals in Vietnam in the coming time, it is advisable to focus on a number of solutions with the following contents:

Firstly, establish a national human rights commission/committee.

Practice in Vietnam shows that to protect better and promote human rights, a specialized agency on this issue is required. Vietnam can refer to the experience of some countries such as the Philippines, Thailand, China, Malaysia, and Indonesia in setting up a national committee on human rights. Establishing a national committee on human rights is consistent with the 2013 Constitution, our regime's nature and the country's practical context. With many advantages, this model is preferred by many countries over the model of the National Assembly Inspectorate. The establishment of this institution also demonstrates Vietnam's positive attitude, seriousness, efforts and determination in fulfilling its commitments when running for the United Nations Human Rights Council. When forming the National Committee on Human Rights, attention should be paid to ensuring relative independence from other institutions of the political system. It is not an opposing body but must still be accountable to the state agency that established it. This committee will have the function of protecting and enforcing human rights, including the rights of PwDs. Through its special position and function, this agency will improve the effectiveness of protecting, ensuring and promoting human rights in our country.

Secondly, raising awareness and responsibility of all levels of Party committees, party organizations, agencies, organizations, enterprises and the people in implementing the guidelines of the Party, policies and laws of the state about helping PwDs.

To step up propaganda and advocacy and profoundly modify awareness and responsibility among cadres, party members, civil servants, public employees and people of all walks of life about humane values in ensuring the rights of PwDs. Actively renovate contents, diversify forms of propaganda, and disseminate the guidelines and orientation of the Party, policies and laws of the State for PwDs appropriately. Strengthen the leadership, direction, inspection and supervision of the Party-affiliated committees and organizations in the implementation of the Party's views and the state's policies and laws towards PwDs; support and facilitate PwDs to reach their full potential and organizations of PwDs to perform well their role of representing, gathering, solidarity, and acting as a bridge between PwDs and the Party and State; ensure a close and reasonable combination of economic development with cultural and social development, guarantee progress and equality towards a barrier-free society for PwDs.

Thirdly, research support programs on study and employment to help PwDs meet social stereotypes about family and change the concept of marriage and family so that PwDs can love, be loved, and get married voluntarily consensual basis. Support programs need to ensure feasibility and practicality. Please pay attention to propagandizing, guiding and encouraging them to access policies supporting loans and vocational training. Constantly interested in expanding the training support professions for PwDs in the direction of flexibility suitable to the characteristics of each type of disability. Ensuring the quality of vocational training and avoiding waste.

Fourthly, amend, supplement, and step-by-step perfect the guidelines of the Party, policies and laws of the State on PwDs on summarizing reality, ensuring consistency, synchronization, feasibility, and consistency with each stage of socio-economic development of the country and international commitments. It is necessary to focus on reviewing, amending, supplementing and gradually

perfecting the Law on PwDs in 2010. The revised law should stipulate the responsibilities of enterprises in employing PwDs. In addition, focus on allocating resources to effectively implement the Party's guidelines, the state's policies and laws on PwDs. Strengthen inspection, examination and supervision; promptly detect and handle violations in implementing policies and laws on PwDs following the law.

Fifthly, promote research and gradually improve the order and procedures for implementing human and citizen rights.

Researching and gradually comprehending the order and procedures for implementing human rights and citizens' rights is important to ensure effectiveness, feasibility, transparency, science, and convenience for people and organizations. On the other hand, this improvement also assists functional agencies in better maintaining national security and ensuring social order and safety. During the process of perfecting the order and procedures for the implementation of human rights, it is essential to pay attention to enlist the opinions of researchers, scientists, and people from all walks of life to avoid letting bad guys take advantage of democracy and human rights issues for subversion.

Sixth, promote international cooperation in the field of PwDs.

International cooperation plays an important role in successfully implementing policies and programs for PwDs in Vietnam in general and the Ministry of Labour, Invalids and Social Affairs in particular. Through international cooperation, Vietnam can exchange, learn from experience, support and help each other, step by step, and improve the effectiveness of activities to protect and promote human rights and citizens' rights, contributing to fostering the establishment and comprehension of a modern, powerful and the prosperous Vietnamese socialist rule of law state.

Conclusion

PwDs are an integral part of society. They are also the ones who have to endure a lot of disadvantages and injuries. Protecting and ensuring the rights of PwDs requires more determination and coordination of all levels, branches, authorities, schools and businesses where they live. Respecting, ensuring and promoting the rights of PwDs is not only a matter of morality or charity but also demonstrates cultural, progressive and humane behaviour that contributes to economic development - society toward the goal of sustainable development in Vietnam.

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Human values of ensuring the protection of rights of persons with disabilities

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Abstract:

Disability is not a blot. This is a form of nature, and we should not discriminate against them. Without distinction or prejudice, a PwDs person shall be entitled to all the rights outlined in this Declaration. PwDs have the same fundamental rights irrespective of the cause, character, and severity of their handicaps and disabilities. PwDs have the same fundamental rights that all other people have. PwDs have a right to access the policies intended to help them become as independent as feasible. PwDs must be safeguarded from any exploitation and abuse that is discriminatory, abusive, or demeaning. There should be provisions for their representation everywhere accordingly. People with good human values will respect everyone without looking at their caste creed, colour, or disability.

In Sustainable Development Goals of the United Nations have focused on legal and practical action that will be necessary to achieve the goals of social inclusion and sustainable development of PwDs, their rights, representation, and dignity, particularly in the areas of social policy and employment.

Keywords: “PwDs, Sustainable, Discrimination, Economic, Social Security, Equality, Representation”

1. Introduction

A person with a disability is a part of our family, society, or country, which cannot be ignored. For example, a car cannot move if one tire is a puncher. The same thing applies to countries worldwide. Society, family, or country cannot move smoothly without discrimination against PwDs, Dalits, and women. A family, society, and country can run smoothly if we establish such kinds of Laws and existing Laws to ensure equality, equal opportunity for work, and special representation for PwDs in the country. This new dimension will speed up any country's economy and society. According to this positive approach, the country will run speedily. The United Nations Charter, signed in 1945, is the international organisation's founding document. According to Article 55, the United Nations must work to provide the following circumstances of stability and well-being to foster peaceful and amicable relations among nations based on respect for the concept of equal rights and human self-determination.

- A. Higher living standards, full employment, and conditions for economic and social progress and development;
- B. Solutions to global issues relating to the economy, society, health, and education;
- C. Universal respect for and observance of fundamental freedoms for all without distinction based on race, sex, language, or religion [1].

The United Nations General Assembly issued a declaration on the rights of PwDs on December 9, 1975, known as the 'Declaration of the Rights of PwDs' as the 3447th resolution overall [2]. Without distinction or prejudice, a PwDs person shall be entitled to all the rights outlined in this Declaration.

Independent of the cause, character, and severity of their handicaps and disabilities, PwDs have the same fundamental rights as others. PwDs are entitled to the same civil and political rights as everyone else. PwDs have a right to policies that help them be independent in all respects.

The right to economic and social security for PwDs includes finding and keeping a job, engaging in a useful, fruitful, and well-paying vocation, and joining unions based on their talents. The right to live with one's family or with foster parents and participate in all social, creative, and recreational

activities is guaranteed to PwDs. PwDs must be safeguarded from exploitation and abuse that are discriminatory, abusive, or demeaning.

2. Who is a Person's Disability

The Declaration defines anyone “who lacks physical or mental capacities and is unable to provide for the needs of a normal individual or social life”.

A prohibition against discrimination that extends the rights to all PwDs, regardless of their race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth, or other circumstances.

So, a ‘person disabilities’ means any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life as a result of deficiency, either congenital or not, in his or her physical or mental capabilities.

2.1 Definition of Disability

A disability is an impairment that can affect one or more of the following areas: cognition, growth, intelligence, activity, ability, sensory, or some combination of these. It may be present by birth or develop throughout a person's lifetime and significantly impacts their daily activities. Disability is a contentious topic, having various definitions attached to it by various societies. It can relate to physical or mental traits that certain organisations, especially those in medicine, see as having to be repaired. It can reference the restrictions placed on individuals by the ablest society. PwDs have the same health requirements as people without impairments for things like cancer screenings and vaccines.

2.2. United Nations Summit

At a historic United Nations summit in 2015, world leaders endorsed the Seventeen Sustainable Development Goals of the 2030 United Nations Agenda for Sustainable Development, which came into force in 2016. Although the objectives are not legally enforceable, each state's responsibility is to design them. Providing updates on own sustainable development policies and how to implement them. Social inclusion and respect for the rights of PwDs are important elements of sustainable development. So, the States, after the ratification of the United Nations Convention and explore the two paths (i) that the states have adopted to improve the status of PwDs and (ii) that help the country to implement the Sustainable Development Goals. A number of measures were identified and focused on legal and practical action that will be necessary to achieve the goals of social inclusion and sustainable development of PwDs, particularly in social policy and employment. While the objectives of sustainable goals are not legally enforceable, each state is responsible for designing its sustainable development policies for PwDs and providing updates on how they are being put into active action. On the other hand, it should also represent them in all fields.

3. Social Inclusion and Disability

A socially inclusive society shows the health of its citizens and society. Social inclusion and recognising PwDs' rights and representation fit into the larger picture of sustainable development. A better opportunity will allow them to flourish and lead a dignified life in modern society. The state shall provide a healthy environment for their development without any discrimination. It is also the state's responsibility to provide them with a good working environment for growth. The state has established strict rules and laws and ensures equality and non-discrimination. It should establish policies for their upliftment and representation in all kinds of opportunities.

3.1. The United Nations Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities is an international human rights treaty of the United Nations that aims to “protect the rights and dignity of PwDs. The object of the Convention is to promote, protect and ensure the full enjoyment of PwDs and to provide an ideal environment for full equality and enjoyment under the law”. In the Charter of the United Nations, it is declared that the “inherent dignity and values and equal and inalienable rights of all members of the human family are the foundation of freedom, justice, and peace in the world”. Similarly, the UN Universal Declaration of Human Rights will make a “significant contribution to addressing the profound social disadvantages of PwDs and promoting their participation in the civil, political, economic, social, and cultural spheres with equal opportunities in both”. All the developing and developed countries have to ensure the application of the Convention on the “Rights of PwDs deals with matters such as general principles based on which the rights of PwDs are to be promoted and protected, and the obligations undertaken by the state to adopt them.

This Convention focuses on the situation in the Republic of Macedonia following its ratification of the UN Convention, examines a few of the steps taken to improve the situation of PwDs there, and supports the obligation of the nation to carry out sustainable development goals. It is required to fulfil the objectives of sustainable development, particularly in social policy and employment, and it will be helpful for the social inclusion of PwDs.

Being mindful of the commitment made by the Member States to work together and separately in support of the organisation to advance improved living standards, complete employment, and conditions for economic and social growth and development, reaffirming its belief in human rights and fundamental freedoms as well as the Charter's declarations of social justice, peace, and human dignity.

3.2. Universal Declaration of Humans 1975

Recalling the principles of the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Declaration of the Rights of the Child, and the Declaration on the Rights of Mentally Retarded Persons, as well as the standards already set for social progress in the constitutions, conventions, recommendations, and resolutions of the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the United Nations Children's Fund and other organisations concerned,

4. The special Instrument on the Rights of PwDs

Recalling also Economic and Social Council resolution 1921 (LVIII) of May 6, 1975, on the prevention of disability and the rehabilitation of PwDs, it emphasises that the Declaration on Social Progress and Development has proclaimed the necessity of protecting the rights and assuring the welfare and rehabilitation of the physically and mentally disadvantaged. It is necessary to prevent physical and mental disabilities and assist PwDs to develop their abilities in the most varied fields of activities and promote their integration as far as possible into normal life.

A few developing countries with limited resources can devote only limited efforts to achieving the Declaration on the Rights of PwDs and calls for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of these rights.

PwDs shall enjoy all the rights outlined in this Declaration. Paragraph 7 of the Declaration on the Rights of Mentally Retarded Persons applies to any possible limitation or suppression of those rights for mentally PwDs. They are entitled to the measures designed to enable them to become as self-reliant as possible.

4.1. PwDs and Right to Health

They have the right to medical, psychological, and functional treatment, including prosthetic and orthotic appliances, to medical and social rehabilitation, education, vocational training and rehabilitation, aided counselling, placement services, and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration. They have the right to economic and social security and decent living [3].

4.2. PwDs and Right of Freedom

Recognising that in order for PwDs to fully enjoy all of their human rights and basic freedoms, they must be able to access the physical, social, economic, and cultural environment, as well as health, education, information, communication, that is ensured by all government for their citizens [4].

4.3. PwDs and Right of Representation and Intolerance Worldwide

PwDs can fully enjoy all their human rights and basic rights. Disability is not based on any caste, race, colour, creed, or gender, but everyone has the right to equality. This right is based on something other than citizenship, which must be addressed based on citizenship to PwDs at the airport of any country. If you apply for admission or a job form in any international university, you are asked in one column whether you need any disability representation. The representation of PwDs and no discrimination will be intolerant worldwide.

5. Policy Activism on a National and International Basis

Some developed countries have tried providing rights, equality, and equal work opportunities to PwDs. Such as Sweden, Switzerland, and many European countries have followed these treaties seriously. When we talk about developing and under-developed countries, we need to think of the efforts of these countries better. These countries suffer from poverty, unemployment, hunger, and other problems [5]. The countries which have signed on Treaty are working in that direction. Common Wealth Countries introduced the Rights of the PwDs Act around 2016, which binds the state government and the central government to the rights of PwDs.

5.1. Abolish discrimination on the basis of disability

After India signed and ratified the United Nations CRPD (UNCRPD) in 2007, the process of enacting new legislation in place of the PwDs Act, 1995 (PwDs Act, 1995) began in 2010 to make it compliant with the UNCRPD. The Act lays stress on non-discrimination, full and effective participation and inclusion in society, respect for difference and acceptance of disabilities as part of human diversity and humanity, equality of opportunity, accessibility, equality between men and women, respect for the evolving capacities of children with disabilities, and respect for the right of children with disabilities to preserve their identities. After a series of consultation meetings and a drafting process, the rights of persons with disabilities act, 2016 [6] (RPWDS Act, 2016) was passed by both houses of Parliament. It was notified on December 28 2016, after receiving the presidential assent.

Indian Constitution provides for abolishing discrimination on the basis of disability. To prevent discrimination in the country, the Constitution of India in Articles 15 and 16 states, “No one shall be discriminated based on sex, colour, caste, creed, and religion [7]”. Extending this line of thinking, the RPWDS Act 2016 envisages the concept of non-discrimination. It provides an excellent elaboration of the constitutional guarantee by considering the circumstances of PwDs. Section 3, Equality and non-discrimination, guarantees access without discrimination [8], and Section 20, Non-discrimination in employment- prohibits discrimination when an employee acquires a disability during service. It also prevents denial of promotion to the next higher post on the basis of disability [9].

Every person, including PwDs, has his life and liberty guaranteed under Article 21 of the Constitution [10]. There can be no traffic in human beings (including PwDs), and beggars and other forms of

forced labour are prohibited, and the same is made punishable in accordance with law (Article 23) [11].

5.2. Political Representations for PwDs

The demand for representation for PwDs in India was raised in the Parliament on September 30, 2013, in Bhubaneswar. A group of PwDs demanded 4% representation/reservation for PwDs in Parliament and other institutions of democracy. Justifying the demand for a quota of 22 Lok Sabha seats and 10 Rajya Sabha seats for PwDs, Jitendra Kumar Biswal said that across the social spectrum, such people, who are backward in the way of representation/reservation for SC, ST, and OBC in India, are eligible for representation. “Although there is the representation for PwDs in the field of education and job opportunities, without political empowerment, the vision of an equal and inclusive India is not possible,” declares the launch of a nationwide and worldwide campaign for political empowerment of PwDs. Huye Biswal said that he would demand a reservation from Panchayats to Parliament. Such provisions should be made available to the governments at the earliest. Due to this PwDs also get a chance to join the mainstream. It is similar to the representation of black people in developed countries [12].

6. Human Values ensuring the Care of Person disabilities

There is a great need to increase valuable education among children by parents and teachers. We are witnessing increasing violent activities, behavioural disorders, and a lack of unity in society. Valuable education enables us to understand our needs and visualise our goals. For this, there is a need for changes in education and improved education status over time, and there is a need to indicate the right conditions and direction for their fulfilment. Multidisciplinary education is urgently and strictly needed to inculcate human values in the society of any country. Because of that good education, people will inculcate tolerance and tolerance in human values.

Which is an urgent need in today’s society and business world. They have many positive characteristics that create bonds of humanity among people and thus hold value for all human beings. Human values are the basis of any practical life within society. This basic education will end the discrimination against PwDs and give them respect. The followings are the basic human values for ensuring the dignity and life of a person with a disability.

- I. **Human Firstly** - The basic human value of society is to consider the person with a disability as a human being Firstly. This acceptance will change society's perspective and help reduce the miseries of PwDs. People should avoid labelling them as they are human and not “handicapped” or “disabled”.
- II. **Be a true Friend** - Every person needs a behaviour with empathy and a true friend who can understand the problems of a person with special needs. The service-providing agencies are working well by providing a human touch in the life of the person with a disability.
- III. **Provide Space for Expression** - PwDs reflexively make their way through the world. They want freedom of speech and workable conditions. PwDs are entitled to the full meaning of the right to free speech. The ability to communicate, in whatever form, must be available to every person with a disability.
- IV. **Accessible and Participative Environment** - One of the basic needs of a human being is to move freely to enjoy life and all the basic amenities available. A society shall provide an environment for active participation in community life.
- V. **Ensure Family Connection** - PwDs must ensure life continuity through family and neighbourhood connections. The society shall endeavour steps to eliminate barriers and

strengthen the evidence base for future public and private actions to reduce the impact of disability on individuals, families, and society. It became a success with the help of society and the Governments' efforts.

- VI. **Give Respect and Dignity** - PwDs must be treated with respect and dignity. Any account of human rights must begin with the moral right of all people to be treated with respect. For PwDs, it means that while preserving the moral value of the individual, interpreting the disability as a disorder would be an insult to human dignity. The principle of dignity requires that every person is taken to human dignity. It is a moral value and a means of dignity, which imparts a moral value in human behaviour.
- VII. **Ensure freedom to Live** - Every individual has to ensure the freedom of PwDs to enjoy and must have the freedom to choose how they want to live their lives and receive the support they need.
- VIII. **Freedom of Choice and Control of Life** - PwDs must be able to exercise choice and control in all areas of their lives.
- IX. **Accessible Home** - PwDs must be able to live in homes of their choice and choose the supports they need.
- X. **Protection of Employment** - PwDs must be able to enjoy the benefits of true productivity through employment and/or contributions as members of their communities

7. Future Directions and Suggestions

- I. PwDs community should demand benefits that are both just and necessary; We should remember that it is the collective responsibility of all to care for the handicapped; this will raise both the country and the society. It is everyone's main responsibility to benefit them like a family.
- II. The Firstly thing is that the state should ensure that the government should provide proper representation to them in the Firstly of all ratio.
- III. The government and NGOs need to recognise the voice of PwDs and raise issues.
- IV. There is a need to provide strong encouragement and support to mentally challenged people and their representatives to form organisations.
- V. There is a need to teach such courses in schools and colleges that remove discrimination against the handicapped.
- VI. There is a strong need to disseminate information in the regional language regarding disability, to reach far and wide across the country, and create awareness.
- VII. Change in the education curriculum has the potential to change the attitude of the professional.
- VIII. Disability services and benefits must be explained, appropriated, monitored, and disbursed.
- IX. The need to introduce health legislation, including reviewing existing legislation and planning amendments from time to time or introducing new laws from time to time.
- X. There is a need to do more and more research on the factors associated with
- XI. PwDs and mental disorders should get their proper representation. They should also get equal societal rights and contribute shoulder-to-shoulder to the country's progress.

8. Conclusions

After that effort, have PwDs fully entered the mainstream? All the countries in the world have overcome all kinds of barriers to economic, political, and social inclusion they have historically faced.

The inclusion of PwDs is a complex and multifaceted topic, and different aspects of inclusion overlap and influence one another.

People should be sensitised to PwDs from a religious viewpoint, and this sensitivity must be raised to that level. Where they would accept that it is their religious duty to accept these PwDs as it is because of nature or due to an accident. One must be convinced him /herself by where he treated such people not to be treated as PwDs, but as persons differently abled. If this can be achieved, then only the people would start accepting the such person as their kith and kin then only such a person would lead a life in our society like any other normal person. All country's governments should work hard on the representation of differently-abled persons.

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Some theoretical and practical issues on assuring the rights of persons with disabilities in Sustainable Development in Vietnam

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Abstract:

The article clarifies several theoretical issues on assuring the rights of PwDs, including concept, characteristics, content, and meaning of rights of PwDs; concept, characteristics, necessity, content, methods and factors affecting the assurance of the rights of PwDs in our country. Based on the analysis and the practice of assuring the rights of PwDs, the author proposes some solutions to ensure better the rights of PwDs in sustainable development in Vietnam in the upcoming time.

Keywords: disability; PwDs; rights of PwDs; guarantee; Sustainable Development.

1. Overview of the rights of PwDs and assuring the rights of PwDs

1.1. Concept, characteristics, content and meaning of rights of PwDs

1.1.1. The concept and characteristics of the rights of PwDs

To fully and properly perceive the protection of the rights of PwDs, Firstly of all, it is necessary to objectively and properly understand PwDs and their rights.

Up to now, in the world, there is still no unified concept of “disabilities”. There are various debates on the term “disabilities” due to the different historical, economic, cultural, social, and cognitive contexts of people between countries. Here are some views in particular:

The United Nations in 2007 in the CRPD defines “disabilities is an evolving and emerging concept that disability results from the interaction between PwDs and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”. Article 1 of the Convention clearly states: “PwDs 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”.

In the United States, the Americans with Disabilities Act of 1990 (ADA) explains: “Disabilities means, concerning an individual. (A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such impairment; or (C) being regarded as having such an impairment” [1].

In the Philippine Act on the Rehabilitation, Self-Development, and Self-Reliance, and Their Integration into the Mainstream of Society and For Other Purposes (Act 7227) of 1992, PwDs are entitled to be understood as: “those suffering from the restriction of different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in the manner or within the range considered normal for a human being” [2].

According to Article 2, the Law of the People's Republic of China on the Protection of PwDs 1990 (amended in 2008) stipulates: “A person with disabilities refers to one who has abnormalities of loss of a certain organ or function, psychologically or physiologically, or in anatomical structure and who has lost wholly or in part the ability to perform an activity in the way considered normal”. “A person with disabilities refers to one with visual, or hearing, or speech, or physical, or intellectual, or psychiatric disability, or with multiple disabilities and/or other disabilities” [3].

In Vietnam, like many other countries, the concept of “PwDs” has changed over time. From 1945 to 2009, our country's legislators used the phrase “PwDs” in legal documents. For example Constitution

of 1946, the Constitution of 1992, Ordinance No. 06/1998/PL-UBTVQH10 of the National Assembly Standing Committee in 1998 on PwDs... Many people use the word “disabilities” and “handicapped” arbitrarily because they think that “handicapped” and “disabilities” are synonyms. Besides, there is also the view that the concept of “PwDs” is broader than the concept of “handicapped person” or “afflicted person”, so there should be a distinction. After a while, enforcing the law on PwDs in our country has revealed many limitations and problems. To overcome shortcomings and inadequacies in the process of implementing the law on PwDs, in 2001, the National Assembly issued Resolution No. 51/QH10 on amending and supplementing several articles of the 1992 Constitution that revised the issue related to PwDs in Article 59, which used the phrase “*disabilities*” instead of “*handicapped*”. Then, in 2010, the National Assembly enacted the Law on PwDs. The National Assembly has adjusted and officially used the phrase “PwDs” to replace “handicapped person”. This change brings many important meanings: (1) This is the basis for creating a common unity in the system of documents; (2) Show respect for PwDs; (3) Mark the progress in awareness of legislators, officials and people; (4) Showing conformity with the trend of international integration, (5) Conforming with the 2006 International CRPD (Vietnam signed a commitment to join the Convention on October 22, 2007). In order to clarify the content of “disability”, Article 2 of the Law on PwDs 2010 explains: “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” [4]. Types of disabilities include mobility disabilities; hearing and speaking disabilities; visual disabilities; psychiatric and mental disabilities; intellectual disabilities; other disabilities.

Thus, the views on “PwDs” are diversified between countries worldwide. Although there are many different views and approaches about PwDs, and each concept has its logic and reasoning, in general, the views focus on two issues: Firstly, defects or impairment of various bodily functions; Secondly, those defects become obstacles for individuals with disabilities when they integrate into the community. In summary, PwDs can be conceived as follows:

PwDs are people with defects in one or more body parts or have a functional impairment, leading to difficulties and limitations in their daily activities and participation in social activities with other subjects. The Universal Declaration of Human Rights of 1948 and the international treaties in this area affirmed that everyone is entitled to equal enjoyment of human rights without discrimination. PwDs are part of a community. Thus, PwDs are also subjects of human rights.

From the above analysis, the rights of PwDs can be identified as follows:

The rights of PwDs are natural privileges rooted in the inherent dignity of the human person, universal, indivisible, inalienable, accessible to PwDs, and recognised, respected, protected and guaranteed by national and international law.

From the above concept, it can be generalised that the rights of PwDs encompass the following basic features:

Firstly, the subject of rights is PwDs - one of the largest minorities in the world and also one of the most vulnerable. Due to physical or functional impairments, it is difficult for them to have equal opportunities to participate in social activities. They often endure many disadvantages, facing the alienation and contempt of those around them. In many cases, they have low self-esteem and do not dare to be confident in front of people. For children with disabilities, life expectancy is usually not high. They are vulnerable to crisis, exploitation, violence, bullying, and even being taken advantage of and becoming money-making tools for dishonest people. Therefore, creating a legal environment, conditions and opportunities for equality, without discrimination or discrimination against PwDs, is extremely important.

Secondly, the rights of PwDs are universal, specific, inalienable, interrelated and interdependent.

The specificity is reflected in the fact that depending on economic, political, social, cultural and cognitive conditions, there are differences in regulations to assure compliance with the specific characteristics of each country. The universality is reflected in the fact that the rights of PwDs, in particular and human rights, in general, are recognised and applied everywhere on this planet, regardless of gender, ethnicity, religion, skin colour, or social status.

In addition, the rights of PwDs also clearly demonstrate the inalienability, interdependence and interrelation of rights. It means that the rights of PwDs are attached to each person with disabilities and cannot be transferred to any other entity. No entity has the right to deprive PwDs of their rights arbitrarily. It should be recognised that the poor exercise of any right of PwDs may affect the exercise of their other rights and vice versa.

Thirdly, the rights of PwDs are part of human rights

PwDs are also members of the human being. PwDs enjoy the full range of basic human rights and freedoms. The rights of PwDs are part of human rights. The rights of PwDs are recognised, respected, protected and guaranteed by national and international law.

1.1.2. content and meaning of rights of PwDs

According to international law, the rights of PwDs are divided into four main groups: basic human rights, the right to equal treatment and non-discrimination on the basis of disability, and the right to access and support [5].

According to Clause 1, Article 4 of the Law on PwDs in Vietnam in 2010, PwDs in our country are guaranteed to exercise the following rights: To participate equally in social activities; live independently and integrate into the community; be exempted or reduced some contributions for social activities; get health care, rehabilitation, cultural studies, vocational training, employment, legally aided, access to public works, transportation, information technology, cultural services, sports, travel and other services appropriate to the type and degree of disability; Other rights as provided for by law.

The rights of PwDs have many important meanings, specifically:

Firstly, it expresses the nature of a democratic, progressive and civilised state.

Our state declares to the world: “The State of the Socialist Republic of Vietnam is a socialist rule of law state of the People, by the People, for the People” [6]. As a rule of law states, Firstly of all, human and citizen rights must be recognised, respected, protected and guaranteed in practice, including the rights of disadvantaged groups in society. The recognition of the rights of PwDs demonstrates the nature of a democratic, humane, human-loving state, all by people and for people. The level of assurance of human rights in general and PwDs, in particular, is a measure of social progress.

Secondly, the recognition, respect, protection and assurance of the rights of PwDs are meaningful to the sustainable development of society and each country.

PwDs are part of the people’s community of each country. They are also an important driving force for the country’s development. Assuring the rights of PwDs is pivotal to the sustainable development of society and the nation. In society, the human factor is the most important. The trust, consensus and support of people in general and PwDs in particular with the regime is the foundation for that regime's long-term stable existence. Moreover, vice versa, sustainable development is an inevitable trend in the development process of society, a premise to assure human rights and the rights of PwDs to be effective in practice.

Thirdly, the rights of PwDs are significant to PwDs themselves.

The recognition, respect, protection and assurance of the rights of PwDs will encourage them to be passionate and dedicate themselves to the benefit of the community and the nation. Reality proves that PwDs have been, are and will be contributing to the general welfare of society and the community where they live. On the other hand, the recognition of rights for this group of people is the basis for protecting and condemning the attitude of indifference, contempt, stigma and discrimination, and at the same time, to fight and strictly handle the acts of the law infringing upon the legitimate rights and interests of PwDs.

1.2. Concept, characteristics, necessity, content, and methods of assuring the rights of PwDs

1.2.1. Concept, characteristics and necessity to assure the rights of PwDs

Although international and national laws recognise the rights of PwDs. However, recognition is only the recognition of the social value of rights and will only be in the form of potentiality that can only become a reality with the conditions and prerequisites for implementation. The conditions and premises here are political, economic, cultural, social, legal, cognitive, and organisational. These conditions depend not only on the subjective will of each person but also on many objective factors along with important methods created by the state and society. It should be noted that even when the rights of PwDs have been implemented in practice, there is still a risk of being violated by agencies and individuals in society. PwDs, due to physical defects, face the risk of serious violations of their rights and dignity or being forgotten. A society can only be considered developed and civilised with its true meaning if the human rights and the rights of disadvantaged groups are guaranteed. If a society disregards human rights violations or ignores the issue of assuring human rights, trading the environment for economic development at all costs, that development is unsustainable. That development will be latent and trigger negative factors that affect back to the natural development process of the entire society. Those negative effects can be an increase in inequality, a widening gap between the rich and the poor, and a rise in injustice and inhumanity. Consequently, fair, progressive and civilised societal values were turned upside down and devastated. Therefore, it is necessary to ensure and promote the rights of PwDs in sustainable development in countries, including Vietnam.

Assure can be understood as a noun, but it can also be understood as a verb. Currently, in Vietnam, many people often confuse the two phrases “guarantee” and “assure” because they think that this is just a change in position between words without changing the meaning of the phrase [7]. However, “guarantee” is a Sino-Vietnamese word, and “assure” is a pure Vietnamese word. Therefore, in order to contribute to preserving the purity of the Vietnamese language and meeting the technical requirements of a legal document, in the legal documents our country's legislators only use the word “assure” without using the word “guarantee”.

Good assurance can be a verb (creating necessary conditions and premises) or a noun (necessary conditions and premises). From the research perspective of this article, assuring the rights of PwDs will be considered and studied with all its constituent elements as a noun. In summary, from the above analysis, it can be understood that assuring the rights of PwDs are the necessary organisational conditions and means (tools) to legally recognise the rights of PwDs, respect, protect, and effectively enforce the rights of PwDs in practice, but without any discrimination.

Based on this concept, it should bear in mind that:

Firstly, the subject assuring the rights of PwDs includes the state, socio-political, socio-professional organisations, mass associations, businesses, schools, families, individuals, and organisations. Depending on their position, each subject has different responsibilities in assuring the rights of PwDs. The responsibility lies Firstly and foremost with the state. The state must recognise, respect, protect

and create the conditions and premise of politics, economic, cultural, social, legal, and awareness, and establish protection methods and effective enforcement agencies and organisations.

Secondly, there are many types of assurance, such as political, economic, cultural, legal, and awareness assurance. Each assurance has its meaning that contributes to the effective enforcement and promotion of the rights of PwDs in practice.

Thirdly, the legal assurance for PwDs must be compatible with international law and the country's circumstances and practices.

Fourthly, it is necessary to distinguish between assurance and protection. Assurance and protection are two different concepts. Assure (as a verb) is understood as creating conditions and other means (tools) for publicising and legally recording the rights of citizens, protecting and effectively enforcing effective practice. Assurance (when it is a noun) is understood as economic, political, ideological, organisational and social conditions and premise for the state and citizens to exercise their rights and obligations as prescribed by law. In terms of purpose, assuring helps citizens to exercise their rights better and with higher quality. While protection is the use of legal measures to prevent and combat any infringement of rights by public authorities or other competent entities, and at the same time, have sanctions to deal with when the violation occurs to restore the rights that have been infringed, to keep the rights intact. Meanwhile, “protection” is to protect and prevent people from being harmed or damaged. Therefore, it is necessary to avoid confusion, equating assurance with protection.

The above analysis shows that assuring the rights of PwDs has the following basic characteristics:

Firstly, assuring the rights of PwDs is the condition and prerequisite for PwDs to be sure to exercise their rights in practice.

The right of PwDs to be fully respected, protected and enforced requires assurances. In particular, the Firstly task the state needs to do is to recognise human rights and the rights of PwDs in the highest legal document, i.e. the Constitution, and concretise it in related legal documents and, at the same time, create premise in all aspects, build a mechanism for the rights of PwDs to be effectively implemented. For example, The state assures that private entities respect the working rights of PwDs, the state provides tax exemptions and reductions for businesses and organisations when employing PwDs, or the state assures that public and private educational institutions do not discriminate against PwDs, when building facilities, it is necessary to build a dedicated mobility area for PwDs.

Secondly, assuring the rights of PwDs is aimed at effectively enforcing the rights of PwDs without any discrimination.

There is always a gap between awareness and recognition of the rights of PwDs in the law with assurance in practice. Recognition does not necessarily lead to genuine respect or protection. The creation of conditions by the state and other entities to help individuals and citizens certainly enjoy the rights recognised in the Constitution and laws.

Thirdly, assuring the rights of PwDs depends on political, economic, cognitive, cultural, social, legal, and organisational factors.

Political, economic, cognitive, cultural, social and legal factors and conditions will affect the assurance of the rights of PwDs. This is true not only in Vietnam but also in other countries worldwide. The distinction in the culture of human rights and economic conditions between different countries requires adjustments of assurance of human rights to assure appropriateness and feasibility.

1.2.2. Contents and methods of assuring the rights of PwDs

- Regarding the content of assuring the rights of PwDs,

The rights of PwDs are fully respected and implemented with the following contents:

Firstly, assuring awareness about the rights of PwDs: Awareness means thoroughly understanding the meaning and importance of the rights of PwDs, assuring the rights of PwDs and knowing how to exercise and protect the rights of PwDs in practice in line with the law. The subject of awareness is the whole political system, including all levels, branches, agencies, mass organisations, functional forces, officers and people. Through assuring awareness and contributing to raising the sense of responsibility and positivity of agencies, functional forces, officials in state agencies and social organisations.

Secondly, political assurance for the rights of PwDs: It is understood as the political will and determination of state agencies, all levels, branches, localities and the whole political system in respecting, assuring, protecting and exercising rights in practice. Accordingly, issues related to the rights of PwDs and assuring the rights of PwDs and other disadvantaged groups in society need to be mainstreamed in documents issued by the Party, State, and competent agencies to direct, guide and provide specific regulations for application and enforcement.

Thirdly, legal assurance for the rights of PwDs: Legal guarantee can be understood as the state's institutionalisation of the rights of PwDs into provisions in the Constitution, laws, and sub-law documents, which prescribe specifically and comprehensively related issues. This is the official affirmation and recognition of the rights of PwDs, and the state assures PwDs to exercise their rights in practice. The provisions of the law are ground to force state agencies, social organisations and all citizens to abide by them strictly. If an individual violates the law, he or she will be subject to sanctions as prescribed by law. Legal assurance for the rights of PwDs can be divided into the following main pillars: Assuring legal provisions, assuring security institutions, and assuring progress in the implementation of the rights of PwDs.

Fourthly, to assure the execution of the rights of PwDs: When the rights of PwDs have been assured in terms of awareness, politics and law, the organisation of the exercise of rights is particularly crucial. This content includes issues such as: equipping facilities; strengthening the propagation, dissemination and education of laws related to the rights of PwDs; carrying out to ensure economic, cultural and social conditions and assure the law enforcement of the rights of PwDs.

Fifthly, handle violations of the law related to the rights of PwDs: This issue is posed to ensure the strictness of the law, to ensure that the law on the rights of PwDs and other disadvantaged groups in society is strictly enforced in practice. All violations of the law related to PwDs must be strictly sanctioned in consonance with the law. Forms of handling the violation of the law can be education, administrative sanctions, and criminal penalties. Strict handling of violations of the law on the rights of PwDs also has the effect of deterring and educating those who have been and are intending to violate the law.

- Regarding the form of assuring the rights of PwDs, assuring the rights of PwDs is manifested in the following forms:

Firstly, recognising the rights of PwDs in the legal documents of the state. This is also the fact that competent state agencies recognise the rights of PwDs and stipulate them in the Constitution and relevant legal documents. This form of assurance is the legal foundation and prerequisite for PwDs to exercise their rights. It requires state agencies and competent individuals to ensure the actual exercise of their rights.

Secondly, propaganda and education to raise awareness without discrimination against PwDs. This is a form that should be regularly and widely carried out by agencies and organisations in order to contribute to helping citizens become aware of the legal provisions on the rights of PwDs; content, form and meaning of assuring the rights of PwDs in sustainable development in Vietnam, thereby

raising awareness and responsibility of the subjects in assuring the rights of PwDs.

Thirdly, provide a mechanism for complaints and appeals for PwDs. The form of this assurance has an important meaning in helping PwDs to make complaints and lawsuits when competent agencies and individuals violate their rights.

Fourthly, promptly detect and strictly handle violations of the law that affect the rights of PwDs.

Fifth, equip and provide the necessary facilities to serve the assurance. Invest in upgrading medical facilities and hospitals, assuring accessibility conditions for PwDs.

Sixthly, organise preliminary and final reviews of programs and plans related to assuring the rights of PwDs. This is a form of rights assurance implemented by competent state agencies to promptly evaluate the achieved results and draw lessons learned during effectively assuring the rights of PwDs.

1.3. Factors affecting the assurance of the rights of PwDs

In order to ensure that the rights of PwDs are effectively implemented, it is essential to fully study the influencing factors on the assurance of the rights of PwDs, specifically:

Firstly, legal factors and conditions

This is an extremely important prerequisite, a legal basis for PwDs to exercise their rights, and a ground for protecting PwDs when their legitimate rights and interests are harmed. The law becomes a sharp tool to protect PwDs when their legitimate rights and interests are infringed. On the contrary, if legal documents are inconsistent, their low feasibility will more or less affect the exercise of rights, protection and promotion of rights for PwDs.

Secondly, material factors and conditions

Material circumstances are the premise and one of the most important factors affecting human rights in general and the rights of PwDs in particular. Economic development anchors in cultural and social development, gradually improving people's material and spiritual life, realising progress, fairness, democracy and civilisation. Rapid and sustainable economic development is indispensable to ensure and promote human rights and citizens' rights effectively.

Thirdly, the cognitive factor

In addition to legal and material factors, cognitive factors also significantly affect the assurance of human rights. By dint of correct understanding, correct perception, and objectivity, responsible subjects will ensure that there will be practical and meaningful behaviours and actions for PwDs. Furthermore, when interested parties are properly aware, they will protect their rights and the legitimate rights and interests of others whenever an infringement arises. On the contrary, when the perception is incorrect and incomplete, it is easy to lead to unobjective, even stigmatising, discriminating, one-sided, and conservative actions that infringe on the legitimate rights and interests of others.

Additionally, political, cultural and social factors also significantly influence assuring the rights of PwDs.

2. The current situation of assuring the rights of PwDs in sustainable development in Vietnam today

Currently, our country has about 7 million PwDs, accounting for 7.8% of the population, of which 48% are women, and 28.3% are children. The majority of PwDs live in rural areas (87%), face many difficulties and need assistance and support from the state and society [8]. By the end of 2020, Vietnam had nearly 3 million PwDs attained disability certificates [9]. Nearly 1 million have severe and especially

severe disabilities [10]. Although assuring the rights of PwDs is still arduous, in recent years, this work has achieved remarkable results, specifically:

- Regarding political assurance: In Vietnam, up to now, PwDs enjoy all rights without any discrimination. The Party, State and society always pay attention to, care for and help the disadvantaged. The state has established the National Committee on PwDs. Recently, the Secretariat issued Directive No. 39-CT/TW, dated November 1, 2019, on strengthening the leadership of the Party in the work of PwDs, which introduced much new awareness. The Directive highlights: “The work for PwDs is the responsibility of all levels, branches and relevant agencies from central to local levels”. Agencies, departments and branches must also be responsible for informing, propagating and disseminating policies and laws on PwDs to Party-affiliated committees, authorities and people from all walks of life.

- Regarding legal assurance: Our State has promulgated many important legal documents contributing to the recognition, protection and promotion of the rights of PwDs. For example, the 2013 Constitution, the Law on PwDs in 2010, the Employment Law in 2013, the Construction Law in 2014 (amended and supplemented in 2020), and the Law on Health Insurance in 2008 (amended and supplemented) in 2014), the Law on Occupational Safety and Health in 2015, the Law on Children in 2016, the Labor Code in 2019, and the Education Law in 2019. This is an important step forward in the full and comprehensive institutionalisation of views and policies of the Party and the state's policies on PwDs to improve the legislative foundation and create equal opportunities without barriers for PwDs. To implement the Law on PwDs, the government issued Decree No. 28/2012/ND-CP dated April 10, 2012, detailing and guiding the implementation of many articles of the Law on PwDs. Then, on August 5, 2012, the Prime Minister enacted Decision No. 1019/QĐ-BTP approving the Project on supporting PwDs for the period 2012-2020 with the target that 90% of PwDs receive legal aid when in need in the period 2012 - 2015 and 100% of PwDs receive legal aid when in need in the period 2016 - 2020 [11]. On February 5, 2013, the government promulgated Decree No. 14/2013/ND-CP amending and supplementing a number of articles of the Government's Decree No. 07/2007/ND-CP dated January 12, 2007, detailing and guiding the implementation of several articles of the Law on Legal aid. In order to affirm and protect the rights of PwDs, pay attention to support and help PwDs, remove all barriers, and create opportunities for PwDs to integrate into the community, Vietnam ratified the International CRPD (November 2014) and became the 118th Party to this Convention. The State of Vietnam demonstrates a strong commitment to the implementation of the provisions of this Convention. Recently, Vietnam has nationalised the global 2030 Agenda into a National Action Plan for Agenda Implementation (CTNS) 2030 with 17 general sustainable development goals and 115 specific goals suitable to the country's development conditions and priorities in order to solve the challenges and difficulties faced by the Vietnamese people in general and PwDs in particular, especially poverty and inequality.

- Regarding social assurance: In 2021, the authorities granted health insurance cards to over 1.1 million PwDs [12], and medical examination and treatment facilities have prioritised medical examination for this group. Hundreds of thousands of people have received orthopaedic and rehabilitation support and have been provided with assistive devices such as wheelchairs and strollers; every year, about 800,000 PwDs receive subsidies and support to buy health insurance cards [13]. Community-based rehabilitation programs for PwDs are implemented in 51/63 provinces and cities with 337 districts and 4,604 communes and wards. One central rehabilitation hospital and 62 hospitals/rehabilitation centres are under the province/ministries and branches; 100% of central general and specialised hospitals and 98% of provincial and city hospitals have rehabilitation departments.

The law also stipulates that by January 1, 2025, all apartment buildings, working offices, and public technical and social infrastructure works must assure accessibility conditions for PwDs [14].

- *Regarding awareness assurance:* Vietnam builds an inclusive education model, converts and evaluates flat-text textbooks into Braille, builds a sign language system, and unifies the script system for blind people. Annually, the number of children with disabilities going to secondary and university levels increases. Many students with disabilities achieve high academic results. According to data from the United Nations Children's Fund (UNICEF), from 2016 to 2017, in Vietnam, 94.2% of children with disabilities attended regular schools [15]. Many seminars, workshops, and scientific research on PwDs at all levels have been strongly boosted and conducted. Besides, communication activities on the law and legal aid for PwDs have also been advanced to help them improve their awareness and understanding of their right to legal aid and free access to legal aid. Recently, the Prime Minister approved the task of formulating a master plan for a system of specialised educational institutions for PwDs and a system of centres to support the development of inclusive education in the 2021-2030 period, with a vision for the year 2050.

- *Regarding financial assurance:* Up to now, about 1,130 vocational training institutions organise vocational training for PwDs, of which 225 are specialised vocational training institutions for PwDs [16]. PwDs are entitled to loans through the National Employment Fund according to Decree No. 61/2015/ND-CP, dated July 9, 2015, Circular No. 45/2015/TT-BLDTBXH dated November 11, 2015, guiding Guidance on the National Fund for Employment in Decree No. 61/2015/ND-CP on policies to support job creation and the National Fund for Employment. On September 23, 2019, the government further promulgated Decree No. 74/2019/ND-CP on policies to support job creation and the National Fund for Employment. For 5 years (2010 - 2015), about 120,000 PwDs received vocational training support and loans [17]. 100% of PwDs are eligible to access and benefit from social security policies [18]. In 2021, the state budget allocated 18,546 billion VND to implement Decree No. 136/2013/ND-CP dated October 21, 2013, of the Government (now Decree No. 20/2021/ND-CP dated March 15, 2021), including monthly allowance and purchase of health insurance cards for social protection beneficiaries and over 356 billion VND has been disbursed to implement educational support policies for PwDs. Up to now, about 100,000 families and individuals taking care of social protection beneficiaries who receive monthly social allowances and millions of PwDs and children with disabilities are nurtured and cared for in social assistance facilities [19].

Recently, the state has also effectively implemented many guidelines and policies to care for, assure the rights and promote the role of PwDs. Some important projects can be mentioned, such as the Project on vocational training for rural labourers up to 2020 (approved under Prime Minister's Decision No. 1956/QD-TTg dated November 27, 2009; Project on assisting PwDs for the period 2012 - 2020 (approved under the Prime Minister's Decision No. 1019/QD-TTg dated August 5, 2012); Directive No. 3930/BLDTBXH-TCDN of the Ministry of Labor, Invalids and Social Affairs, October 21, 2014, on improving efficiency and quality in realising the goal of vocational training and job creation for PwDs.

In 2021, the government issued Decree No. 20/2021/ND-CP, dated March 15, 2021, stipulating social assistance policies for social protection beneficiaries, according to which the monthly support level for PwDs has been raised compared to before. However, apart from the achievements in assuring the rights of PwDs in sustainable development in Vietnam, there are also many difficulties and inadequacies. PwDs often live in families with difficult circumstances, low-income families, and families under preferential policies. They are stigmatised, despised, and discriminated against when participating in social relations. Job placement and employment for PwDs encounter many difficulties. Rights, i.e. the right to access information, education, health care, and provision of

inclusive services, of PwDs still need to be more adequately assured. The rate of PwDs accessing information technology and using the internet still needs to be higher, especially in mountainous and rural areas or for poor PwDs [20]. There are many reasons, but the main cause stems from the inadequate awareness of the family and society and the lack of objectivity about PwDs, thus creating invisible barriers for them to integrate into the community.

Moreover, as expected, legal propaganda and education have yet to be effective. Communication methods are inconsistent with different types of disabilities, so the information has not reached many PwDs. Also, many PwDs have complex disabilities, causing challenges in the propaganda, explanation, and dissemination of legal documents. Meanwhile, facilities, finance, medical equipment and means of supporting PwDs still need to be improved. In the coming time, under the impact of the Covid-19 epidemic, population ageing, environmental pollution, climate change, traffic accidents, labour accidents, and war consequences, assuring the rights of PwDs in Vietnam will become harder, which requires further research on this issue in order to make appropriate and effective recommendations.

3. Some solutions to better assure the rights of PwDs in sustainable development in Vietnam

To contribute to better assuring the rights of PwDs in sustainable development in Vietnam in the coming time, it is recommended to focus on the following solutions:

Firstly, continue to raise awareness of the whole society and of PwDs themselves about the rights of PwDs, and the necessity and significance of assuring the rights of disadvantaged groups for sustainable development.

Actively propagate to make people understand that stigmatising, alienating and discriminating against PwDs violates inherent human dignity. Step-by-step, remove barriers, prejudices, struggles and condemnations against people with indifference, alienation, isolation and lack of humanity towards PwDs. Simultaneously, raising awareness for PwDs and helping them understand their rights as prescribed by law.

Authorities, associations of PwDs, and family members need to actively care, encourage and help PwDs access information on the labour market and the law when integrating into the community. When disseminating information to raise awareness for PwDs, it is necessary to pay attention to the specific barriers that this group of PwDs face in order to have an appropriate implementation plan and promote its effectiveness in practice:

For the blind and illiterate people, it should propagate, disseminate and educate the law orally via loudspeakers and radio stations.

For the deaf and dumb, it is suggested to disseminate legal education and impart information and advice through writing, writing in pictures, or interpreters (teachers of schools with disabilities or family members).

For children with disabilities: it is necessary to focus on coordination between families, schools and residential areas where children with disabilities live. These are the critical forces in education to raise awareness for children with disabilities.

For PwDs who are ethnic minority people who do not know the common language: it is necessary to propagate in ethnic minority languages or draw pictures, distribute leaflets in ethnic minority languages and get help from family members and neighbours.

Secondly, focus on assuring labour rights and employment for PwDs.

Authorities should call on benefactors, organisations and businesses to recruit PwDs to help PwDs find suitable jobs and earn stable incomes. The recruitment information for PwDs should be posted

simultaneously in numerous ways, such as posting on newspapers, radio stations, social networking sites, posting at the head offices of enterprises, announcements to residential areas, an association of blind people, and association of PwDs.

In fact, due to physical defects, many PwDs find it challenging to move from home to work. Therefore, it is necessary for businesses and benefactors with a kind heart to arrange accommodations for employees to facilitate their activities while they work.

Authorities, families and social communities must pay attention to, encourage, and advise on career guidance and appropriate vocational training, especially for employees with disabilities. Thereby expanding job opportunities, contributing to increasing income, improving living standards for PwDs, helping them integrate into the community, and eliminating fear, inferiority, or dependence on others.

Thirdly, gradually perfecting legal documents related to PwDs.

The functional agencies actively review to promptly amend and supplement documents or issue new legal documents, contributing to overcoming and removing existing difficulties, obstacles and inadequacies. The state also needs to distribute more preferential and encouraging policies for organisations, businesses, and benefactors when employing PwDs or other disadvantaged groups. Currently, the Law on PwDs 2010 does not stipulate that job priority for PwDs is a mandatory requirement for businesses but is only recommendable. This is inadequate because such regulations need to be binding enough for businesses to consider hiring and employing PwDs. Therefore, it is essential to study and consider this content in the next revision of the Law on PwDs.

In addition, the process of finalising legal documents should pay attention to quality assurance in accordance with the United Nations CRPD to which Vietnam is a member and other relevant laws.

Fourthly, bolster investment in material and technical facilities better to assure human rights and the rights of PwDs.

Not only is it necessary to have appropriate and feasible legal documents and policies, but it is also necessary to prioritise financial resources to ensure facilities to meet the needs of living, clothing, accommodation, medical treatment and entertainment for PwDs, especially women with disabilities and children with disabilities.

Fifthly, consolidate the inspection and supervision of implementing legal provisions on assuring the right to work for employees with disabilities. This is because PwDs are weak, vulnerable, and difficult to resist when conflicts arise. The infringement of human rights and the rights of PwDs is quite common. The inspection and supervision will substantially contribute to detecting violations quickly and promptly. At the same time, resolutely and strictly handle violations of the law that infringe upon the legitimate rights and interests of PwDs.

Sixthly, facilitate dialogue and proactive and active international cooperation in assuring and promoting human rights in general and the rights of PwDs in particular.

International dialogue and cooperation is an opportunity for Vietnam to learn and exchange experiences with countries worldwide in law-making and enforcement, assuring human rights and the rights of PwDs. Vietnam can also study other countries' models of legal aid for PwDs to apply it creatively and in accordance with the country's actual circumstances and conditions.

Conclusion

Sustainable development is an urgent need and an indispensable objective trend in the development process of human society. Sustainable development is the basis and premise to assure that human rights, the rights of PwDs and other disadvantaged groups are effectively implemented in practice.

Assuring the rights of PwDs well is not only a moral or charitable issue to help PwDs easily integrate into the community, encourage them to live a happy, healthy, useful life and contribute to society, but also to contribute promote economic and social development.

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Some recommendations to improve Vietnam's law on assurance of the rights of persons with disabilities

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Summary:

In this article, the authors focus on assessing the current status of Vietnam's legislation on the rights of PwDs compared to the United Nations CRPD. On the basis of that assessment, the authors analyse the limitations, inadequacies and inconsistencies between Vietnamese law and the United Nations CRPD. At the same time, some recommendations were made to improve the law, especially the Law on PwDs 2010, to be in line with international law and to better ensure the rights of PwDs.

Keywords: PwDs, rights of PwDs, the law on the rights of PwDs, ensuring the rights of PwDs.

1. Introduction

As one of the most vulnerable groups in society, PwDs often face dual barriers due to disability, poverty, and discrimination. Therefore, our state has issued many policies and legal documents to ensure rights and limit discrimination against PwDs, contributing to offset their disadvantages in both aspects, i.e.: (1) regulate the issues of PwDs directly and (2) provide a legal framework to support PwDs. Especially in 2007, Vietnam signed the CRPD and ratified it in 2014. In order to codify this Convention, Vietnam promulgated the Law on PwDs in 2010 and Decree 28/2012/ND-CP dated April 10, 2012, detailing and guiding the implementation of several articles of the Law on PwDs This is the most important legal document in ensuring the rights of this vulnerable group.

Firstly of all, it must be affirmed that the Law on PwDs 2010 stipulates the basic issues of PwDs in accordance with the CRPD in terms of: health care; Education; Vocational training and employment; Culture, physical training, sports and entertainment; Apartment buildings, public works, traffic, information and communication technology; social protection, at the same time, sets forth the state's policies on PwDs and sets the responsibilities of agencies, organisations, individuals and families towards PwDs. However, in the implementation process, the current Law on PwDs 2010 also needs to be revised compared to the requirements of the CRPD, a lack of synchronisation with the current legal system, and incompatibility with the socio-economic level of Vietnam. Therefore, in this article, we will focus on those limitations to make recommendations to improve the Law on PwDs 2010 to contribute to ensuring the rights of PwDs in Vietnam.

2. Approach to Evaluation

We must Firstly assert that ensuring the rights of PwDs is about meeting their basic needs in practice. However, society is increasingly developed and more civilised. In particular, society's general awareness and perception of PwDs have also changed. Therefore, in this article, we will use the "Human Rights-Based Approach" [1] to assess the legal limitations on the rights of PwDs.

The rights-based approach, in general, and the rights-based approach of PwDs, in particular, is humane. Considering the rights enjoyed by people and PwDs in particular as noble human values, thereby considering PwDs as the centre, then focusing on their needs and potentiality to solve problems.

Accordingly, this approach will aim to balance both factors, which are regulations on rights and how to enforce the rights of PwDs. In other words, we are keen on both the results and the implementation of policies related to the rights of PwDs, to enable PwDs to either participate or benefit from the policy, thereby supporting the active participation of PwDs in the development process. Specifically:

- (1) Consider supporting the realisation and enjoyment of the rights of PwDs as the main goal in development policies and programs;
- (2) Take international principles and standards on the rights of PwDs as a guide in setting and implementing development policies and programs;
- (3) Clearly identify duty bearers, thereby performing obligations and responsibilities in supporting and enhancing the capacity of PwDs.

3. Some limitations of Vietnamese law on the rights of PwDs

3.1. Limitations in identifying PwDs

In this context, we would like to refer to the limitations in three aspects:

Firstly, there is a limitation in determining what a person with a disability is

The CRPD states: “PwDs 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”. Thus, the concept of PwDs in the Convention is defined in three aspects: health, social and rights.

However, in the Law on PwDs 2010, it is stipulated: “Person with a disability is a person who has a defect in one or more body parts or a functional impairment manifested in the form of a disability that makes working, living, learning difficult” [3]. So far, we define PwDs only in the medical aspect, “with a defect in one or more body parts or a functional impairment manifested in the form of a disability”, but ignore the right aspect that PwDs are also human beings, so basic human rights should be guaranteed and social aspects that are social barriers to the full enjoyment of human rights of PwDs.

Secondly, limitations in classifying types of disability and how to determine the degree of disability

Article 3 of the Law on PwDs 2010 and Article 2 of the consolidated document detailing and guiding the implementation of the Law on PwDs No. 763/VBHN-BLDTBXH dated February 28, 2019, identify 6 types of disability as mobility disabilities; hearing and speaking disabilities; vision disabilities; neurological and mental disabilities; intellectual disabilities; other disabilities.

The number of people with autism is increasing; according to the statistics of the General Statistics Office of Vietnam, there are about 6.2 million PwDs aged 2 years and older, accounting for 7.06% of the population. About 1 million people have autism, and the rate of children with autism is estimated at 1% of all children born. This is an extremely complex disability, affecting many aspects because people with autism lack language, communication, and social skills and will behave differently due to a lack of senses. However, the current Law on PwDs puts autism in the category of “other disabilities”, leading to inadequate awareness and incomplete assessment of this disability and no specific policy for this disability group [4].

In addition, the Law on PwDs and its guiding documents classify the degree of disability into particularly severe disability, severe disability and mild disability [5] by using the following method of determining the degree of disability: “directly observing PwDs, through performing simple activities for personal daily living needs, using questionnaires according to health and social criteria and other simple methods to conclude the degree of disability for each person with a disability” [6]. In addition, the council to determine the degree of disability is established by the Chairman of the People's Committee of the commune, ward or township, comprising the President of the People's Committee of the commune being the Chairman of the Council; the head of commune health stations; Commune-level civil servants in charge of labour, war invalids and social affairs; heads or deputy heads of the Vietnam Fatherland Front Committee, the Women's Union, the Youth Union, the

Commune-level Veterans Association; The head of the organisation of PwDs at the commune level where the organisation of PwDs is located [7]. These regulations, we think, are not convincing enough and are not favourable for difficult-to-identify disability types that are impediments to receiving social benefits or support from the state.

This is because, according to the provisions of the Law on PwDs, the determination that a person with a disability is entitled to social protection policies is primarily based on the degree of that person's disability. People with particularly severe and severe disabilities are entitled to social protection policies; they get free health insurance, free legal aid, and a wide range of other policies. People with mild disabilities are not entitled to the above policies and are entitled to certain educational incentives, vocational training and preferential loans to create jobs.

Thirdly, limited interpretation of relevant words

In the CRPD, there is a definition of “communication”, “language”, “inclusive design”, and “reasonable accommodation”, but the Law on PwDs does not provide definitions of such concepts. This will affect the adjustment of the law and concretise the rights of PwDs in different fields and promote the effective implementation of the rights of PwDs.

In addition, the Law on PwDs 2010 states the concepts of “discrimination” and “discrimination against PwDs”, which list the acts of other subjects towards PwDs without generalising the discrimination or discrimination against PwDs on the basis of the aforementioned rights-based approach or otherwise, these two concepts have not yet been generalised that it is discrimination on the basis of disability is that does not ensure the enjoyment of human rights by PwDs on an equal basis with other entities.

3.2. Limitations in regulations on the rights of PwDs

3.2.1. In guaranteeing the right to education

In education, the rights of PwDs are stipulated in the Law on PwDs, in the Education Law of 2012, amended and supplemented in 2019, and the Law on Higher Education in 2019. Accordingly, the method of education for PwDs includes inclusive education, semi-inclusive education and special education. Inclusive education is the main method of education for PwDs. It also sets out the responsibility of the state to create conditions for PwDs to study in accordance with their needs and abilities [8].

However, the literacy rate of PwDs is low, accounting for 74.4%, compared to the national literacy rate of 92.68% and that of persons without impairment is 94.31% [9]. PwDs represent 7.06% of the population aged 2 years and over, but the number of PwDs make up 15.37% of those who have not completed primary school [10]. Among the population of PwDs aged 5 years and over, the issue of educational attainment is even more evident in the educational opportunities of PwDs, with more than half of them not having completed primary school. It is worth noting that the disparity between the proportion of PwDs completing primary and lower secondary and PwDs completing upper secondary schools is significant, proving the difficulty for PwDs to access tertiary education [11]. Thus, barriers for children with disabilities to access the inclusive education system still exist, which is also why PwDs cannot fully participate in society. This is due to many reasons, such as:

- (1) Promoting inclusive and other education, such as semi-inclusive and special education, must be adequately invested.
- (2) Lack of teachers and staff to support children with disabilities.
- (3) Lack of a system of centres to support the development of inclusive education at the provincial level [12].

(4) Lack of facilities and equipment for classes and function rooms, such as desks and chairs that cannot be adjusted in height or specific learning equipment such as Braille, visual aids, and movement support tools.

(5) Difficulty commuting, moving from home to school of children, especially in rural and mountainous areas.

Moreover, it is also worth mentioning that the Law on PwDs does not stipulate the state's obligation to “ensure an inclusive education system at all levels and lifelong learning programmes”, as stipulated in the CRPD. Instead, the Law on PwDs 2010 only provides that “The State creates conditions for PwDs to study in accordance with their needs and abilities of PwDs” without emphasising the state's responsibility for ensuring that PwDs are not excluded from the education system.

3.2.2. In ensuring the right to health, rehabilitation

Medical care and rehabilitation are important rights of people in general and PwDs in particular. Therefore, the CRPD stipulates: “The States Parties recognise that PwDs have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability” and “States Parties to the Covenant undertake to provide PwDs 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 [13].

Following this provision of the Convention, the Law on PwDs 2010 prescribes: “The State ensures that PwDs receive medical examination and treatment and use appropriate medical services” and “PwDs enjoy health insurance policies in accordance with the law on health insurance” [14]. However, in practice, ensuring the rights of PwDs in this area still needs to be improved. Specifically:

(1) Restrictions on who can be granted health insurance

As analysed above, the degree of disability is the basis for enjoying social protection policies and free health insurance. According to the 2009 Law on Health Insurance, amended and supplemented in 2014 and the Law on PwDs 2010, only persons with severe disabilities and persons with profound disabilities are granted a free health insurance card [15] and receive 100% support for medical expenses [16]. Thus, if they do not belong to other social protection objects, people with mild disabilities are hardly entitled to any preferential policies on health insurance and are also not eligible for monthly social allowances. If they want health insurance, they either have to have a job to buy compulsory health insurance according to the labour establishment or buy it themselves while living standards are low and income is limited.

Thus, people with mild disabilities have economic difficulties and difficulties as they are not supported in issuing health insurance cards. This becomes a barrier that prevents people with mild disabilities from exercising their right to health care and limits their equal right to enjoy medical services and treatment like others.

(2) Limitations on coverage of health insurance

According to the current law, for groups of people with severe and especially severe disabilities, health insurance only covers some basic services. However, it does not include high-tech services or special tools for PwDs [17], such as prosthetics and hearing aids [18]... which are assistive devices that can greatly affect the ability of PwDs to participate in society. Besides, psychological intervention services for people with intellectual, neurological and psychiatric disabilities are not on the list covered by health insurance, so they have to pay when using mental support services.

People with severe disabilities are supported with health insurance cards. However, the coverage of health insurance is limited, which on the one hand, refrains PwDs from using comprehensive medical services and affects the effectiveness of treatment and rehabilitation. On the other hand, it is also a barrier for people with severe disabilities to enjoy their right to health care, while these are essential needs.

(3) Limited facilities when PwDs access medical care and rehabilitation services

According to the General Statistics Office, only 16.9% of health stations are designed to meet accessibility standards for PwDs. Furthermore, only 22.4% of health stations have toilet facilities for PwDs, and about 41.7% have ramps for PwDs [19]. Alternatively, medical facilities do not have Braille documents, speakers, signs or interpreters to assist people with hearing and vision disabilities when they receive medical care.

Across the country, 57.3% of commune health stations have rehabilitation programs, 90.6% carry out propaganda and education on medical care for PwDs, and 88.3% of health stations have records of disability [20]. Furthermore, the number of officials and employees trained in knowledge about PwDs could be higher, needing more experience communicating with people with cognitive or behavioural difficulties. On average, each clinic has less than 1 staff trained in rehabilitation services. Nationally, 12.6% of the commune or ward health station staff are trained in rehabilitation; only 1 in 8 commune or ward health workers are trained in rehabilitation for PwDs [21]. Moreover, the human resources involved in providing specialised rehabilitation services are restricted and uneven.

The above figures reflect the limitations of medical facilities and human resources when PwDs have access to medical services. This significantly influences the access to medical care and rehabilitation services of PwDs to improve their functioning. Therefore, in the coming time, the Law on PwDs and other related laws should be adjusted to expand the scope and coverage of health insurance in accordance with the CRPD.

3.2.3. In ensuring the right to vocational training, labour and employment

This is one of the critical rights of PwDs because this right is the basis for ensuring other rights of PwDs. Only when trained they will be able to find a job, get a job, and earn an income to live independently and be part of the community. Therefore, this right is provided for in Article 27 of the CRPD. In accordance with the provisions of the Convention, the Law on PwDs 2010, the Law on Employment 2013, the Law on Vocational Education and Training, and the Labor Code 2019 have been concretised to ensure the right to vocational training, labour and employment of PwDs. However, in practice, the guarantee of this right face various challenges in the implementation process, specifically:

(1) Limitations in vocational training

According to statistics of the National Committee on PwDs of Vietnam, by the end of 2020, Vietnam has about 6.2 million PwDs, about 62% of which are of working age (from 15-60 years old). Among PwDs aged 15 years and over, only 5% of them have received vocational training, of which 57% have primary vocational training, about 27% have intermediate vocational qualifications, and 16% have college and university degrees [22]. It can be seen that the percentage of PwDs of working age in Vietnam have a job with a stable income, and the percentage of employees with disabilities who have received vocational training is still very low. Meanwhile, the demand for vocational training and employment of PwDs in Vietnam is high. This proves that PwDs are unable to access policies to support vocational training and have not been consulted for vocational training suitable to their disability, so the number of PwDs receiving vocational training is still low.

(2) Limitations in labour and employment issues

Currently, the proportion of PwDs participating in the labour market is relatively low, and the gap is huge with the group of persons without impairment. Statistics of the National Committee on PwDs of Vietnam by the end of 2020 indicate that Vietnam has about 6.2 million PwDs, about 62% of which are of working age (from 15-60 years old). However, only 15% of PwDs are salaried workers; the rest are informal jobs and have no income [23].

As mentioned above, the right to vocational training and employment of PwDs is guaranteed in many legal documents. However, vocational training and employment policies for PwDs are still limited. Because:

Firstly, the Law on PwDs 2010 only provides general provisions to ensure the right to study, vocational training and employment of PwDs. Organisations and agencies are not allowed to refuse PwDs if they are qualified for the job. There are no specific regulations on sustainable learning, work policies, or career adaptation for PwDs. Simultaneously, there are no measures or sanctions when agencies, organisations and individuals refuse to accept PwDs to work even though they are eligible.

Additionally, the policies in the Law on Vocational Education also do not clearly show these contents, which leads to the incompatibility of Vietnam's legal policies on PwDs compared to Article 7 and Article 8 of the Convention No. 159 on Vocational Rehabilitation and Employment for PwDs.

Secondly, there needs to be more support in supporting businesses that employ PwDs and PwDs to open their businesses. This stems from businesses needing to be more aware of their responsibilities in creating jobs for PwDs. In addition, the regulations on tax incentives for enterprises employing PwDs are not appropriate [24], so the development and maintenance of jobs for PwDs in the private sector are not promoted.

When PwDs are self-employed and businesses that employ a lot of PwDs, they still need help in product consumption due to the lack of support policies. Moreover, the fraction of PwDs accessing the loan policy with preferential interest rates for production and business from the Bank for Social Policies still needs to be higher because there is no loan program specifically for PwDs or no loan source. The special capital for PwDs in the National Fund for Employment and the level of loans to create jobs is still low, leading to many people deciding not to borrow, or in some cases, because of low capital, it is impossible to carry out production and business activities [25].

Thirdly, stigma and discrimination in the workplace is still a big barrier for PwDs. This reason is manifested in two sides, PwDs themselves still have guilt and low self-esteem about their disabilities and businesses do not arrange suitable jobs, and infrastructure and transportation are not accessible; PwDs are not allowed to sign formal labour contracts, they have low wages or receive no salary increase or promotion [26]. Alternatively, PwDs working in agencies and organisations are not allowed to hold positions even though they are qualified.

4. Some recommendations to improve the law to guarantee the rights of PwDs better and be consistent with the CRPD

4.1. For the Law on PwDs

The Law on PwDs has made an important contribution to ensuring the rights of PwDs. However, in light of the new trend and the general change in awareness of human rights and the rights of PwDs in particular, the Law on PwDs disability needs to be adjusted and supplemented accordingly. Specifically:

Firstly, it is essential to amend and supplement the concept of "PwDs" in all three directions: rights-based, social, and medical approaches.

Secondly, it is necessary to add some concepts of “communication”, “language”, “reasonable accommodation”, and “universal design” in Article 2 of the Law on PwDs, which on the one hand, is consistent with the CRPD, and on the other hand, facilitates the recognition and enforcement of the rights of PwDs.

Thirdly, to supplement the provisions: “PwDs have the right to study and education on an equal basis with those without disabilities with appropriate support” and: “PwDs have the right to lifelong learning, not being excluded from the general education system because of disability” to affirm the right to lifelong learning of PwDs in Article 27 and to ensure that PwDs are not excluded from the education system common because of disability.

Fourthly, to amend and supplement Clause 2, Article 22 of the Law on PwDs in that the state has policies to support people with mild disabilities to prioritise purchasing health insurance and enjoying preferential treatment costs.

Fifthly, to improve the regulations on the council to determine the degree of disability, the method of determining the degree of disability is to ensure the rights of PwDs better.

Sixthly, to amend and supplement Article 32 of the Law on PwDs 2010 in the direction of (1) stricter regulations in order to enhance the responsibilities of vocational training institutions for counselling and appropriate career orientation for PwDs; (2) Supplementing a coordination mechanism to connect vocational training institutions for PwDs and production and business enterprises and organisations in order to create favourable conditions for PwDs to be recruited immediately after being trained at vocational training institutions.

Seventhly, to amend Clause 2, Article 33 of the Law on PwDs in 2010 as follows: “It is forbidden for agencies, organisations, enterprises and individuals to refuse to recruit PwDs who fully meet the recruitment criteria to work or to set recruitment standards in contravention of the law in order to limit the employment opportunities of PwDs. If refuse or set up regulations to restrict the recruitment of PwDs, they will be handled in accordance with the law”.

Eighthly, to add a provision stipulating that if a person with a disability opens a business or production establishment where the employees are also PwDs, in addition to the priorities under Article 34 of this Law, they will also be given priority in purchasing input materials and supporting the consumption of output products.

Ninthly, to amend Article 34 of the Law on PwDs 2010 to maintain the provisions on tax exemption and tax incentives for production and business establishments employing 30% or more of the total number of employees who are PwDs to encourage production and business establishments employing Employees with disabilities.

In addition, in the current global trend to encourage the design and manufacture of products according to universal design criteria, it is necessary to research and consider additional vocational training and employment for PwDs, and encourage enterprises to design and manufacture products according to universal design criteria (products containing utilities for PwDs) in accordance with Articles 2 and 4 of the CRPD.

4.2. For other relevant laws

- Amending the Law on Health Insurance 2014 and related policies in the direction of expansion in the following aspects: (i) Adding the beneficiaries of free health insurance support who are people with mild disabilities; (ii) Supplementing the coverage of health insurance for people with severe and especially severe disabilities when using assistive devices, orthopaedic rehabilitation devices; (iii)

Supplementing the list of medical supplies and medical equipment on the payment list of health insurance.

- Amending provisions in Clause 3, Article 1 of the Law on Amendments to the Law on Corporate Income Tax in 2008 as amended in 2013 on the condition that enterprises employing 30% of employees with disabilities must have at least 20 employees sign the labour contracts in a year to be eligible for exemption from corporate income tax as mentioned above.

4.3. Other recommendations

- Research to improve the quality of educational institutions implementing inclusive education at all levels so that PwDs can participate equally while expanding flexible educational models in the community, such as distance education, education at home and community-based education in parallel with existing forms, in order to facilitate children with different types and degrees of disabilities, especially children with severe disabilities and children with particularly severe disabilities to participate.

- Balance and supplement the budget for policies for PwDs, especially in the fields of education and health, such as investing in procurement and promulgating a minimum list for equipment, school supplies, and learning materials, special materials for the education of children with disabilities; invest in commune health stations, rehabilitation facilities so that PwDs can use rehabilitation services available in the locality. At the same time, it is necessary to train teachers and support staff for PwDs with appropriate teaching methods to promote the quality of education of PwDs, and improve school attendance and reduce the dropout rate of PwDs; Training staff, staff to support PwDs to access facilities, access medical equipment or measures to ensure that PwDs access relevant medical information, sign language staff or available sign language interpreting services.

- Propagate and disseminate education to raise awareness for cadres, civil servants, public employees and people about the rights of PwDs to reduce discrimination against PwDs. At the same time, it is also recommended to propagate and popularise PwDs to understand their rights, thereby creating a better mechanism to protect their rights and improve the effectiveness of ensuring their rights.

Conclusion

The Law on PwDs 2010 has internalised the spirit of the CRPD, which is an important legal basis to ensure the implementation of the rights of PwDs in Vietnam in many fields. However, after a while of implementation, the Law on PwDs 2010 revealed needs to be improved compared to the requirements of the CRPD as well as a need for synchronisation with the current system of legal documents. These shortcomings pose an urgent need to amend and supplement the Law on PwDs 2010 to be consistent with the CRPD and the current legal system, as well as with the level of socio-economic development of Vietnam. Thereby creating a solid legal basis to strengthen the guarantee of the rights of PwDs in Vietnam in practice because ensuring the rights of PwDs is the foundation of humane and humanity in society in accord with the rights-based approach, creating prerequisites for realising the principle of “*leaving no one behind*” and in line with the spirit of the 2013 Constitution.

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Privileges for persons with disabilities in Vietnam's law

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Abstract:

PwDs belong to the weak, vulnerable group and face many difficulties in life. Therefore, international and national laws contain provisions for PwDs intending to care for, support and facilitate their access to basic social resources. The article clarifies the necessity of preferential treatment for PwDs, analyses preferences for PwDs in Vietnamese law assesses the situation and makes recommendations.

Keywords: PwDs; preference; law.

1. The necessity of preferential treatment for PwDs

A person's disability means a person with a defect in one or more body parts or a functional impairment manifested in the form of a disability, causing difficulties in working, living and studying. According to the United Nations, an estimated 10-15% of the world's population (i.e. 700 million to one billion people) are PwDs, and 80% live in developing countries. PwDs comprise 20% of the world's poorest people and encounter great challenges in accessing education, employment, health care and other social assistance services [1]. In Vietnam, over 7% of the population aged 2 years and over (more than 6.2 million people) are PwDs. Besides, 13% of the population (nearly 12 million people) live in a household with a person with a disability. This proportion is expected to increase in line with the ageing population trend [2].

Compared with ordinary people, PwDs have a number of other health, psychological and socio-economic characteristics.

Regarding health, PwDs have defects (loss or abnormality) of body structure or impaired function. Therefore, their health declines, even some people lose their ability to work and live off others. Depending on the type of disability, PwDs face different obstacles in social activities, so different policies and support should suit each type of disability.

Regarding psychology, PwDs often have low self-esteem, live a closed life, and struggle to integrate into the community. When communicating with PwDs, some border populations are sympathetic or estranged. Sympathetic people are prone to feel pity for PwDs, which, on the one hand, can help PwDs person to improve their lives, but on the other hand, might destroy PwDs person's independence. The estranged people see PwDs as an epidemic or a social burden that makes PwDs lonely, stigmatised, and desperate. The massacre of PwDs under Hitler's era, with hundreds of thousands of PwDs being killed, is an unbearable pain for their families and society. Today, the view of PwDs has changed. Accordingly, PwDs are a part comprising the diversity of society.

In terms of socio-economic, PwDs are mostly poor people with harsh financial circumstances. Many PwDs depend on their families and social allowances. Challenges in job seeking make them have no earnings to support themselves.

Thus, PwDs belong to the weak and vulnerable group. Their access to the labour market and employment opportunities are constrained. They need to be cared for, helped, supported and facilitated to access basic social resources in order to live independently and contribute to their families and society. Thence, there should be appropriate incentives for them.

2. Preference for PwDs in Vietnamese law

** In the medical field:*

Among the incentives for PwDs, health care is always a top priority. At the place of residence, the commune-level health infirmary is responsible for providing primary health care for PwDs such as: (i) propagating, educating and disseminating general knowledge about health care, disability prevention and reduction; (ii) instructing methods of disease prevention, self-care and rehabilitation; (iii) record health monitoring and management; medical examination and treatment for PwDs.

Disability health insurance is determined based on the extent of the disability. PwDs eligible for monthly social allowance shall have health insurance premiums paid by the state budget; the health insurance benefit rate is 100% of medical examination and treatment expenses. People with severe and especially severe disabilities who are subject to social protection are granted health insurance cards by the state.

PwDs are included in the Community-Based Rehabilitation Program. This is a form of providing physical and mental rehabilitation measures, social support, employment, education, and creating other favourable conditions in the community for PwDs to reach their full potential and improve their quality of life to integrate into society. PwDs and their families receive necessary professional and technical support from collaborators and rehabilitation staff of communes, districts and provinces.

** In the field of education:*

PwDs are provided with learning conditions suitable to their needs and abilities and are given priority in admission and enrollment; be exempted or reduced some subjects or educational contents and activities that the individual's ability cannot meet; be exempted, reduced tuition fees, training costs, other contributions; be considered for scholarships, support means and learning materials.

PwDs are provided with special learning aids and materials in case of necessity; people with hearing and speaking disabilities are taught sign language; and those with visual impairments are taught in Braille according to national standards.

** In the field of labour:*

PwDs are entitled to free vocational training counselling, selection and participation in vocational training according to their ability and capacity equally as other people; free job counselling; and be offered a job and work that matches their health and characteristics of PwDs.

For PwDs not to be restricted in employment opportunities, the law stipulates that employers must not refuse to recruit PwDs who are qualified for employment or set illegal recruitment standards that hinder their employment opportunities. Employers must arrange and secure suitable working conditions and environment for PwDs; must fully comply with the provisions of the labour law for PwDs, such as ensuring working conditions, working tools, occupational safety and hygiene, and organising periodical health check-ups suitable for PwDs; must consult with PwDs when deciding on issues related to their rights and interests; must not employ persons with mild disabilities with a working capacity decrease of 51% or more, with severe or particularly severe disabilities, to work overtime or work at night, unless PwDs person agrees; PwDs must not be employed to do heavy, hazardous or dangerous work without their consent.

PwDs who are self-employed or households that create jobs for PwDs are entitled to loans with preferential interest rates for production and business and receive guidance on production, technology transfer, and product consumption support.

** In the field of culture, sports and access to public works*

Persons with profound disabilities are exempted, and people with severe disabilities are discounted for ticket and service prices when using a number of cultural, sports, entertainment and tourism services.

When building or renovating the following construction works, the national system of technical regulations on construction must be complied with to ensure access to and use by PwDs: (i) apartment buildings; (ii) public works (headquarters of State agencies; medical examination and treatment establishments; educational and vocational training establishments; cultural, physical training and sports facilities; hotel and commercial buildings); (iii) railway stations, piers, bus stations, roads, sidewalks, pedestrian tunnels, overpasses, other technical infrastructure and urban facilities (funeral houses, cemeteries, public toilets), bus stops, automatic teller machines, public internet access points) [3].

When entering traffic, PwDs are provided with accessibility assistance, including: (i) PwDs are taught and issued driving licenses for personal vehicles; (ii) PwDs, when travelling by public transport, can use the corresponding aids or aids, are allowed to carry and free of charge when carrying appropriate supporting vehicles and equipment; (iii) persons with profound disabilities and people with severe disabilities are exempted or reduced from fares and service prices when participating in traffic by some means of public transport; (iv) PwDs are given priority to buy tickets, get help and arrange convenient seats when using public transport [4].

** In the field of social protection:*

Persons with profound disabilities and severe disabilities are entitled to a monthly social allowance. The family of a person with a particularly severe disability who is directly nurturing and taking care of that person; people who take care of persons with profound disabilities; people with particularly severe disabilities; People with severe disabilities who are pregnant or raising children under 36 months old are supported with monthly care expenses.

Persons with profound disabilities who are helpless and unable to care for themselves are accepted and raised at social protection establishments.

PwDs receiving monthly social allowances are supported with funeral expenses upon death.

** In the field of justice:*

PwDs who have financial difficulties are entitled to legal aid [5]. PwDs belonging to near-poor households or people receiving monthly social allowances are provided with free legal services in the form of: consultation, participation in proceedings, and representation outside the proceedings in all legal areas, except business and commerce [6].

PwDs are people with meritorious services to the revolution; children and ethnic minorities residing in areas with extremely difficult socio-economic conditions are eligible for legal aid.

In criminal proceedings, if the accused has a physical weakness that cannot be defended, If a person has mental defects, the agency competent to conduct proceedings must request or request the State Legal Aid Center to appoint a legal assistant or lawyer to defend them.

3. Actual situation of implementing preferential treatment for PwDs and recommendations

Regarding medical care for PwDs, the state has established many rehabilitation facilities. There are 63 rehabilitation hospitals and rehabilitation centres nationwide, including 1 central-level rehabilitation hospital and 62 rehabilitation centres at the provincial and city level; 100% of central and provincial general hospitals have rehabilitation departments (80 rehabilitation departments). 90% of the Faculty of Traditional Medicine - Rehabilitation is at the district level; about 25% of communes have rehabilitation services. Commune health stations only do primary health care, disability health management and community-based rehabilitation. A team of village health workers and rehabilitation collaborators also guides PwDs in exercise and rehabilitation in the community [7].

However, no comprehensive evaluation criteria exist for “accessibility” in medical care services for PwDs. The Ministry of Health has issued criteria for evaluating hospitals in Vietnam, which include accessibility standards for wheelchair users. However, the other accessibility criteria, such as communication and sign language, are absent, entailing barriers to accessing health care for PwDs. Therefore, it is necessary to add access criteria for people with communication and language disabilities in the hospital evaluation criteria.

Regarding education for PwDs, the state has established a system of centres to support the development of inclusive education at the provincial level in over 20 provinces and cities; there were 107 special education institutions and 12 education centres for children with disabilities. These institutions implement inclusive education at all levels of general education. The number of children with disabilities attending school in Vietnam has increased tenfold over the past two decades. According to the National Survey on PwDs, the rate of children with disabilities attending primary school at the correct age is about 88.7%, and 33.6% in upper secondary school [7].

However, the implementation of inclusive education for PwDs still needs to be improved. According to the survey and assessment report on support for PwDs 2012-2020, only 3 out of every 100 schools have an appropriate design (2.9%), 8 schools have walkways for PwDs (8.1%), and 10 schools have toilet facilities suitable for children with disabilities (9.9%). Most schools have yet to adjust their facilities reasonably due to a lack of funding, inspection, supervision and sanctions. Inclusive education program requires schools to have individual plans to exempt or reduce some subjects for PwDs. However, only special education programs are available for primary students, not high schools. These barriers illustrate that the rights of PwDs have yet to be effectively implemented. Therefore, it is necessary to enhance school facilities and review the educational program to support PwDs better.

Regarding labour, the law stipulates that employers must not refuse to recruit PwDs who meet the recruitment criteria; otherwise, the employers will be fined from 5 to 10 million dong. This penalty is too slight and should be raised to be enough of a deterrent.

The state only encourages but does not force enterprises to employ PwDs. That is, businesses may or may not employ PwDs. This contributes to an increase in the unemployment rate of PwDs. According to statistics, only 31.74% of PwDs employed out of 1.6 million PwDs can work over 6.2 million PwDs (According to the General Statistics Office, 2016). Therefore, it is essential to compel enterprises to hire a certain percentage of employees who are PwDs. It is possible to refer to the regulations of some countries on this issue, such as: in India, each Government will stipulate the fraction of employment of PwDs but at least 3% in each establishment. If there are not enough PwDs to work, this position will be transferred to the next recruitment year if a suitable person has a disability. If the vacancy still needs to be filled, persons without impairment will be recruited. Thailand prescribes that businesses employ PwDs in positions suitable for them, accounting for at least 1% of the total employees employed. At the same time, Thailand has a separate tax collection policy for businesses that want to avoid employing PwDs. Japan stipulates that each enterprise must accept 1.8% of employees who are PwDs out of its total payroll [8].

Several national socio-economic development strategies (such as Vietnam's sustainable development strategy 2011-2020, strategy for international integration of labour and society to 2020, and vision for 2030) still need to pay attention to the employment issue for PwDs. Therefore, the national socio-economic development plans and strategies issued in the coming time should pay more attention to PwDs.

Regarding culture, sports and access to public works, 45/63 provinces and cities nationwide have the physical training and sports movements for PwDs, of which 30-35 provinces and cities regularly operate. Verification and appraisal of new construction projects in recent years revealed that 95% of apartment buildings are assessed as ensuring access to use, 80% of educational, medical, and cultural works, commercial offices and headquarters guarantee accessibility standards for PwDs and 85% of technical infrastructure works qualify to access and use by PwDs [9]

However, only some traffic works are guaranteed for PwDs to walk and need to be improved in the coming time.

Regarding social protection, about 100,000 families and individuals take care of social protection beneficiaries in the community who enjoy monthly social allowances, and millions of PwDs and children with disabilities are raised and cared for in social support establishments. However, the number of PwDs receiving social assistance is still moderate.

According to the Ministry of Justice statistics, after 4 years of implementing the Law on Legal aid in 2017, the legal aid system nationwide has carried out 9,141 cases of legal aid for PwDs having financial destitution, and 2,062 cases participated in legal proceedings. The number of legal aid cases by participating in legal proceedings escalates annually, accounting for a large proportion of the total number of legal aid cases among disadvantaged groups. More than 400 successful and effective legal aid cases for PwDs. In particular, there are cases where PwDs with financial difficulties have been found innocent, have been reduced penalties, or have been adjusted to lesser crimes (in the criminal field) or won lawsuits, protected their legitimate rights and interests (in the civil and administrative fields) [1].

However, some agencies and organisations still need to consider disseminating the right to legal aid. They have yet to inform the State Legal Aid Center about the case of legal aid for PwDs with financial hardship. Therefore, it is required to communicate to raise awareness of the social community about the right to legal aid for PwDs who have financial difficulties in order to create a spread and social companionship.

Conclusion

The State of Vietnam gives PwDs comprehensive incentives in all fields and implements many practical activities. The implementation process has achieved encouraging results, but many limitations still need to be overcome in terms of legal regulations and the law implementation. Therefore, Vietnam should be more active in completing preferential policies for PwDs and improving this policy's effectiveness.

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Ensuring the rights of persons with disabilities towards the value of happiness and conveying humanistic legislative thinking in Vietnam's law

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Abstract:

K. Marx wrote: "The essence of man is no abstraction inherent in each separate individual, but in its reality, it is the ensemble of the social relations". In Marx's view, human is presented by biological factors and social factors, but social factors are predominant. Based on such a starting point, when looking at any society, PwDs can always make valuable contributions. On the other hand, recognition is an important element that creates happiness for PwDs and society. Compared with other disadvantaged groups such as women, children, and the elderly, PwDs have received great attention from the Government of Vietnam from a very early age. This is clearly shown in forming a legal system for PwDs since the 1990s. In 2014, Vietnam ratified the CRPD, marking a step forward in implementing human rights in general and the rights of PwDs in particular. This is evidence of the "populist" nature and humanistic legislative thinking in Vietnamese law towards equity and equality. However, as the number of PwDs in Vietnam tends to increase, identifying problems and determining influencing factors are necessary to develop appropriate policies to ensure their rights in the future. This paper proposes some viewpoints and solutions to ensure the rights of PwDs towards happiness in accordance with the humane legislative thinking of Vietnamese law.

Keywords: PwDs; ensuring rights; legislative thinking; happiness; humanity.

1. Introduction

Vietnam has a history of ups and downs in fighting against foreign invaders and defending the Fatherland. This has created the culture's humanity and become an important foundation for forming a unique superstructure. Humanism is also clearly expressed in legislative thinking throughout the laws from the feudal period to the present. In particular, stemming from that humane legal thinking, the disadvantaged groups in society have always been given great importance. Recognising and ensuring the rights of disadvantaged groups, including PwDs, towards the true value of happiness is a prominent feature in the legal system of Vietnam.

PwDs, especially those whose disabilities were left by the war, are inseparable from the Vietnamese community. They are respected for their contributions to the struggle for national independence and their unyielding spirit of being "disabled but not useless". More than anyone else, it is PwDs that show the strong spirit of Vietnamese people.

The Party and the State of Vietnam have had sound and timely policies to ensure human rights for PwDs in various fields of social life such as culture, education, health care and administration. However, more importantly, affirming their value in the development of society needs to be properly recognised by themselves and the whole community. Facilitating mechanisms from the state in ensuring the rights of PwDs is only necessary to partially compensate for their disabilities so that they can access equal development opportunities. Awareness of PwDs and the community about the value of PwDs to society is a sufficient condition and an important basis for enjoying the true value of happiness.

Vietnam's legal system on PwDs, including the 2013 Constitution, which has the highest legal value, and other laws such as the Law on PwDs, the Law on Education, and the Labor Code are developed on the basis of that humanistic philosophy; thereby forming a set of regulations to ensure the rights of PwDs comprehensively.

2. Humanistic legislative thinking of Vietnamese law in ensuring the rights of PwDs

Vietnamese law is developed on the basis of national cultural traditions, imbued with many profound values, including humanitarianism. Looking back at the legal history of Vietnam, it can be seen that even feudal laws such as the “Quoc Trieu hinh luat” (the penal code compiled under the reign of King Le Thanh Tong) and “Hoang Viet luat le” (the penal code compiled under the reign of King Gia Long), although aimed at defending the dominant position of the ruling class (the King and mandarins of the feudal state at that time) but still showed a deeply human nature.

Since the establishment of the Democratic Republic of Vietnam, the modern legal system has been formed and developed in the socialist direction, showing even more humanistic legislative thinking of Vietnamese law.

In particular, the law on the rights of PwDs in Vietnam is associated with the respectable history of the two resistance wars against France and the US. Many PwDs in Vietnam are wounded and sick soldiers returning from the war. Previously, in society as well as in legal documents, there was still a difference between the terms “person with disabilities” and “person disabilities” based on the origin of the disability (congenital disability or disability caused by other factors). However, after introducing the Law on PwDs in 2010, the term “person with disabilities” has been used uniformly for all cases, regardless of the origin leading to the disability.

The humanistic legislative thinking in ensuring the rights of PwDs in Vietnam is reflected in the following aspects:

Firstly, the legal system that guarantees the rights of PwDs was formed very early.

Compared with the law for other disadvantaged social groups, such as women, children and the elderly, the law on PwDs was formed very early. The Law on Gender Equality was promulgated in 2006; the Law on Child Protection, Care and Education in 2004 (currently the Law on Children 2016); the Ordinance on the Elderly was promulgated in 2000 (currently the law on the Elderly 2010). Meanwhile, legal documents protecting PwDs have existed since the 1990s, including the Ordinance on Incentives for revolutionary activists, patriotic martyrs and martyrs’ families, wounded soldiers, sick soldiers, activists under resistance wars, and people who contributed to the Vietnamese revolution (August 29, 1994) and the Ordinance No. 06/1998/PL-UBTVQH10 issued by the National Assembly Standing Committee (July 30, 1998).

At the international level, Vietnam has also participated in the conferences of the member states of the International CRPD. At the United Nations Human Rights Council, Vietnam hosted a seminar on job creation and a favourable working environment for PwDs as a sideline of the 31st session (March 2016). In addition, Vietnam has also contributed effectively to regional and inter-regional forum discussions on PwDs. Within the framework of the Association of Southeast Asian Nations (ASEAN), Vietnam has actively participated in the regional policy-making process and implemented joint activities in the field of rights of PwDs. These include drafting and implementing the ASEAN Charter, the Bali Declaration on enhancing the role and participation of PwDs in the ASEAN community, and the Mobilisation framework of the ASEAN Decade of PwDs (2011-2020).

After signing the CRPD in 2007, Vietnam officially ratified the Convention in 2014. With this, Vietnam has committed to comply with the guarantees of social security rights of PwDs concerning living standards, adequate social welfare, health care, rehabilitation, education, labour and employment of PwDs. Vietnam does not reserve any article of the CRPD; therefore, all rights of PwDs under the Convention have been recognised and applied immediately after Vietnam ratified the Convention.

In recent years, the basic foundation of the legal system on the rights of PwDs in Vietnam has been built. The 2013 Constitution has the highest legal value in protecting human rights in general and the rights of PwDs in particular. On the basis of Article 34 of the 2013 Constitution about “citizens’ right to social security”, the National Assembly has promulgated as well as amended many legal documents to protect human rights in general and social security rights of PwDs in particular, such as Law on PwDs, Criminal Code, Civil Code, Labor Code, Law on Social Insurance, Law on Health Insurance, and Law on Vocational Education... Among them, The 2010 Law on Persons with Disabilities (amended in 2013) recognised the right to social security of PwDs, equal participation in social activities, independent living, and community integration. This law also stipulates the responsibilities of the state, family and society towards PwDs.

In implementing the Law on PwDs, the government issued Decree No. 28, dated April 10, 2012, along with guiding circulars detailing the implementation of several articles of the Law on PwDs to bring practical benefits to PwDs. Recently, the Secretariat of the Party Central Committee emphasised: “Strengthening the leadership, directing, inspecting and supervising role of the Party committees and organisations in the implementation of the Party's guidelines and the state's policies and laws on PwDs; supporting and creating conditions to promote the capabilities of PwDs and organisations of PwDs to perform their representative role well and to act as a bridge between PwDs and the Party and State; ensuring a close and reasonable combination of economic development, cultural and social development, social progress and justice promotion towards a society with no barrier for PwDs”¹.

Secondly, Vietnamese law prohibits stigma and discriminatory acts against PwDs.

The 2010 Law on Persons with Disabilities (amended in 2013) prohibits stigma and discriminatory practices against PwDs, including contempt for PwDs on the basis of their disabilities, acts of alienation, denial, ill-treatment, defamation, prejudice or restriction of the rights of PwDs because of his or her disability.

On the basis of the concepts outlined in The 2010 Law on Persons with Disabilities (amended in 2013), relevant specialised laws such as the Labor Code, the Law on Medical Examination and Treatment, the Law on Vocational Education and the Law on Education also have regulations on treatment for PwDs in the respective fields.

Vietnamese law also imposes strict sanctions on acts that show stigma or discrimination against PwDs. Specifically, it is stipulated to give a fine ranging from VND 3,000,000 to VND 5,000,000 for acts of discrimination against PwDs; obstruction of the lawful marriage and child custody rights of PwDs; preventing PwDs from living independently and integrating into the community; preventing PwDs from participating equally in social activities; preventing PwDs from exercising their right to access information technology². If the subject of the violation is an organisation, the fine will be doubled.

Just like normal persons, PwDs are also legally defined as having human rights as well as the basic rights of citizens. They are treated equally by law when participating in social activities without stigma and discrimination from society.

Thirdly, a system of social security policies has been developed, facilitating PwDs in contributing to and enjoying socio-economic development achievements.

Vietnam has built a legal system for PwDs to create equality and favourable conditions for them to have a stable life and opportunities to enjoy socio-economic development, contribute and assert their position in society.

In order to promote the guarantee of the rights of PwDs, Vietnam has established the National Committee for PwDs under Decision No. 1717/QĐ-TTg dated October 6, 2015, of the Prime Minister. The Committee has 18 members representing central ministries and agencies. On June 21, 2016, the Prime Minister also issued Decision No. 1100/QĐ-TTg, approving the Implementation Plan of the United Nations Convention on PwDs. Then, many provinces and cities have also established Provincial-level Committees for PwDs and developed plans to implement the Convention at the provincial level.

Regarding living standards and social protection, the 2013 Constitution affirms that citizens have the right to social security. The state is responsible for creating equal opportunities for citizens to enjoy social welfare and developing a social security system that includes PwDs.

Under Vietnamese law, PwDs are one of the groups that are eligible for social protection. They are issued a disability certificate stating the type of disability and the extent of the disability. The government guarantees a monthly social allowance and grants a health insurance card to persons with severe disabilities and persons with profound disabilities living in the community. The government also provides monthly allowances for those who agree to care for PwDs. Older persons and children with severe or profound disabilities will enjoy a higher allowance. In addition, the government provides monthly care stipends for households whose persons with profound disabilities, persons with severe or profound disabilities who are pregnant or raising children under 36 months of age. The social allowance level is adjusted to suit each period³. Persons with profound disabilities who have no support and cannot care for themselves will be admitted and cared for by social protection facilities.

There are also measures to ensure that PwDs have access to other services and supports, including programs to assist PwDs in education, health, transportation, science and technology. Vietnamese law also identifies PwDs as priority subjects in the policy of social housing support⁴. Accordingly, PwDs are always given priority to buy or rent apartments in social housing development projects of the central and local governments.

Regarding medical care, The 2010 Law on Persons with Disabilities (amended in 2013) stipulates that PwDs are entitled to primary health care at their places of residence with health insurance policies, including medical examination, treatment, and use of appropriate medical services. Persons with severe or profound disabilities, children with disabilities, the elderly with disabilities, and pregnant women with disabilities are given priority in medical examination and treatment. The 2009 Law on Medical Examination and Treatment also stipulates the right to receive a quality medical examination and treatment suitable to the actual conditions of patients, regardless of PwDs or persons without impairment.

Vietnam has also established a system of providing central and local rehabilitation services regarding operational support and rehabilitation. The main level is a rehabilitation hospital and centre - Bach Mai Hospital. All central general hospitals have rehabilitation departments. There are 61 hospitals/rehabilitation centres at the provincial level, while 90% of provincial general hospitals and 50% of provincial specialised hospitals have rehabilitation departments. At the district level, this figure is 75%. At the commune level, there are health workers specialised in rehabilitation⁵.

Rehabilitation programs for PwDs have also been widely deployed. By 2016, 51 out of 63 provinces and cities of Vietnam had implemented community-based rehabilitation programs. The main activities include surveying the needs of PwDs, providing rehabilitation services at home and in hospitals, and making health records for PwDs⁶.

Regarding education, Article 39 of the 2013 Constitution stipulates that citizens have the right and obligation to study. According to Article 10 of the 2005 Law on Education (amended in 2009, 2014, 2015): “All citizens, regardless of ethnicity, religion, belief, sex, family origin, social status, and economic circumstances, are equal in terms of learning opportunities”. The 2010 Law on Persons with Disabilities (amended in 2013) stipulates that PwDs, their parents or guardians can choose education methods suitable to their individual development of PwDs. Families are responsible for creating favourable conditions and opportunities for PwDs to learn and develop their abilities.

Vietnamese law prescribes separate policies to ensure the right to education of PwDs. To illustrate, PwDs can enrol at a higher age than those specified for general education. They are given priority in enrollment and exempted from several subjects unsuitable for their ability to study. They are not only exempted or reduced in tuition or training costs but are also provided with means and materials to support their study in case of need. As for children with disabilities, there are two parallel education systems, including inclusive and special education, in which inclusive education is key. PwDs study in a special education mode at a special education institution according to a special education program prescribed by the Ministry of Education and Training for each type of disability. The state pays much attention to special schools and ordinary schools admitting blind students by providing teaching equipment such as pictures, braille books, audio-visual aids, and an abacus to make it easier for students with disabilities to learn.

According to the Report on the Implementation of the International CRPD issued by the Ministry of Education and Training on December 27, 2016, Vietnam has established a system of centres supporting the development of inclusive education in 20 provinces and cities. In addition, there are 107 special education institutions and 12 education centres for children with disabilities. Vietnam has also applied inclusive education at all levels of schooling. The number of children with disabilities attending school in Vietnam has increased tenfold over the past two decades⁷.

Regarding labour and employment, The 2010 Law on Persons with Disabilities (amended in 2013) stipulates that the state is responsible for ensuring that PwDs receive free vocational training advice, decide on career choices and participate in vocational training on an equal basis with others. The state creates conditions for PwDs to restore their working functions and get jobs suitable to their health and characteristics. Article 8 of the 2019 Labor Code prohibits discrimination in labour. More importantly, the Labor Code has a separate section (Section 4) which directly regulates employees with disabilities. Accordingly, the state protects the labour rights and self-employment rights of employees with disabilities; adopts appropriate incentive policies for employers in creating jobs for PwDs or accepting employees with disabilities to work in accordance with the law on PwDs. Employers must ensure working conditions, working tools, occupational safety, hygiene, and periodic health checks for employees with disabilities. Employers must consult employees with disabilities when deciding on issues related to their rights and interests. At the same time, the code stipulates that it prohibited acts when employing PwDs. Specifically, it is not allowed to employ persons with slight disabilities but having a working capacity reduction of 51% or more; to ask persons with severe or profound disabilities to work overtime or work at night unless employees with disabilities agree. It is also prohibited to employ PwDs to do heavy, hazardous and dangerous jobs according to the list promulgated by the Minister of Labor, War Invalids and Social Affairs without the consent of PwDs (the employer must provide complete information about the job).

Regarding community integration, the 2013 Constitution and The 2010 Law on Persons with Disabilities (amended in 2013) both recognise the right to live independently and integrate into the community of PwDs. Vietnam implements social security policies to ensure a minimum income for PwDs and to support their access to essential social services. PwDs, who are in extremely difficult

circumstances, unable to take care of themselves and have no guardians, may be admitted to social support establishments. Currently, Vietnam has 432 social support establishments, of which 67 specialise in nurturing and caring for PwDs. The total number of PwDs fostered in social support establishments is estimated at nearly 20,000 people⁸.

In 2009, the independent living program was piloted in Vietnam by establishing the Hanoi Independent Living Center. This program has been implemented in 5 provinces and cities of Vietnam. The program has provided persons with severe disabilities with the knowledge and skills necessary for independent living, peer counselling, and personal help. The personal mentors themselves are also trained to assist persons with severe disabilities.

3. Ensuring the rights of PwDs towards the value of happiness in the future in Vietnam

3.1. Improving the legal system to ensure the rights of PwDs

The current legal system of Vietnam already includes many provisions on the rights of PwDs. However, there are still certain gaps between Vietnamese law and international law. In practice, some rights of PwDs have yet to be fully and effectively guaranteed.

Therefore, it is necessary to review national laws to ensure compatibility with the 2007 International Convention on PwDs, helping PwDs better integrate into the community. In particular, there should be amendments to mechanisms and policies on vocational training and job creation, as policies for employees working in support of PwDs, to develop the workforce of social workers to help PwDs. In addition, it is recommended to research and develop several laws related to ensuring the rights of PwDs, such as the Law on Social Work, the Law on Social Assistance, and the Law on Mental Health. In addition, it is necessary to ensure an effective mechanism to enforce the social security rights of PwDs. For example, it is essential to develop and strictly implement sanctions to ensure that PwDs can access means of transport. Free or discount fares can also be applied to PwDs when participating in traffic.

3.2. Creating conditions for PwDs to actively exercise their human rights actively, thereby affirming their role in society

To gain a place in society, PwDs need practical activities to participate in socio-economic development. In order to do so, the state needs to have plans to promote the roles and responsibilities of each sector, level of government, mass organisations and the general public in synchronously implementing activities to assist PwDs and create conditions for them to access and participate in social activities. It is also important to note that solutions and programs to assist PwDs must be carried out persistently, regularly, with a clear focus, and in accordance with the functions and tasks of each sector and locality.

The approach to supporting PwDs needs a radical change, moving from humanitarian and charitable assistance to development-oriented assistance, which emphasises creating motivation for the development of PwDs. PwDs should be recognised equally as other social subjects in formulating and implementing socio-economic development policies. They also have the right to dedicate and contribute to the country's development. Disabilities in different forms are obstacles preventing PwDs from participating in socio-economic development activities. This psychological barrier makes PwDs inactive in community activities, not to mention stigma and discrimination in society. Their economic and social activities participation still needs to be improved because of PwDs and other objective

factors. Incentive policies can only partially offset the limitations caused by disabilities, helping PwDs confidently participate and contribute like other ordinary people.

PwDs, in many cases, have higher needs than those without disabilities, especially regarding the need for respect and self-actualisation. These are the two highest needs in human psychology (according to Maslow's Hierarchy of Needs theory). PwDs have stable self-esteem. They require respect, social status, recognition, reputation, prestige, and attention. They also require self-actualisation, creativity, demonstrating abilities, performing, and recognition as successful persons.

3.3. Changing attitudes and perspectives from society is the basis for creating happiness for PwDs

Despite great achievements and advancements in medicine, culture, science and technology, the number of PwDs is forecasted to continue to increase due to various reasons such as population ageing, poor health conditions, chronic diseases and non-contagious diseases, poor sanitation, lack of clean water, and lack of facilities for health care.

PwDs are considered one of the largest minorities in the world and also one of the most vulnerable groups. Due to their disabilities, they suffer disadvantages in all aspects, such as poorer health, lower education attainment, lower economic participation, and a lower standard of living than persons without disabilities. PwDs are sometimes considered “dangerous”, “unusual”, and “special”; therefore, they are treated separately (they are sent to social or medical establishments for care or have to study in specialised educational institutions... Whether in the family, school or community, PwDs are often ignored and discriminated against at different levels. Their image in the media is often “distorted” through pitiful images. In most cases, they appear as objects of charitable activities instead of being the subject of human rights.

The protection and support given to PwDs have always been based on a compassionate and humanitarian approach, not on the perception that they are subject to human rights like everyone else in society and that the state, as well as the community, should respect and ensure the implementation of the rights of PwDs, such an approach tends to backfire. It prevents PwDs from effectively integrating into all aspects of social life equally with others.

However, it must be acknowledged that disability is not only a humanitarian or charitable issue but also an economic, social and legal issue. The United Nations proclaimed the International Year of PwDs in 1981, adopted the World Program of Action concerning PwDs in 1982 to achieve a society for all by 2010 and the United Nations Decade of PwDs 1983-1992. These are important landmark events in awareness and action about PwDs, which have attracted global attention to the situation and needs of PwDs and motivated international organisations, regional organisations and nations to take action. To enable PwDs to participate in social life fully, it is necessary to recognise the right of all people, and PwDs should have equal opportunities with others. They must be respected and considered active members of society.

Conclusion

PwDs are human rights subjects and should be treated equally to others in society. However, disabilities have inadvertently created barriers that prevent them from enjoying basic human rights, especially the right to pursue happiness. Happiness is the feeling that each person feels under countless subjective and objective factors. Disability cannot be changed, but it should not be used as an excuse for pity from oneself or others. Instead, the happiness of PwDs is the affirmation of their value through their contributions to society and the recognition from the community for those contributions.

Vietnamese law is based on humanistic legislative thinking, imbued with humanitarian traditions and love for people, especially the disadvantaged. Recent achievements in ensuring the rights of PwDs,

including the building, amendment and improvement of the legal system and the implementation of socio-economic policies, clearly show this.

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Laws and mechanisms for exercising the rights of persons with disabilities toward modern national governance in Viet Nam today

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Abstract: Vietnam currently has over 7 million PwDs, accounting for 7.8% of the population. Vietnam has joined the CRPD and has issued many policies and legal documents recognising the rights of PwDs. The rights of PwDs and international commitments are realised when mechanisms to ensure rights implementation work effectively. The article mentions the current status of regulations, enforcement, and mechanisms to ensure the rights of PwDs and the difficulties, limitations, causes and challenges. From there, some urgent and long-term sustainable solutions are proposed to continue to improve the legal framework, expand, protect, and better implement the rights of PwDs from the perspective of an integrated approach combined with the strategic policy of socio-economic development of the Party and State in the current period.

Keywords: The rights of PwDs; implementation mechanism; legal improvement, modern national governance

1. Context of the rights of PwDs in Vietnamese law

The rights of PwDs, are natural and objective human rights recognised and protected by national and international laws because they are the most vulnerable to disability. Thus, they have to suffer disadvantages and discrimination in all aspects of social life. The international community has defined a system of standards and principles for the conduct of PwDs from the basic guarantee of human rights. International documents on human rights with content directly related to PwDs have been developed, such as ILO Convention No. 111 on Discrimination in Employment and Occupation (1958); ILO Convention No. 159 on Occupational Rehabilitation and Employment for Persons with Disabilities (1983); Convention No. 168 on Employment Promotion and Unemployment Prevention (1988); United Nations CRPD 2006 (entered into force in 2008)... and regional documents related to PwDs such as the European Commission's Consistent Policy on Occupational Rehabilitation for PwDs (1992); “Biwako Millennium Framework for Action” (BMF) towards an inclusive, unconstrained society for the rights of PwDs in the Asia-Pacific. To protect the rights of PwDs, promote the responsibilities of countries and the international community in supporting and helping PwDs, removing all barriers, and create opportunities for PwDs to integrate into the community, the CRPD with a progressive and equitable view on PwDs from the perspective of recognising and ensuring the full and equitable enjoyment of human rights and civil rights by PwDs is particular. Vietnam is one of over 150 countries that have signed this Convention.

To enhance respect, promote social responsibility, protection, care and help PwDs, the State of Vietnam has recognised in the law [1] every year on April 18 as the Vietnamese National Day of PwDs. Vietnam has signed and ratified the United Nations CRPD, ILO Convention 159 on Employment for PwDs, and committed to implementing programs in Asia - Pacific and ASEAN. This requires Vietnam to legalise committed international documents.

Declaration on the Rights of PwDs and calls for national and international actions “To ensure that it is used as a common basis and frame of reference for the defence of these rights” [2].

In Vietnam, PwDs enjoy all basic civil rights like ordinary people, without discrimination with regard to their disability status, and are given preferential treatment to compensate for their disadvantages, as well as to ensure substantive equality of rights and opportunities as all citizens.

2. The content of the law governing the rights of PwDs and the mechanism for exercising their rights toward modern national governance in Vietnam

2.1. Law on the rights of PwDs

Along with participation in international conventions related to PwDs, the Party and State's care for PwDs is also reflected in the law, initially in the provisions of the Constitution - the state's basic law. The 1946 Constitution, article 14 directly stipulates about PwDs: "Old or handicapped citizens who cannot work, receive help". This constitutional spirit has demonstrated the humanitarian spirit and social responsibility for PwDs of the Democratic Republic of Vietnam from its establishment. By the 1959 Constitution, the rights of PwDs have been affirmed: "Employees have the right to receive material assistance when they are old, sick, or lose their working capacity. The state gradually expands social insurance, rescue and medical organisations to ensure that workers enjoy that right" (Article 32). The 1980 Constitution continued to affirm the provisions on the rights of PwDs and war invalids: "The State implements preferential policies for war invalids and martyrs' families, facilitates war invalids to recover their working function, have a job that is suitable for health, and have a stable life" (Article 74).

The provisions in the 1980 Constitution meant to protect the rights of PwDs continued to be recognised and developed in the content of the 1992 Constitution. "Education is the right and duty of citizens"... "The State and society create favourable conditions for children with disabilities to receive education and appropriate vocational training" (Article 59)... "Invalids, sick soldiers, and families of martyrs are entitled to preferential government policies. War invalids are provided with favourable conditions for labour rehabilitation, having jobs suitable for their health and stable life. People and families with meritorious services to the country are rewarded and cared for. The elderly, PwDs and the orphans without support are helped by the state and the society" (Article 67).

In 2001, the National Assembly promulgated Resolution No. 51/QH10 on amendments and supplements to several articles of the 1992 Constitution, including amendments related to the issue of PwDs in Article 59 using the word "disability" instead of "handicap" - a recognition marking the change, they are properly and respectfully called PwDs, they participate in social relations as equal subjects of human rights, have the right to and duties like all citizens. Based on this change in the Constitution, in 2010, the 12th National Assembly passed the Law on PwDs, replacing the Ordinance on Handicapped Persons in 1998 [3]. These changes uphold the state's position on the role of PwDs in social life because it is the orientation to complete the state's policies and laws towards PwDs to ensure the rights of PwDs, promote their abilities and emphasise their values in social life; stipulate the right to receive legal aid of all PwDs regardless of whether they have support or not (Article 4).

As the Law on PwDs was promulgated, supporting activities for PwDs achieved many positive results, promoting the responsibilities of all levels, sectors, organisations and individuals in supporting and ensuring the rights of PwDs, the equality in the exercise of citizenship, promoting PwDs to develop their capacity, integrate and contribute to the society.

The rights of PwDs are of interest to both the international and Vietnamese communities because PwDs are suffering, are "weaker" in society due to their physical and mental defects and easily encounter obstacles in life and society. The law on the rights of PwDs is not a branch of law in the Vietnamese legal system, but it is closely linked and affects other branches of law in order to create a legal mechanism to comprehensively and effectively protect the rights of PwDs in various fields, expressed through groups of civil and political rights; economic, social and cultural rights and specific rights.

In general, the law on the rights of PwDs is a system of generally compulsory rules of conduct promulgated or recognised by the state to regulate social relations arising in the field of exercising the rights of PwDs in the civil, political, economic, social and cultural spheres and other specific rights.

The law on the rights of PwDs in Vietnam includes the following basic contents: General provisions on the scope of regulation and subjects of application; word interpretation; types and degrees of disability; disability certification, health care, education, vocational training and employment; culture, physical training, sports, entertainment and tourism for PwDs; Housing and public construction, traffic participation, information and communication technology, stipulates the conditions for approving new construction investment designs, the roadmap for renovation of public works in order to ensure accessing and using conditions of PwDs; means of transport and policies and measures to ensure PwDs access to traffic, information and communication technology; Social protection, regulations on social welfare policies for PwDs, families of PwDs, caregivers of PwDs; the policy of concentrated nurturing in care facilities for PwDs; funeral support policy; facilities for PwDs; Responsibilities of state agencies for work related to PwDs; regulations on state management agencies for PwDs and responsibilities of the Ministry of Labor - Invalids and Social Affairs, ministries, ministerial-level agencies, People's Committees of provinces and centrally run cities.

Thus, the legal system on PwDs in Vietnam has been increasingly improved, basically institutionalising the Party's guidelines and policies towards PwDs and having similarities with the International Convention about the rights of PwDs. Among the rights of PwDs, the right to receive free legal aid has been affirmed in legal documents. The rights of PwDs under Vietnamese law recognise the following groups: (i) Basic civil and political rights recognised in the Constitution and laws, including the right to vote and stand for election; the right to freedom of assembly and association; the right to equality; (ii) Economic, cultural, social and specific rights [4]. The basic economic, social and cultural rights of PwDs include the right to health care and rehabilitation; the right to education, labour and employment rights; the right to enjoy cultural values, to access public works and to integrate into the community.

2.2. A mechanism for exercising the rights of PwDs

Although human rights are recognised, there is a need for a protection mechanism. It will be meaningless if human rights “are just provisions on paper; the practical value of laws in general and the law on human rights, in particular, is expressed through regulations applied in real life. The reality will test and evaluate most reasonably the regulations and the ability to protect the state's human rights regulations” [5].

The mechanism to guarantee implementation is understood as “how a process is carried out” [6], and the mechanism for realising the rights of PwDs *is a system of regulations on how to exercise the rights of PwDs.*

Currently, there are many views when discussing the mechanism for implementing the rights of PwDs. There is a view: *“The guarantee of civil and political rights is instantaneous because it does not depend much on guaranteed material resources. Meanwhile, the guarantee of socio-cultural-economic rights can depend highly on economic conditions with development steps commensurate with the country's existing resources”*. According to the general opinion [7] and the author, the rights of PwDs need to be recognised as a unified whole that requires each state to always ensure human rights in all aspects of civil, political, economic, cultural, and social rights.

In addition, regarding the rights of PwDs, the state has the responsibility to organise and effectively implement in practice specific measures to enforce the provisions of the rights of PwDs and the

obligation to achieve outcomes means ensuring that the measures and activities proposed are feasible and effective, not that they are formulated in a formalistic way.

The rights of PwDs will be guaranteed when there is a complete legal system. Completion of laws and mechanisms to ensure the implementation of the rights of PwDs needs a new approach to move from the perspective of social welfare to the perspective of human rights, comprehensive adjustment, create a legal environment and equal opportunity conditions without barriers for PwDs to contribute and sustainably enjoy their rights. However, the current law and mechanism to ensure the rights of PwDs in Vietnam still need to be improved. PwDs are still discriminated against, scorned, abused, and forgotten. The reasons for the above situation are many, including the need for complete legal mechanisms to ensure the implementation of the rights of PwDs effectively. The full and proper recognition of rights and the mechanism to ensure the exercise of rights also aims to define the responsibilities of the state and other actors in the implementation of international human rights conventions as well as the implementation of constitutional regulations, legal documents that the state has put forward which is one of the most requirements at present.

3. The reality of the implementation of the law on the rights of PwDs toward modern national governance in Vietnam

Vietnam has signed to participate in and ratified the conventions and programs of the international community and programs of the Asia-Pacific and ASEAN region, which requires Vietnam to legislate international documents committed to. Most recently, on November 1, 2019, the Secretariat issued Directive No. 39-CT/TW to deepen the Party's leadership in the work related to PwDs.

3.1. The situation of PwDs in Vietnam

The survey results [8] of households showed that 7.06% of the population aged 2 years and older are PwDs, in which the disability rate of children aged 2 to 17 years old is 2.83% and adults are 8.67% [8]. If combined with the results of the general review of PwDs who are permanently residing in centres, the disability rate of the population aged 2 years and above is 7.09%, of which children aged 2-17 are 2.83% (children from 2 to 15 years old is 3.02%) and adults are 8.67%. If including the data source of the total administrative review of PwDs, the total number of PwDs in the whole country is 6,225,519, including 671,659 children aged 2-17 and 5,553,860 people from 18 and above.

The rate of disability tends to increase with age; the rate of women is higher than that of men. In the future, the rate of disability may continue to increase as Vietnam is transitioning to an ageing population and increasing quality of life. According to statistics of the Vietnam National Committee on PwDs, the whole country has about 6.2 million PwDs, accounting for 7.06% of the population aged 2 years and above, of which 58% are female, 28.3% are children, and nearly 29% are heavily PwDs and severely PwDs. As of the end of 2020, nearly 3 million PwDs have been granted disability certificates.

3.2. The reality of exercising the rights of PwDs

3.2.1. Regarding the political and civil rights of PwDs

The Vietnamese Constitution recognises and affirms basic democratic freedoms in the civil and political spheres. PwDs are equal in exercising rights, including the right to vote and stand for election, the right to participate in state and social management, the right to freedom of assembly and association, and the right to equality before the law. All acts violating those rights will be strictly handled according to the law.

PwDs are guaranteed to exercise specific rights: To participate equally in social activities; Live independently and integrate into the community; To be exempted or reduce some contributions for social activities; Receive health care, rehabilitation, cultural studies, vocational training, employment,

legal aid, access to public works, transportation, information technology, cultural, sports and travel services and other services appropriate to the type and degree of disability; Other rights as provided for by law. In addition, PwDs perform their civic obligations in accordance with the law.

Regarding the right to vote, stand for election, and participate in social management: This is one of the most important political rights. Ensuring the right to vote and stand for election for PwDs means that “the State has realised the right to be the owner of PwDs”. The right to vote and stand for election of PwDs is recognised in the Constitutions of 1946, 1959, 1980, and 1992, revised in 2001, and the Constitution of 2013, specified in legal documents and by-laws.

Regarding the right to freedom of assembly and association: For PwDs, this right has significant meaning because when participating in meetings in organisations of and for PwDs, PwDs have the opportunity to communicate with each other to increase the level of social awareness, gain sympathy, share life experiences, work together; create a spirit of solidarity and progress and together protect their rights and obligations, calling for the responsibility of the state, family and society for them.

The current law recognises that organisations of PwDs are [9] social organisations established and operating under the provisions of law to represent the legitimate rights and interests of members who are PwDs and participate in formulating and supervising the implementation of policies and laws for PwDs. Organisations for PwDs are social organisations established and operating in accordance with the law to carry out support activities for PwDs.

Thus, organisations of PwDs can actively contribute to management activities by developing and monitoring the implementation of policies and laws for PwDs. Organisations of PwDs have the right to represent PwDs to ensure this group of subjects' legitimate rights and interests. In formulating policies and legal regulations on PwDs, legislative bodies and policymakers must consult with PwDs, organisations of PwDs are responsible for developing and supervising the implementation of policies and laws towards PwDs to ensure the rights and interests of members of their organisations. Recently, the Vietnam Federation of PwDs has acted as a national organisation of and for PwDs. In 2021, the Union had key activities, carried out law dissemination activities, raised awareness, built capacity for PwDs and developed programs to assist PwDs.

For the rights of PwDs to be effectively implemented, it is necessary to have a mechanism to exercise rights, organise the exercise of rights, demand and require the participation of all individuals, organisations, and the state to respect, protect and promote the rights of PwDs. Among them, the state's obligations to enforce the rights of PwDs include basic obligations: (i) Rights and the obligations of PwDs must be regulated and respected; (ii) Preventing violations of human rights before third parties, taking measures and stipulating mechanisms to prevent and handle violations; (iii) Take measures to ensure, organise the implementation, facilitate and support PwDs to fully enjoy their rights.

3.2.2. Regarding economic, cultural and social rights

The life of a large number of PwDs still faces many difficulties, especially those with persons with profound disabilities. PwDs still need access or have inadequate access to the state's support policies in terms of health, education, vocational training, employment, credit, construction works, transportation, and information technology. The social allowance for PwDs is slowly adjusted. The number of PwDs raised at social protection establishments is small, and the facilities need to be improved. Some officers and people need more awareness, considering the work related to PwDs as humanitarian and charity activities, the responsibility of the labour-war invalids and society. There is still stigma and discrimination against PwDs. In some places, the organisation and implementation of

the law on PwDs still need to be improved and completed. The operational efficiency of some organisations for PwDs is low.

On the other hand, stable jobs for PwDs will allow them the necessary income for their living expenses and reduce their dependence on others. Many PwDs have been tortured, mistreated, taken advantage of, exploited, and insulted by others just because they are dependent and cannot support themselves. In addition, the fact that PwDs participate in labour and contribute to society become more popular, the society's recognition of PwDs will also change, the stigma and disrespect towards them will gradually disappear and *“One one hand, ensure the right to labour and employment, giving PwDs confidence in life, self-improvement, self-affirmation, limiting social discrimination, earning income to cover their own lives, creating a basis for their access to and enjoyment of other rights; On the other hand, it is labour that will help PwDs train themselves in comprehensive rehabilitation to enjoy and contribute”* [10]

Gradually realise the rights of PwDs, promote PwDs to integrate into the community, and fully participate in social activities. It is necessary to realise the state's policy on PwDs *“Integrate policies on PwDs in socio-economic development policies”* [11] into real life.

The state and organisations of PwDs have actively mobilised social resources to ensure the life and living conditions of PwDs in all aspects. In the past time, in response to the Covid-19 epidemic, the Government of Vietnam has paid special attention to protecting vulnerable groups promptly through measures such as *“social support packages, with a total budget of more than 62 trillion VND (equivalent to nearly 3 billion USD) to support more than 20 million people of the poor, PwDs, elderly, and labourers who have lost their jobs, have no income or are reduced income... quickly stabilise life”* [12]

Sources from the State budget “allocated VND 17,517 billion to the localities to implement Decree No. 136/2013/ND-CP and VND 131 billion to implement policies to support education for PwDs. Up to now, the whole country has over 1 million persons with severe disabilities and persons with profound disabilities, about 100,000 families and individuals taking care of social protection beneficiaries in the community are entitled to monthly social allowances in the community and millions of PwDs and children with disabilities are nurtured and cared for in social protection facilities” [13].

Regarding health care, the state has relatively wide recognition through legal regulations in related fields to ensure a comprehensive and complete mechanism for realising the rights of PwDs. A number of laws have been studied, amended and supplemented, such as the Law on Medical Examination and Treatment, which integrates regulations on Rehabilitation and Community-Based Rehabilitation; the Amendment of the Law on Health Insurance to incorporate the scope and coverage of health insurance for PwDs. Vietnam is focusing on assessing the status of Vietnam's Rehabilitation system in order to *“determine the current situation and develop a plan for the development of the rehabilitation network and a national strategy for rehabilitation development in the 2021-2030 period”* currently there are 50 provinces and cities have implemented the Community-Based Rehabilitation Program, of which 18 provinces have implemented in all districts and communes.

Regarding education, the Ministry of Education and Training directly leads, guides, supports and supervises localities to increase access to quality, equal and friendly education for PwDs, to pay special attention to mobilising children with disabilities to go to school and improving the quality of inclusive education for children with disabilities. According to incomplete statistics of ministries, branches and localities, in 2019, the country enrolled about 20,000 PwDs at the elementary level in under 03 months.

Regarding jobs, jobs have been created for about 1,508 million workers, of which about 10% are PwDs. Implementing the Government's Decree No. 61/2015/ND-CP dated July 9, 2017, on the Credit Program for job creation, the Bank for Social Policies implemented the Credit Program for job creation, including preferential loans for PwDs, small and medium-sized enterprises, cooperatives, cooperative groups, and business households that employ many PwDs. In 2019, 2,277 PwDs got loans to create, maintain and expand jobs. The Vietnam Blind Association 2019 alone was assigned nearly 51 billion VND to deploy in 51 provinces and cities for nearly 10,000 blind households and create stable jobs for over 13,000 Employees with disabilities. Currently, there are 359 establishments, 236 massage establishments and 123 craft production facilities.

In terms of society, in 2020, positive innovations in communication activities in terms of content, methods, objects, and time brought many substantive effects in raising awareness and creating widespread in society regarding the issue of PwDs; reduced social prejudices about the capacity of PwDs, promoted positive changes in care, education and vocational training, create livelihoods so that PwDs can control their lives; social barriers are gradually reduced; the rights of PwDs are more and more guaranteed; Agencies and units have tried to implement regulations to support PwDs.

The National Committee has advised the Prime Minister to issue a plan to implement Directive 39 of the Secretariat and the Program to assist PwDs in 2021-2030.

Activities to support the lives of PwDs are especially focused. Continuing in 2020, the state budget has allocated 17,696 billion VND for localities to implement Decree No. 136/2013/ND-CP dated October 21, 2013, the government and 374 billion VND to implement educational support policies for PwDs and more than 39,000 PwDs were granted health insurance cards, free medical examination and medicine for 207,000 turns of PwDs. The number of rural workers who are PwDs receiving vocational training is 3,000. The Vietnam Blind Association has been allocated more than 51 billion from the central funds and 40 billion from local sources to deploy in 51 provinces and cities for nearly 10,000 blind households, creating stable jobs for over 13,000 Employees with disabilities. In addition, PwDs participating in public transport are exempt from 25% to 100% of fares. 100% new design or renovation works ensure access to use by PwDs. [14]

3.3. Success, limitations and causes

3.3.1. The success achieved on the rights of PwDs

The State of Vietnam always cares and creates favourable conditions for PwDs to exercise basic human rights. The Party's resolutions have been institutionalised into law, and Vietnam has domesticated the principles and standards on the rights of PwDs in the International Conventions on Human Rights and the Rights of PwDs of which Vietnam is a member; inherited, developed, supplemented and amended them towards more and more complete; rights are viewed from the perspective of accessing rights and the mechanism to ensure the rights of PwDs have real efficiency. Especially recently, Directive No. 39-CT/TW, dated November 1, 2019, of the Secretariat on strengthening the leadership of the Party in the work of PwDs, has been grasped thoroughly, propagated and implemented.

The political, civil, economic, cultural, social and operational rights of PwDs have been implemented comprehensively, synchronously and proactively with the attention and promotion of responsibilities of Committee members, ministries, branches, localities and relevant organisations. Barriers to society, traffic, travel, and information have been removed step by step, creating favourable conditions for PwDs to have easier access. Positive innovations in communication activities in terms of content, methods, subjects, and timing have brought substantive effectiveness in raising awareness and creating a widespread in society about the issue of PwDs; reduced social prejudices about the

capacity of PwDs, promoted positive changes in care, education and vocational training, livelihoods creation so that PwDs can control their lives; social barriers are gradually reduced; the rights of PwDs are increasingly guaranteed. Some outstanding results can be seen [15].

In order to ensure an effective mechanism for the implementation of the rights of PwDs, it is Firstly necessary to have a system of legal documents to guide and organise law enforcement: the National Assembly has passed 03 Laws which integrate regulations to protect the rights of PwDs such as the Law on Mediation and Dialogue in Court, the Law on Investment and the Law on Residence; studied and amended the Law on Medical Examination and Treatment, including regulations on rehabilitation and community-based rehabilitation; amended the Law on Health Insurance, including the provision to increase the scope and coverage of health insurance payments for PwDs in 2020. The Prime Minister has issued 04 Decisions, remarkably Decision No. 753 /QD-TTg dated June 3, 2020, Promulgating the plan for the implementation of Directive No. 39-CT/TW dated November 1, 2019, of the Secretariat of the Party Central Committee; Decision No. 1190/QD-TTg dated August 5, 2020, approving the program to assist PwDs between 2021 and 2030.

Regarding communication activities, many communication programs were implemented, including raising social awareness about PwDs, such as the program “Vietnam today” on the VTV1 channel with sign language interpretation. The Ministry of Health has issued communication materials on Covid-19 epidemic prevention for PwDs, and video documents using sign language interpreters for PwDs.

Health care or access to transportation has noticeable change: There are ticket gates with priority for PwDs at bus stations and convenient seating arrangements for PwDs, Departments of Transportation in some localities are continuing to call for the socialisation of investment in bus shelters and renovating bus shelters, for example, Quang Tri Department of Transportation invested in new construction and renovation of 03 bus shelters, Quang Nam Department of Transportation conducted a pilot study of 01 bus route to improve infrastructure and bus access; Thanh Hoa Department of Transportation is approving the investment of 30 bus shelters. There have been 13/22 airports nationwide that have equipped vehicles and equipment for passengers needing special assistance. Vietnamese airlines have issued and implemented procedures to serve passengers with disabilities. The Ministry of Construction in 2020 has completed an investigation report surveying constructions that do not meet the requirements of QCVN 10:2014/BXD to propose solutions to help PwDs access apartment constructions, public works, roads and sidewalks.

Activities for Women with Disabilities of the Central Committee of the Vietnam Women's Union are many, notably the organisation of a contest for women with disabilities, “Creative Start-ups – Successful Connections”, with 32 idea proposals across 03 regions in the country. Through many rounds of competition, 02 projects of women with disabilities entered the final round of the women's start-up contest in 2020, with 01 project winning the pioneer award and 01 winning project on technology application to help women with disabilities in adaptation and environmental protection.

3.3.2. Restrictions on the rights of PwDs in the law

The implementation of policies to assist PwDs still faces some limitations, such as:

The progress of elaborating and promulgating legal documents to amend, supplement and address problems and shortcomings still needs to be improved.

Barriers to traffic and travel are still one of the most difficult problems to overcome, especially in rural areas where it is difficult to guarantee a roadmap to ensure access to traffic and public works according to regulations of the Law on PwDs.

The certification and issuance of disability certificates for people with mild disabilities have achieved minor results. Social allowances for PwDs are still small. The number of PwDs receiving help from social assistance facilities is still small.

The establishment of organisations of PwDs in some localities is difficult as there is no participation of representatives of PwDs associations at commune and ward levels, which affects the issuance of disability certificates at the commune level.

There are still many PwDs who still need to receive vocational training and loans to develop production.

Compliance with construction regulations and standards needs to be more thorough. There are still many inappropriate points, such as the location and form of emergency stairs, the form and height of the safety railing, the slope of the ramp to ensure access for PwDs, common toilets, and seating arrangements for PwDs.

The establishment of organisations of PwDs in some localities is still difficult, so there is no participation of representatives of the Association of PwDs at the commune and ward levels, thus affecting the activities of issuing disability certificates at the commune level.

Activities of inspecting and examining the compliance of regulations and handling violations of construction work that do not ensure access have yet to be focused on and lack deterrence.

3.3.3. Causes of success and limitations

In general, the current law on the rights of PwDs is not stable, and there is a lack of punitive regulations; there are still many regulations that lack specificity, which becomes barriers to the access and enjoyment of the rights of PwDs; there are still many principles and strategic regulations that lack detailed and specific regulations, making it difficult to implement and apply.

State agencies need to do better in their responsibilities towards PwDs, such as a lack of interest in some ministries, branches and localities. In general, the awareness of society and competent state agencies in law promulgation, of PwDs themselves about the rights of PwDs, and of the law on the rights of PwDs is still inadequate; slow to conduct a comprehensive and scientific review and assessment of the law on the rights of PwDs. Coordination between state agencies still needs to be improved, and more cooperation and timeliness in supplementing and amending legal documents on the rights of PwDs. The state management mechanism to ensure the rights of PwDs still needs to be more consistent, scattered and divided among sectors. The work related to PwDs is still considered the responsibility of the Labor, War Invalids and Social Affairs sector alone, so there is no plan to implement policies to support PwDs annually, and for the whole period, there are no solutions to realise the goal of assisting PwDs under their state management responsibilities; Some localities have not yet established a Working Group for PwDs, or have set up a formalistic operation.

Awareness of social and civic responsibilities regarding the rights of PwDs is not adequate, and there are still many places where discrimination, unfair and equal treatment of PwDs occurs.

4. Solutions to improve the law on the rights of PwDs and the implementation mechanism on the rights of PwDs toward modern national governance in Vietnam

4.1. Completion direction

Currently, the Government of Vietnam has always identified people as both the goal and the driving force of development; all policies and guidelines of the State of Vietnam are towards making “prosperous people and a strong, democratic, equitable, and civilised country”, taking the people as the centre to meet the legitimate needs of the people better.

The law and mechanism to ensure the implementation of the rights of PwDs towards sustainable, effective and feasible development, ensuring resources and good conditions. It is needed to be integrated with policies, strategies and plans for social-economic development in many fields of the Party and State, on the basis of the development perspective *“Maximising advantages of regions; harmonious development between economy, culture, society, environmental protection and adaptation to climate change; paying attention to and creating favourable conditions for policy beneficiaries, people with meritorious services, the poor, the disadvantaged, and ethnic minorities”* [16].

Raise awareness and responsibilities of all levels of Party committees, party organisations, agencies, organisations and people in implementing the Party's guidelines and views, the state's policies and laws on assisting PwDs;

Strengthen the effectiveness and efficiency of state management in implementing policies and laws on PwDs; promote the roles and responsibilities of the Vietnam Fatherland Front, socio-political organisations and social organisations towards organisations of PwDs.

Additionally, associations and unions should have many practical support activities for PwDs, such as vocational training, job creation, subsidies, and gift-giving.

In addition, the Government of Vietnam is always consistent in its declaration and acts together with countries in Asia and all countries in the world, affirming that *“no human rights violation can be justified”* [17] and *“promote universal respect, realisation and protection of all human rights and fundamental freedoms for all”* [18].

4.2. Solutions to improve the law and the mechanism for exercising the rights of PwDs in Vietnam today

Raise awareness of the law on PwDs, strengthen the propaganda and dissemination of policies and laws on PwDs in general, and social protection throughout the province, including reviewing and identifying disability types and levels of disabilities; organise guidance, training, discussion and answer a number of difficulties and obstacles in implementation so that the law enforcement team can understand and grasp to implement policies for social protection beneficiaries properly.

Support activities for PwDs still need help regarding transportation access, basic social services, and staff capacity. In the coming time, competent agencies need to focus on reviewing and evaluating projects to advise on the development and submission of schemes and programs in the coming period; organise to thoroughly grasp, propagate and develop a plan to implement the Directive of the Secretariat on strengthening the leadership of the Party in the work of PwDs in order to create profound changes in awareness and responsibility among cadres, party members, employees and all classes of people on the work of PwDs. Intensify inspection of activities to assist PwDs in a number of ministries, branches and localities.

Organise the understanding, propaganda and implementation of Directive No. 39-CT/TW of the Secretariat on strengthening the leadership of the Party in the work of PwDs in order to create profound changes in awareness and responsibilities among cadres, party members, civil servants, public employees and the people in the work of PwDs.

Review the system of legal documents related to PwDs to promptly amend, supplement and overcome obstacles and inadequacies in accordance with the reality of the country and the United Nations CRPD. Further, promote the implementation of the UPR cycle III recommendations that Vietnam accepts.

Evaluate and summarise the implementation of the Law on PwDs, thereby amending and supplementing the Law on PwDs in accordance with current socio-economic conditions.

Build and implement substantively, creating jobs for PwDs: livelihoods; starting a business; vocational training associated with job placement in enterprises, production and business establishments; provide vocational training associated with livelihoods for PwDs; community-based rehabilitation to effectively promote the rights of PwDs.

Renovate communication work and foster the propaganda and dissemination of the International CRPD, policies and laws on PwDs in diverse forms suitable for different audiences.

Intensify inspection and examination of activities of assisting PwDs in a number of ministries, branches and localities; organise thematic inspection and examination of the implementation of national technical regulations on the construction of works to ensure access to use by PwDs.

Be devoted and responsible for implementing cooperation on PwDs with bilateral and multilateral partners in the region and the world, bolster coordination activities, and share information with development partners in the field of disability; To strengthen international cooperation in legislation on the rights of PwDs to learn from experience and to take advantage of resources for the study, formulation and application of the law.

Conclusion

Perfecting the law on PwDs and the mechanism for exercising their rights is an objective need to satisfy the needs of life in general and of PwDs, to create a stable, comprehensive, feasible and effective legal environment; raise awareness; to break down barriers and discrimination so that PwDs can exercise and enjoy their citizenship rights; to uphold the social status of PwDs, encourage and create mechanisms for PwDs to contribute, study, work and enjoy; to continue to responsibly and effectively implement the above requirements and solutions, it is required the collaboration of the state, society and the efforts of PwDs themselves, internal resources and international cooperation on the basis of equality, independence and respect in the field of human rights and the rights of PwDs towards an equal and progressive society. In the current comprehensive Doi Moi, the Vietnamese government has always determined that “people are both the goal and the driving force of development”, and the policies and guidelines of the Party and State of Vietnam are all towards the goal of “rich people, strong country, justice, democracy, civilisation and people-centeredness” to meet the people's legitimate needs better. The achievements in country development have generated material conditions and resources to ensure better people's basic rights and freedoms and PwDs.

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Mapping of United Nations Convention on the Rights of Persons with Disabilities to the Barriers and Rights of persons with disabilities and the Inclusive Sustainable Development Approach

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Abstract:

Being the most ratified convention agreement, the implementation of the CRPD, the structures, committees, documents, and events have contributed tremendously to the period of the UN and disability concerns. These concerns and rehabilitation strategies tailored to the requirements of PwDs with community involvement differ across industrialised and developing nations. Most PwDs live in rural parts of underdeveloped nations, where accessibility, availability, proper utilisation of resources, and cost-effectiveness of rehabilitation services are the main sustaining challenges. It is difficult to assess the research on the burden of disability in developing nations and to execute effective intervention measures as per the current situation. Thus, this study paper will go through a number of problems and difficulties with disabilities, including the types of disabilities and the need for rehabilitation services in developing nations like India. The research paper also makes the following arguments: (a) CRPD framings may encourage individual-level inclusion and accommodation practices, and (b) the normative goals of the CRPD necessitate a more in-depth understanding of the structural and systemic causes of disability.

Key words: Disability, CRPD, WHO, Public Health, Human Rights

1. Introduction

The CRPD 2006 was adopted as a global human rights agreement by United Nations (United Nations, 2006). It was widely acknowledged that collecting a sizable number of principles and rights is rooted in human rights legislation (United Nations General Assembly, 2015) [1]. The complete range of human rights, civil, political, social, economic, and cultural, are thus included in this comprehensive document. The convention asserts and acknowledges a number of certain human rights, including the rights to dignity and personal freedom. The CRPD espouses this framework to promote, develop, and assess “the policies, plans, programmes, and actions at the national, regional, and international levels to equalise opportunities for individuals with disabilities further” [2]. The goal of the convention, as stated in article 1, is to “*promote, defend and ensure that all individuals with disabilities are able to enjoy their inherent dignity and the full and equal enjoyment of all human rights and basic freedoms.*” Moreover, the CRPD's general principles are embraced in article 3, including respect for people's inherent dignity, individual autonomy, including the freedom to make one's own decisions, and independence; non-discrimination; full and effective participation and inclusion in society; respect for difference; and respect for the developing capacities of children with disabilities and for the right of children with disabilities. Further, the CRPD, 2006 cares for a number of rights through various provisions to fulfil the need of all PwDs [3]. There are several provisions, including the right to life (Article 10), equality before the law (Article 12), access to justice (Article 13), liberty and security of the person (Article 14), freedom from torture or cruel, inhuman, or degrading treatment or punishment (Article 15), freedom from exploitation, violence, and abuse (Article 16), protecting the integrity of the person (Article 17), freedom of expression and opinion and access to information (Article 21) and respect for the privacy of others (article 26) are included in this noteworthy document. Signed state parties are required to uphold and advance these rights. But as per the survey reports of many countries, it has been leading to contentious situations. Since everyone must have the freedom to live

their lives as they deem fit, state parties are required to implement policies that protect people's rights to life and health, even if those policies go against their preferences. In addition, the convention's protection and promotion of rights should be viewed as a *prima facie* part. In other words, while rights must be respected, they may occasionally be superseded by other values or stronger competing rights. Therefore, it is necessary to thoroughly analyse the relevant facts to determine which right has to be upheld above all others. Disability should not be the basis for explanations or justifications, as this would be discriminatory. The individual approach should be included in the discussion to be treated equally.

Considering the above points, the CRPD also considerably impacts the international human rights law system. There are 18 independent experts, including 17 PwDs, who make up the CRPD Committee, which was founded in 2009 initially. There have never been so many specialists with disabilities in one body. It was keenly observed that accessibility to UN facilities and information and communication networks had become an indispensable problem [4]. To resolve this threat, a secretariat-wide interdepartmental task force on accessibility was formed, and various resolutions have been passed to make the UN more inclusive and accessible for PwDs. A contemporary human rights pact, the CRPD has numerous novel clauses. State parties, for instance, are required to establish national human rights mechanisms. The convention permitted the EU to join as a regional integration body, it includes two stand-alone development clauses, but most importantly, it updates international equality legislation (Art. 11, 32, 33, 42). It can be argued with certainty that the CRPD goes further in its commitment to equality for PwDs than earlier international human rights documents, according to Andrea Broderick's recent analysis: "From a theoretical and comparative standpoint" [5].

2. Disability concept and CPRD understanding

Despite having clarity about the concept of disability, the CRPD bargains a broad meaning by using expressions such as "inclusive of all". Following Article 1 of the CRPD, "PwDs" are defined as "*those who have long-term physical, mental, intellectual, or sensory impairments that, when combined with other factors, may limit their ability to fully and effectively participate in society on an equal basis with others.*" This definition shifts the emphasis from the person's disabilities towards the social and environmental barriers that prevent them from participating in society. Thus the "sustainable inclusive model" of disability refers to an ideal method of handling disabilities rather than an innate incapacity to engage a person with a disability's exclusion from society is the result of a barrier or hindrance to that person's ability. For instance, if a person has a motion disability. Due to this disability, he is unable to enter a health clinic. The issue, as per the CRPD framework, is not that they are unable to walk but rather that the clinic is not accessible. Therefore, the task is establishing the means and making it available to PwDs. The CRPD is crucial for defining the rights of PwDs. The human rights-based criteria on disability were described by the UN Office of the High Commissioner for Human Rights as follows:

"By establishing the conditions that enable meaningful involvement by a variety of people, including those with disabilities, a rights-based approach seeks ways to accept, promote, and celebrate human diversity. Providing services for PwDs is only one aspect of defending and advancing their rights. It involves altering attitudes and actions that stigmatise and exclude PwDs. It also involves implementing policies, legislation, and programmes that eliminate obstacles and ensure that PwDs may exercise their civil, cultural, economic, political, and social rights."

As per many reports, PwDs have to suffer a wide range of human rights violations and exploitation at the hands of society due to institutionalisation, isolation, stigma, discrimination, lack of access to opportunities for health, education, and employment etc. are responsible for the cessation of their

societal involvement (Alur, M. & Bach, M., 2010). To resolve these vulnerable threats, the CRPD document outlines a broad range of rights to protect the PwDs from torture and other cruel, inhumane, or degrading treatment or punishment and to foster better to best equal protection and benefit of the law for these PwDs. Apart from the given rights, other required rights covered by the CRPD include respect for the home, family, education, employment, health, participation in political and public life, cultural life, freedom, and sports. The CRPD aims to “guarantee that all individuals with disabilities enjoy the full and equal enjoyment of all human rights and basic freedoms and to promote respect for their inherent dignity.” To make this convention more effective, the parties to the CRPD were required to advance and safeguard all their rights and enjoy all other human rights fully through their domestic legislation. The signed member parties must therefore ensure that its disability legislation reflects the safeguards and goals endorsed by the UNCRPD to uphold international duties [6].

PwDs are protected by rights outlined in the CRPD's Articles 3 through 9, which cover universal rights, and its Articles 10 through 30, which include substantive rights. While Articles 41 to 50 of the CRPD set out the guidelines for carrying out operations under the CRPD straightforwardly and agreeably, Articles 31 to 40 of the CRPD deal with their respective implementation and future monitoring. This convention covers the following Rights:

- *Non-discrimination*: The country that ratifies CRPD must acknowledge that their people are equal before the law and guarantee equal protection and prohibit discrimination on the basis of any disability. Also, these ratified countries must keep the schemes, programmes and plans in action to remove or equalise the rights of PwDs. To achieve this mandate, the state parties are obligated to create and implement the legal and administrative measures to protect, sustain and promote awareness about the rights guaranteed by the convention and to repeal discriminatory laws, rules, ordinances, customs, and practices.
- *Children with disabilities' rights* - Children with disabilities must have the same rights as other children. On the international level, there are various bodies, UN laws and organisations to advocate their rights, which cannot be taken away even from their parents against their will unless authorities deem it to be in the child's best interest.
- *Freedom from exploitation*: Members of the international community must work to ensure that people are free from abuse and violence. In cases of abuse, states are required to support the victim's recovery and reintegration while also looking into the abuse. There must be no arbitrary or unlawful interference with a person's right to privacy, family, home, correspondence, or communication. It is important to think about their families' well-being, privacy, and rehabilitation.
- *Accessibility*: The convention mandates that nations identify and remove barriers and obstacles that prevent PwDs from accessing their environment, transportation, public facilities and services, and information and communication technologies. This is one of the fundamental issues of accessibility.
- *Adequate standard of living*: The member countries must accept and offer their native citizens with disabilities an adequate standard of living. The governments of the member countries that have ratified this convention must offer accommodations for PwDs, such as housing, as well as financial support if PwDs cannot cover their basic living expenditures.
- *Education*: The member countries that ratify this convention must ensure all individuals have equal access to primary, secondary, and vocational education. The right tools, methods, and communication styles must be used in education. Teachers proficient in sign language and Braille must educate deaf and blind students in the most appropriate communication medium.

Disability education must promote social inclusion, a sense of value and dignity, and the growth of a person's personality, skills, and creativity.

- *Right to work:* PwDs have the same ability to find employment and make a living. Countries are required to outlaw discrimination in employment-related matters, encourage self-employment, entrepreneurship, and starting a business; hire PwDs in the public sector; support those individuals' employment in the private sector; and make sure those individuals receive reasonable accommodations at work.

3. Disability and Barriers

As previously said, PwDs are uniquely capable, but they are unable to achieve their full potential owing to hurdles imposed by their impairment or constraints imposed by society or the state. In barrier-free and non-discriminatory environments, PwDs are just as productive and efficient as Persons without impairment. There are several examples of impaired people outperforming the abled. Unfortunately, numerous obstacles become hurdles in their life. These barriers are classified into four types:

- 1.1. *Eco-friendly Barriers* - The PwDs are inaccessible due to non-friendly public and private buildings and their passage, including hospitals, schools, colleges, offices, factories, stores, hotels and restaurants, entertainment venues, parks, transportation, and communication systems. Due to the lack of infrastructure and facilities for PwDs, the community and PwDs are not able to connect. The government of all countries, including least developed and developing, is expected to keep a balance to sustain or maintain the needs of the needy through their effective policies and well-planned budget.
- 1.2. *Institutional Barriers* -. PwDs are denied access to basic services through the direct and indirect allocation of resources. These refer to social differences and separation from shared communal domains such as health, education, employment, law and order, and recreation. The government of various countries must encourage MNCs, TNCs and government organisations to remove these barriers with the help of CSR or policies.
- 1.3. *Attitudinal Barriers* - Our society is full of misconceptions such as that the PwDs are incompetent, insufficient, a drain on family resources, and so on. Eventually, this results from injustice caused by ignorance, superstition, and misconceptions. It is, therefore, imperative to overcome these barriers to comprehend and appreciate the potential of a person with disabilities to contribute to society's Gross Domestic Product.
- 1.4. *Information Barriers:* PwDs and their close family members, especially their parents, often have trouble getting in touch with each other. They don't know the facts and circumstances of the disability in their family, are often misinformed about the right and timely steps to take in the case of a certain disability and don't care. People often need to learn about the referral options that are out there. Impacted individuals often need to learn about the available programmes, benefits, and discounts.

3.1 To what extent is CRPD competent to handle disability and related rights?

Supporting the abovementioned facts, Article 25 of CRPD states, “PwDs have the right to the highest standard of health that is reasonably possible, free from disability-based discrimination (UNCRPD, 2006).” Health is “A state of total physical, mental, and social well-being and not only the absence of disease or illness”. Furthermore, the CRPD highlights the role of environmental and cognitive barriers rather than physical impairment (if any) in impeding full and effective participation in society on an equal footing with others, making simultaneously clear that disability is not always a medical condition. While it's true that some PwDs may require health care for issues directly related to their

impairment, this should not be taken as evidence that this is the primary reason they require access to health services. To fulfil the required action, Article 3 of the CRPD lays down the basic principles that must be considered when interpreting Article 25, which guarantees the right to health. Mandates such as non-discrimination, community participation, self-sufficiency (including the ability to make choices), social inclusion, sex equality, and equal opportunity are fundamental and essential to life [7]. The interpretation of the other articles in the CRPD should be based on overarching ideas to sustain the objective of CRPD; for example, Article 25, right to health, must be understood in light of Article 4(2)'s requirement that states progressively realise economic and social rights. The state parties must have a special and continuing commitment to move as soon and effectively as feasible” to ensure that the right to health is fully realised (UN Nations Committee on Economic, Social, and Cultural Rights, 1990). The Committee on the Rights of PwDs argues that the right to health is something other than what any State can rapidly realise. For instance, states must construct healthcare infrastructure, train health professionals and establish healthcare-related infrastructure before enacting healthcare legislative reforms. The ICESCR and the CRC, which “*all impose an urgent obligation to guarantee that economic, social, and cultural rights are enjoyed without prejudice,*” also impose an obligation to guarantee non-discrimination, as does the CRPD (United Nations Economic and Social Council, 2007). Therefore, actions taken to advance the realisation of rights must always be directed by following the fundamental prohibition against discrimination. Regardless of the resources, the commitment to pledge non-discrimination must be immediately implemented since “many measures, such as most strategies and programmes, are designed to eliminate health-related discrimination. The same can be pursued with minimum resource implications through the adoption, modification, or abrogation of legislation or the dissemination of information. To advocate against these obstacles, the Committee on Economic, Social, and Cultural Rights argue that non-discrimination toward health right is an immediate obligation for all States, regardless of resources.

- *The active and full participation right*

The CRPD implementation plays a big role in achieving its aim of fostering the overall development of PwDs. Thus, CRPD endures placing a sturdy emphasis on the right of disabled individuals to participate in both its application and monitoring processes; this focus is implicitly and visibly plaited throughout the languages [8]. The convention, in particular, adopts a strong system whereby the states parties have to consult with closely and actively involve the groups like PwDs, including children with disabilities, through their representative organisations and recognised groups, in the development and enforcement of legislation and policies related to them (Article 4.3). This approach helps to include the most affected persons with the right to participate in decisions. Also, this convention forms a Committee on the Rights of PwDs as part of the CRPD monitoring framework, like human rights treaty bodies. The Committee generates General Comments to help States Parties understand their rights and legal responsibilities and offer direction, advice, and recommendations to promote the convention's successful aims and achievements.

- *The right to live in the community*

All PwDs have the right to live in the community and make the same decisions as everyone else, according to Article 19. By doing so, the States Parties agree to take all necessary steps to ensure that PwDs can fully enjoy this right. It should be highlighted that the CRPD aspires to ensure that every person with any disability has the right to live in the community, regardless of how much assistance from the society they require. To satisfy a fundamental need in people's lives, Article 19 (a) guarantees that individuals with disabilities have a choice and control over the living arrangements that make up a significant portion of their lives. In this situation, Article 19(a) forbids forcing people

into certain living arrangements based on a handicap. Deinstitutionalisation and independent living are notions brought back by reading Article 19(a) with the introductory clause. Moving from institutional care to community-based services, or “deinstitutionalisation” enables PwDs to live in their communities and take control of their own lives. Article 19 (a) ensures that PwDs can decide about their lives, including their living arrangements. This freedom has several dimensions, including the ability to choose a place to live and the daily activities that make up daily life. “All human beings are born free and equal in dignity and rights,” which is a fundamental tenet of human rights; before and throughout the writing of the CRPD, PwDs and their representative organisations contended that everyone is capable of making decisions about their own needs, which must be recognised. The study of such myths as the idea that PwDs are incapable of making rational decisions about their own life impacted the formulation of the provisions of Article 19. Article 19 recognises the practises that prevented PwDs from having control over their life, particularly their living circumstances, and calls for modification. According to Article 19 (b), individuals with disabilities must be supported by individualised community-based services to be able to live in the community. “Community living” refers to the ability of PwDs to live in their local areas and participate in daily activities such as attending the local school, spending time with their families as children, and working and raising a family. Furthermore, Article 19 (c) seeks to guarantee that PwDs can access mainstream community services, including healthcare, education, or transportation services.

3.2 Is the human rights approach centred on PwDs?

In the last 10 years, concerns around disability rights have received increasing attention and awareness. The CRPD, after its establishment in 2006 and went into force on May 3, 2008, has played a significant role in increasing the understanding of the human rights of PwDs. The CRPD provides us with a comprehensive strategy for securing the rights of individuals with disabilities. The CRPD is essential for clarifying the rights of those with disabilities and changing how others see them. The UN Office of the High Commissioner for Human Rights describes a human rights-based approach to disability as follows:

“A rights-based strategy attempts to embrace, encourage, and celebrate human diversity by creating the conditions that allow a range of individuals, including those with disabilities, to participate meaningfully. Defending and strengthening the rights of individuals with disabilities involves more than just offering assistance to them. Changing attitudes and behaviours that stigmatise and exclude individuals with disabilities requires concrete action. Implementing laws, regulations, and programmes that remove barriers and guarantee that individuals with disabilities may exercise their civil, cultural, economic, political, and social rights is also part of this process.”

In addition to being institutionalised, isolated, stigmatised, and discriminated against, PwDs frequently lack access to health, education, and work opportunities. The CRPD provides various rights that apply to every aspect of life, such as the right to life, the prohibition against torture and other cruel, inhumane, or humiliating treatment or punishment, and the right to equal protection and benefit under the law. Respect for the home and the family, education, work, health, engagement in politics and public life, cultural life, leisure, and sports are other rights protected by the CRPD. To “ensure that all PwDs enjoy full and equal enjoyment of all human rights and fundamental freedoms and to promote respect for their inherent dignity,” the CRPD was created. In addition, Article 18 of the CRPD formally protects the right to international movement for those with disability. However, disability is viewed as a burden. PwDs who want to immigrate commonly encounter entry-level health challenges. Although regulations exist, the ethics governing real decisions witness conflicting goals and aspirations. Similarly, Kett and Cole note that there are still many gaps in funding, implementation, monitoring, and impact reduction in practice, despite progress in terms of the

inclusion and rights of PwDs and improving resilience to environmental change at the policy level. They used data from Bangladesh and Kenya to support this report. Since discussions on climate-related policy and practice do not include PwDs when disability inclusion is not regarded from a rights-based standpoint, Kett and Cole argue that harsher measures are required to preserve rights and challenge social norms [9]. Recently, the UN Human Rights Disability Rights Strategy was established by the OHCHR in the year 2020 (DRS). The approach contains an action plan with concrete steps that may be taken to improve leadership on issues of disability rights. Both the High Commissioner and the Deputy High Commissioner, both in public and internal procedures, continue to be consistent in their participation in issues on disability rights.

What does “solidarity” mean ethically concerning the rights of those with disabilities? As was already said, the CRPD has prioritised participation to ensure impartial decision-making processes. Participation in informal and formal procedures may provide a mechanism to ensure a variety of opinions on what is thought acceptable or desired negative outcomes from social growth, which is also a key component of climate-resilient development. When used as a weapon for social change, the CRPD emphasises the importance of participation and accessibility more than the socio-political tensions inherent in any participation process, particularly how uneven power relations present themselves in the ethics that eventually drive decision-making. The overarching principles mentioned under Article 3 must be followed to implement the numerous individual rights that allude to certain moral tenets of what is considered desirable society results, such as respect, non-discrimination, dignity, and inclusion for all persons regardless of gender, ability, or socio-economic distinction.

4. The right to health and the CRPD

PwDs have the right to the best extent of health that is logically feasible, free from discrimination based on their handicap, as stated in CRPD Article 25. Health is “*a condition of complete physical, mental, and social well-being and not merely the absence of sickness or illness*”. It's important to note that the CRPD makes clear that a disability is not always caused by a medical condition and places emphasis on the role of mental and environmental barriers rather than a physical ailment (if there is one) in preventing full and effective participation in society on an equal basis with others. Even if this may occasionally be the case, it should not be believed that the primary need for health services for those with disabilities is to obtain medical attention for problems related to their disability. When interpreting the right to health in Article 25, one must consider the fundamental principles of the CRPD, as stated in Article 3. The main ideals are non-discrimination, participation, autonomy (including the ability to make one's own decisions), social inclusion, gender equality, and equality of opportunity. These general ideas should guide the interpretation of other CRPD articles.

5. The CRPD and India

When creating and allocating resources for public services, governments in developing nations must consider fundamental issues such as poverty, gender, and disability [10].

Disability has historically been given lower priority on a government's list of service development and allocation activities than issues with poverty alleviation, caste and gender equality, and rural upliftment. As a result, PwDs have been an underserved population frequently excluded from society's political and social structures. This indicates that the need for laws, programmes and services for those with disabilities is only now becoming recognised as a significant social issue in nations like India. Disability is often seen as a clever cover for deceit-based behaviours rather than a means to conceptualise human differences. Additionally, India only had a comprehensive law protecting PwDs a few decades ago. A Working Group was formed in July 1980, 33 years after the country gained its independence, in the Firstly attempt to draught such legislation. 1981 was designated the

International Year of PwDs, and a draught law, the “PwDs (Security & Rehabilitation) Bill of 1981”, was created. Nothing more was done until a committee was established in 1987–88, and they produced a report in June 1988. The Committee's report gave a wide range of recommendations regarding the several facets of rehabilitation, such as prevention, early intervention, education, training, and employment. However, none of the Committee's proposals was made into law, although the Committee's creation and recommendations show a growing awareness of disability issues in India. Through the PwDs Act, India made a statutory commitment to inclusive education in 1995. Every child with a handicap must have access to free education in a suitable environment until eighteen, according to Chapters 5 (Clauses 26–30) and 6 (Clause 39). It calls for a comprehensive education programme that should include transportation amenities, removing physical barriers from schools, colleges, and other institutions, providing textbooks, uniforms, and other school supplies, scholarships, and creating a grievance forum. The curriculum has to be restructured as part of the Act's requirements to benefit students with disabilities. Furthermore, it required the establishment of teacher training institutions and assistance in developing teacher training programmes from national institutes and other non-profit organisations so that qualified professionals could be found to care for special needs, children. Additionally, it offers research funding to create original teaching tools, specialised instructional materials, and assistive technology. By the beginning of the twenty-first century, four pieces of legislation—the Mental Health Act of 1987, the Rehabilitation Council of India Act of 1992, the PwDs (Equal Opportunities, Protection of Rights, and Full Participation) Act of 1995, and the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities—were directing the development of services for PwDs in India. Because the Mental Health Act of 1987's legal structure is connected to colonial penal custodial laws (such as the Indian Lunacy Act of 1912 and the Indian Lunatic Asylums Act of 1858), which gave the state the right to take away people's liberties with due process, it should be noted that the Act's status as disability legislation has been hotly contested. Nevertheless, the government regarded the Mental Health Act as “disability legislation” during CRPD harmonisation. India has the National Policy for PwDs, enacted in 2006, and the abovementioned laws. Its authority comes from Articles 15 and 16 (2) of the Indian Constitution, which forbid discrimination based on religion, race, caste, sex, place of birth, or any of them' and Article 14 of the Constitution, which states that “the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India.”

India became the seventh country in the world to ratify the convention on the opening day of the convention, October 1, 2007. One of the first tasks in implementation is to examine a country's policies, laws, and programmes and bring them into accordance with the spirit of the convention. According to the website, “UNCRPD is only a paper if it is not implemented,” thus PwDs should “play an active role in the implementation and monitoring of UNCRPD.” India is required to take the following actions in its capacity as a State Party: (a) adopt laws and administrative measures to advance the human rights of PwDs; (b) adopt laws and other measures to end discrimination; (c) protect and advance the rights of PwDs in all policies and initiatives; (d) put an end to any actions that violate those rights; and (e) ensure that the public sector upholds those rights. All children between the ages of six and fourteen are required to receive a free and compulsory education under the Right of Children to Free and Compulsory Education (RTE) Act of 2009 and the constitutional amendment of 2002 (Eighty-sixth Amendment). This is a significant piece of legislation that could impact the movement toward inclusive education. On April 1, 2010, these two pieces of law became official. Children and adolescents with disabilities who attend non-profit or private schools, however, are not covered by the statute.

Besides the above, there was National Policy for PwDs Act 2005. It is concerned with the physical, educational, and economic rehabilitation of PwDs. In addition, the strategy of this legislation emphasises the rehabilitation of women with disabilities and children, as well as a barrier-free environment, social security, and research. The National Policy acknowledges that PwDs are a great human resource for the country. It also aims to establish an environment that gives them equal opportunity, respects their rights and allows them to participate fully in society. The Rights of PwDs Act, 2016, is also considered, which has replaced the current PwDs Act, 1995, as discussed above, which had been in force for almost two decades. The PwDs Act of 2016 was passed to give effect to the United Nations CRPD (CRPD). The appropriate government must ensure that PwDs have the same right to equality, decency, and respect for their integrity as everyone else. The government would take steps to increase the capabilities of PwDs by establishing a conducive atmosphere. Section 3 specifies that no PwDs shall be discriminated against based on disability. It is provided that the Act or omission in question is a reasonable method of accomplishing a legitimate purpose and that no person's liberty shall be denied exclusively based on disability. PwDs must be allowed to live in the community; the government must take all possible steps to ensure suitable housing. Women and children with impairments must be given special attention to ensure they have the same rights. PwDs must be safeguarded against abuse, assault, exploitation, brutality, and inhumane and degrading treatment. To protect the rights of PwDs, any person or registered organisation with reason to believe that an act of abuse, violence, or exploitation has been, is being, or is likely to be committed against a PwDs may report it to the local Executive Magistrate. On receiving such information, the Executive Magistrate will take immediate action to stop or prevent the Act and issue appropriate orders to protect the PwDs, as provided for in section 7(2) of the Act. As per the required procedure in the said legislation, if a police officer obtains information regarding violence, abuse, or exploitation, he must inform the aggrieved PwDs of his right to seek justice before the Executive Magistrate. The police officer must also inform the nearest organisation that assists PwDs in rehabilitation, the right to free legal assistance and the opportunity to file a complaint under the terms of this Act or any other legislation that addresses such an offence. In addition, section 12 of the said Act specifies that PwDs have equal access to any court, tribunal, authority, commission, or other entity with judicial or quasi-judicial authority. The same shall be without discrimination. Clause (2) states that the responsible authority must take all possible steps to implement suitable support measures for PwDs. This will be particularly to those who live outside their families and require much assistance to exercise their legal rights. In addition to the above mandates, clause (3) states that the National Legal Services Authority and the State Legal Services Authorities established under the Legal Services Authorities Act, 1987 (39 of 1987) must make reasonable accommodations to ensure that PwDs have equal access to any scheme, programme, facility, or service they provide. The last clause (4) of the said provision states emphatically that the appropriate government shall take initiatives to ensure that all of their public documents are in accessible formats. The filing departments, registry, or any other records office are equipped with the equipment to enable filing, storing, and referring to documents and evidence in accessible formats. To make all necessary facilities and equipment available, the recordings of testimonies, arguments, or opinions shall be made in accessible formats.

In addition to the abovementioned details, the Criminal Law (Amendment) Act of 2013 supports women with disabilities under Cr. PC, 1973, section 154 (1), deals with the recording of FIRs which has been revised as the FIR has to be documented by a woman police officer or any woman official in certain crimes against women (including rape). To provide more protection to a temporarily or permanently mentally or physically woman with disabilities who alleges the commission of any offence mentioned under sections 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D,

376E, or section 509 of the Indian Penal Code, 1860. Such information shall be recorded by a police officer at her residence or a location of her choice. Also, this should be in the presence of an interpreter or a special educator [11]. In addition, the received information will be videotaped, and her statement before the Magistrate under Section 164 CrPC will be recorded by the police officer as quickly as feasible. Despite the protections provided by international human rights legislation, notably through the CRPD, individuals with disabilities regularly encounter significant barriers to justice. Barriers and obstructions can include a combination of inaccessibility and prejudice. Article 12 of the CRPD, 2006 affirms that all PwDs have full legal capacity. However, PwDs, including those with physical, mental, intellectual or sensory impairments, are 'the group whose legal capacity is most often denied in legal systems across the globe. Compensation delayed, denied: India ratified the CRPD (CRPD) in 2007, as mentioned above, which ensures access to justice for PwDs. This includes appropriate special facilities for PwDs and other provisions mandated by the Rights of PwDs Act 2016 that protect all PwDs from abuse, violence and exploitation. But there are implementation gaps. To get their right implemented, these visually impaired people struggle a lot. During police and court detention, a visually blind suspect may be subjected to prejudice, torture, and harassment. India has taken significant measures to change the criminal justice system to include women and girls with disabilities, but our new study demonstrates that more needs to be done. The government should move quickly to guarantee that accommodations and other measures are implemented so that women and girls with disabilities are no longer in the dark about their rights. As discussed above, a few provisions were added in 2013 in the Criminal Procedural Code, 1973 and Indian Evidence Act, 1872, for the accessibility of administration of justice for PwDs. But it has been observed through cases that police and judicial magistrates failed to implement the provisions introduced through these amendments. Even the police rarely provide information on the right to free legal aid or legal aid services to survivors or their families of disabled. The legal Education System is still not inclusive concerning PwDs, especially persons with visual disabilities. The procedural laws are incompetent to deal with the special procedure required for special people. No provision is available for the visually impaired person who comes under disability in the Indian Evidence Act of 1872 and the Court fees Act of 1870. CPC, 1908 provides a provision on 'Dispauper' as an exemption to pay court fees before filing a civil case; then why the disability is not yet thought of in this context as blindness/ visual impairment or any disability more acute as compared to indigency, and if the visually impaired is poor also which happens in 70% cases in India then it is a curse or clear violation of their human right by not recognised still the needed special procedure for it. Access to justice can be achieved only if there are some special accommodations made for PwDs, especially for the blind and persons with visual disabilities, as they lack due to health inequity and need special treatment to pace the way to equality as provided under Art. 14 of the constitution in the context of access to justice. In addition, the United Nations' announcement of 1992 was the "International Year of Literacy," removing illiteracy is particularly widespread among handicapped persons, putting them at a disadvantage twice over. They are not only crippled but also illiterate, which isolates them. The constitution's 'Right to Education' is codified in Art. 21 A, however, it is inaccessible owing to faulty and insufficient methods of accessibility, as well as poor implementation of Art. 41 in the case of PwDs in India.

Conclusion

Many Conventions for PwDs have been enacted on the international level. Many nations have ratified them and aligned their local legislation with the Conventions. The UNCRPD is the most important of these Conventions since it is completely dedicated to individuals with disabilities and gives numerous rights to PwDs. Correctly implementing such disability rights and freedoms would greatly aid their seamless integration into the social society. Moreover, the UN CRPD views disability more

as a socially produced issue than physical and mental inability. It considers impairment an outcome of the interaction between an inaccessible environment and a person rather than an inherent human characteristic. CRPD ushers to replace the traditional medical paradigm of disability with a social and human rights sustainable model that prevents people from fully participating in society and enjoying their human rights as citizens. This document establishes worldwide norms for disability rights. It establishes globally acknowledged disability rights standards; defines the meaning of human rights concepts and their application to the condition of PwDs. It provides appropriate references for formulating national policies and legislation and a proper monitoring plan, such as a panel of highly competent persons for oversight and the opportunity to submit reports to the government. India has a long way to go before it is deemed accessible to people who are PwDs. The cases like *Government of India v Ravi Prakash Gupta* [12], *Lalit and Others v Govt. of NCT and Another* [13] and *Kritika Purohit and Anr. v. State of Maharashtra and Ors* [14] showcase a miserable situation of violation of person disabilities' human rights and fundamental rights. In 2004, a visually impaired girl was raped in India, and a 20-year-old visually challenged woman was allegedly raped in central Delhi's Desh Bandhu Gupta Road by a 45 years old man, raising vital questions such as procedural accessibility, affordability and availability of services relating to the Indian justice system to them. As a result, PwDs face significant barriers to accessing justice. There is a need to comprehend the wide range of challenges that PwDs face regarding access to justice (NHRC Report, 2021) [15]. Overcoming these obstacles would need a holistic and integrated strategy and challenges to prejudice against PwDs in the legal system. Lastly, to understand laws for awareness, it's equally important to understand the interrelation and interdependence of the rights of persons with disabilities and other human rights. Again, it's important to identify how the rights of persons with disabilities are promoted or denied. Along with this, it's necessary to understand and simultaneously seek effective implementation of the provisions on the human rights of disabilities as per the UN CRPD (CRPD).

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CHAPTER 2:

Ensuring the rights of persons with disabilities in Sustainable Development in the political civil field

Law on the right to access health services of persons with disabilities in Vietnam and Germany - comparative study and implications for Vietnam

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Summary:

PwDs are an integral part of the population in the community, and ensuring their equal rights with others is considered a principle in governing international and national law. In particular, ensuring the right to access health services is one of the top concerns stemming from their characteristics. Based on the requirements for perfecting the law and improving the effectiveness of law enforcement on the rights of PwDs in Vietnam, this article focuses on studying the law on the right to access health services of PwDs in Vietnam and several countries around the world from a comparative perspective, thereby proposing some recommendations to comprehend the law of Vietnam.

Keywords: PwDs, rights of PwDs, access to health services

1. Some theoretical issues about the right to access medical services of PwDs

When considering the rights of PwDs in accessing health services, it is recognised that Rights are a legal, scientific concept that refers to things recognised and guaranteed by law for individuals, an organisation under which individuals can enjoy, do and demand without restriction. A characteristic feature of a right is that it is legally recognised and guaranteed to be implemented by legal provisions. The term “access” in the basic sense means bringing something “closer” to another or “closer”, as “near, next to” or “approachable”. “Access” can also be understood as the interaction process between this subject and others to achieve certain goals [1]. From a jurisprudence point of view, with the rights of PwDs, “access” is associated with the right to use, to be able to use and to ensure use without exclusion or preventing enjoyment due to disability. In Vietnam, to a certain extent, the Law on PwDs 2010 stipulates: “*Access means that PwDs may use public facilities, means of transport, information technology, cultural, sports, tourist and other suitable services to be able to integrate into the community.*”

“Health service” is one of the important pillars of basic social services. In the most general terms, health services are understood as services provided to protect and improve the community's health, which include many different types of services such as diagnosis, disease treatment, and health care and rehabilitation activities. Thus, from a legal perspective, the right to access the medical services of PwDs *is understood as the right to use and to be able to use medical services to protect and improve the health of PwDs, which are recognised and implemented by law.*

The issue of access and ensuring the right of access to PwDs is paid special attention by international law, specifically the 2007 CPRD and the law in some developed countries, especially regarding regulations and enforcement. For example, Canada also enacted its own Accessible Canada Act to remove barriers for people, especially PwDs, when accessing public services, including health services [2]. The United States, within the scope of federal law, enacted the America with Disabilities Act of 1990 and the Rehabilitation Act of 1973, which recognised the right of PwDs to access medical services and required providers of services to set up health services in a way that PwDs can easily enjoy.

Most countries identify ensuring access as content that bridges and removes barriers to ensure equality and non-discrimination for PwDs. However, in Vietnam, many limitations are still reflected in understanding, internalisation and implementation. According to Article 25 of the 2007 CRPD,

States Parties are obliged to ensure that PwDs have access to health services, including (i) the same range, quality and standard of free or affordable health care and programmes as provided to other persons (ii) Special medical services for PwDs (iii) Health insurance, life insurance.

In addition, this law recognises that PwDs have the right to enjoy the highest standard of health care without discrimination on the grounds of disability and prohibits discriminatory practices in accessing and using medical services. In the spirit of CPRD and legal regulations of most countries, the right to access health services of PwDs is expressed in two main contents: (i) the right to access basic health services; (ii) The right to access health insurance.

2. The status of the right to access medical services of PwDs in Vietnamese and German laws

2.1. Current status of Vietnamese law on the right to access medical services of PwDs

Compared to other countries, Vietnam is one of the countries with a high number of PwDs, and therefore, the issue of rights and protection of the rights of PwDs has been a concern from a very early age. The landmark marking the Firstly document specifically regulating PwDs is the Ordinance on PwDs 1998. Over time, we have the Law on PwDs 2010, up to 20 guiding documents, and many important legal documents and codes with different regulations directly related to PwDs, such as the Civil Code, the Law on Child Care Protection, and the Labor Code [3]. The right to health care and basic medical services of PwDs is a constitutional right stipulated in Article 38 of the 2013 Constitution, according to which “Everyone has the right to protection, health care, equality in the use of health services”. The specialised legal provisions on the right to access medical services of PwDs are mainly recorded in the Law on Persons with Disabilities 2010, the Law on the Elderly 2009, the Law on Medical Examination and Treatment 2009, the Law on Health Insurance 2014, and the Law on Health Insurance, and Ordinance on incentives for people with meritorious services to the revolution in 2020. Regarding content, the right to access medical services of PwDs is reflected in two main contents, including (i) the right to access basic medical services and (ii) the right to access and enjoy health insurance.

(i) Right to access basic health services

As per the provisions from Articles 21 to 26, Chapter III of the Law on PwDs 2010, the right to access basic medical services of PwDs includes the following contents: (i) primary health care; (ii) Medical examination and treatment; (iii) Orthopedics and rehabilitation. Accordingly, the state recognises and ensures that PwDs have the right to use these services.

One is primary health care. Based on the provisions of the Law on PwDs in 2010 and the Law on Medical Examination and Treatment in 2009, PwDs are entitled to primary health care at their places of residence with the responsibility of commune-level medical facilities within their professional capacity. Commune- and ward-level health facilities are responsible for managing the health of PwDs through medical examination and treatment monitoring books and granting the Firstly right of access to health care to PwDs when needed.

Secondly is medical examination and treatment. The right to medical examination and treatment of PwDs is equal to that of other subjects and is provided in Articles 7 to 13 of the Law on Medical Examination and Treatment 2009: PwDs have the right to receive medical care with quality suitable to actual conditions; the right to keep confidential information about health and private life recorded in medical records; the right to be respected and not to be stigmatised or discriminated against. The state must ensure that PwDs receive medical treatment and use appropriate medical services. Stemming from the unique characteristics of PwDs and ensuring fairness, the law has regulations on prioritising medical care for persons with profound disabilities and persons with severe disabilities,

children with disabilities, elderly PwDs, and pregnant women with disabilities according to the regulations on medical care through forms such as exemption and reduction of hospital fees, living expenses, travel expenses, and treatment costs. These provisions in the Law on PwDs ensure consistency with the Law on Elderly 2009, the Law on Medical Examination and Treatment 2009 and the Law on People's Health Protection 1989.

Thirdly is orthopaedics and rehabilitation. According to the provisions of Articles 24 and 25 of the Law on PwDs, this content is provided to PwDs in two forms: orthopaedics and rehabilitation through orthopaedic rehabilitation [4] and community-based rehabilitation facilities. Currently, community-based rehabilitation is focused on transferring knowledge about disability issues, rehabilitation skills and positive attitudes to PwDs, their families and the community to create equal opportunities and community integration for PwDs.

Although the regulations are quite complete, it is acknowledged that, in practice, the right to access the health services of PwDs still needs to be improved in enforcement. It is most evident in the limitations in ensuring access. It is easy to see that PwDs in mountainous, remote areas, ethnic minorities still face too many barriers to access, such as hindrances to information, language, and mechanisms to manage and support various forms of disability and difficult conditions of health facilities at the commune and ward level. According to the report of the Vietnam Association of PwDs in 2020 and the workshop reports on PwDs, a relatively high percentage of PwDs need access to basic health services due to access barriers [5].

(ii) PwDs' right to access health insurance.

Health insurance is a major state policy, by law, ensuring participants are provided with medical services when in need through a non-profit contribution financial mechanism. To secure universality in ensuring rights, the Law on Health Insurance 2014 stipulates the scope of application to the entire population without discrimination in the form of compulsory participation. To ensure equality in access opportunities, PwDs, along with some other vulnerable groups, are supported with participation fees, depending on their disability level: Persons with severe disabilities and persons with profound disabilities are receiving monthly social allowances or are being fostered at social protection establishments with free health insurance cards granted by the state. The benefit level equals 100% of medical examination and treatment costs when providing medical examination and treatment at the prescribed level.

In fact, in recent years, Vietnam is one of the countries with a fairly good implementation of health insurance for PwDs, reflected in the coverage of participants. PwDs have participated in health insurance according to service packages paid for and supported by the state budget. Even so, the poor health status of PwDs is not always a direct result of disability and is also due to difficulties in access, such as (i) limited legal and policy barriers, lack of appropriate and feasible regulations, (ii) economic barriers, especially most PwDs have to pay expenses outside the health insurance payment package due to the specific characteristics of the disease; (iii) geographical and environmental barriers due to differences in geography, traffic, living environment, and (iv) barriers in terms of information and communication, and language; (v) barriers from limited awareness, knowledge and skills of health workers (vi) barriers from family and society on health issues, health care for PwDs. Some PwDs are vulnerable, isolated and discriminated against because of health problems, making it even more difficult to access health care in disadvantaged groups such as children, the elderly, and women.

2.2. Current status of German legislation on the right to access medical services of PwDs

Germany is a federal country with 16 states in Central Europe bordering 9 countries: Denmark, Poland, Czech Republic, Switzerland, Belgium, Netherlands, France, Austria and Luxembourg.

Historically, this country has witnessed heavy losses caused by wars. According to estimates by the Federal Bureau of Statistics, by the end of 2021, the number of PwDs in this country will be 7.8 million, accounting for nearly 10% of the national population [6]. Accordingly, the number of PwDs in Germany in 2021 has decreased by 1.4% (108,000 people) compared to the 2019 statistics after a continuous climbing trend in recent years. Therefore, Germany always fulfils its commitments to protect and maximise the rights of PwDs, including the right to access medical services. As a member state of the International Covenant on Civil and Political Rights, the World Organization (“WHO”) and especially was one of the Firstly signatories to the CRPD (“CPRD”), German legislation has made important achievements in ensuring the right to access medical services of PwDs.

Article 2 of the German Constitution provides individual liberties, recognising that “every individual has the right to life and physical integrity”. In addition, Article 3 of the German Constitution also recognises the right not to be discriminated against based on sex, blood, race, language, country of origin, faith or religious or political opinion. The above provisions are a pivotal foundation for establishing a solid legal framework, detailed in specialised laws on the right to access medical services of PwDs. The source of law governing this issue is mainly found in the German Social Code, the German Civil Code, the Equality Law on Disabilities, the Fair Treatment Act, the Health Care Act, etc., and specific legislation in each state. Specifically, the content of German law on the right to access medical services is manifested in the following contents:

Firstly, the right to access health insurance.

Germany is the origin country for the health insurance model and is still considered one of the best health insurance systems in the world, with high quality and wide coverage. Since 2009, Germany has implemented universal health insurance and is covered by two systems: statutory and private health insurance. PwDs who have income below the statutory level (under 62,550 ERU/year) will participate in health insurance according to the statutory health insurance system. Regulations in Article 5, Book V of the German Social Code. The special rights of PwDs when participating in health insurance need to be taken into account (Article 2a, Book V) and applied to explain all provisions of Book V of the Social Code to ensure coverage of health insurance and to offset the disadvantages of PwDs [7].

Private health insurance applies mainly to business owners and self-employed workers, workers with high income (above 62,550 EUR/year) or those who need to increase additional benefits beyond the statutory regime. This private insurance also covers people with a monthly income below 450 EUR; therefore, many PwDs also benefit from this type of insurance. The problem is that private insurance often offers unfavourable terms based on disabilities of PwDs that hinder or limit the participation of PwDs. Therefore, German law recognises the principle of prohibiting discrimination in civil matters, including insurance contracts (Clause 5, Article 2 of the Law on Fair Treatment 2006).

In 2009, German law required private health insurance providers to set a common tariff for medical services applied to all participants [8]. According to Clause 1, Article 203 of the Law on Insurance Contracts, this tariff shall not include health risk surcharges and prohibits the exclusion of benefits for beneficiaries of insurance services. The benefits of private health insurance must be equivalent to statutory insurance. (Clause 1 of Article 152 of the Insurance Supervision Act). This regulation is intended to protect PwDs when practice shows that because of disability, their medical costs are often higher than those incurred due to the health characteristics of PwDs, so they are often refrained or excluded from participation.

Secondly, the right to access basic medical services of PwDs

The basic health care service delivery system in Germany consists of two components: (i) Health care under the Health Insurance regulations and (ii) Long-term care under the social long-term care insurance system. As mentioned, the health insurance system in Germany imposes an obligation on people, including PwDs, to participate in health insurance. When participating in health insurance (including statutory insurance and private insurance), PwDs will be guaranteed to provide basic medical services as follows: (i) Medical examination and prevention services, including tests that screen for cancer risk in certain age groups; vaccination for primary diseases and screening for chronic diseases; (ii) Prescription drugs, Firstly aid, treatment, resuscitation and critical care; (iii) Inpatient or outpatient medical care, (iv) Hospital surgical operations (including treatment in rehabilitation facilities in some cases); (v) Dental services (including routine dental check-ups, dental treatment, gum treatment and orthodontic treatment), vision; (vi) Examination and treatment services of doctors, specialists and psychotherapists. In particular, Article 119c, Book V of the German Social Code allows the establishment of specialised care centres for adults with intellectual disabilities or various forms of disability. As of 2019, Germany has recorded 39 healthcare centres mentioned above nationwide [9].

Beneficiaries of long-term care benefits include people who need health care because of reduced health independence due to disabilities and therefore need assistance from others. Therefore, the object of application of this type is mainly PwDs. Long-term care insurance provides care for more than 6 months to PwDs, and short-term care arrangements will be provided through health insurance. PwDs are entitled to choose the benefit levels from 1-5 specified in Book XI of the Social Code, which mainly includes the following benefits: (i) being provided with cash for PwDs to use other care services by themselves or (ii) direct access to care services such as general care regimens, provision of medical supplies, assistance by designated carers.

Ensuring access to basic medical services for everyone (including PwDs) has always been a top concern in social security policies in Germany. The National Plan 2.0 issued by the German government stipulates that the government, state governments and medical practitioners must, in practice, take measures to increase the number of people with access to medical services, including PwDs [10]. According to Article 75 of Book V of the German Social Code, the state's statutory health insurance association is required to publish information about the accessibility of PwDs to medical services [11]. As estimated by the Federal government, with this mechanism, PwDs can access 26.4% of available treatment and 26.1% of specialist treatment.

The Disability Equality Law governs the right of PwDs to access public services, whereby Article 4 requires public institutions, including federal, state and local governments, to ensure that PwDs have access to all public services, including health services. As mentioned, the Fair Treatment Act prohibits discriminatory behaviour based on ethnicity, gender, religion, or disability in the civil field, especially for PwDs when accessing private health services (Clause 5, Article 2). The federal anti-discrimination agency controls law enforcement. PwDs can appeal to this agency for discriminatory practices in accessing basic health services through online access by text or video demonstrating sign language [12].

3. Some observations from the perspective of comparative jurisprudence and recommendations for Vietnam

3.1. Similarities and differences in law on the right to access medical services of PwDs between Germany and Vietnam

Firstly, on the legal framework for the right to access health services of PwDs.

Currently, both Germany and Vietnam are parties to the International Convention on the Rights of Persons with Disabilities, which recognises the right of PwDs to access health services in Article 25 of the Convention. Article 2 of the German constitution states, “Every individual has the right to life and physical integrity”. This is only a general regulation, which is the foundation for the rules of basic medical services in the German Social Security Code and other specialised laws. Meanwhile, Vietnam considers the people’s right to health care and medical services, including PwDs, a constitutional right. Therefore, this right has been affirmed in the Vietnamese Constitutions through the ages. In particular, the 2013 Constitution emphasised the people's equal right to use health services, with special attention to PwDs. Accordingly, PwDs have the right to be respected, receive medical treatment, and enjoy the same services and facilities.

Regulations to ensure the right of PwDs to access medical services in Germany are mainly concentrated in the German Social Code. Meanwhile, in Vietnam, this issue is also stipulated in various high-value legal documents such as the 2009 Law on Medical Examination and Treatment, the Law on Prevention of Infectious Diseases 2007 and many guiding documents such as decrees and circulars. Therefore, law enforcement practice reveals that many overlapping contradictions make interpreting and enforcing the law difficult. The review shows that no specialised document fully mentions the right to access, but most stop at stipulating the right to health care content.

Secondly, on access to health insurance for PwDs.

Vietnam and Germany implement universal health insurance policies, in which participation in health insurance is mandatory for people and PwDs. However, Vietnam has not paid much attention to the accessibility of basic health services for disadvantaged people, especially PwDs. In contrast, Germany has implemented national policies and guidelines to ensure PwDs can access and use basic health services. In addition, in private health insurance, Germany pays special attention to protecting this group of people from discriminatory behaviour by insurance service providers through regulations on the contract of insurance. These are considered “favourable” policies, focusing on ensuring the rights of this group to establish a sustainable social security system. Meanwhile, the Vietnamese legal system needs clear regulations on this issue, making PwDs often encounter barriers when accessing private health insurance.

Thirdly, access to basic medical services of PwDs.

Currently, the laws of both countries recognise, respect and ensure access to basic medical services of PwDs, including medical treatment and appropriate medical services. The laws of both countries consider non-discrimination as a fundamental principle in the connotation of the right to access basic health services of PwDs. Both provide provisions that recognise the right of priority in using medical services for PwDs to bridge the gap between this group and other subjects in society. For example, Article 2a of the German Civil Code stipulates that medical facilities must pay attention to the special interests of PwDs. Vietnamese law also recognises the right to priority in medical examination and treatment along with the specific provisions to ensure the rights of PwDs when participating in health insurance, such as free-fee support.

However, the guiding principle in the German health insurance model is solidarity, mutual assistance and the principle of contribution and benefit when implementing health insurance benefits. Therefore, along with the obligation to participate in health insurance, PwDs in Germany are guaranteed access to most medical services like other subjects. Meanwhile, this right in Vietnam is only guaranteed in primary health care, medical examination and treatment, support and rehabilitation, and health insurance specified in Chapter III of Law on PwDs 2010. German law has successfully stipulated a

long-term care regime to provide health care services for 6 months or more to help this group receive the necessary support. This is a very valuable experience for PwDs from Germany.

Besides, in practice, Germany is doing much better in ensuring health benefits for PwDs than Vietnam. Public authorities in Germany have coordinated with each other, even setting up a separate organisation to monitor and advise PwDs against discriminatory practices when using basic health services. Information about specialists and general practitioners and available medical services are updated regularly on the portal of state agencies. In addition, Germany has also set up specialised healthcare organisations for adults with intellectual disabilities and severe disabilities, especially to ensure that they receive appropriate treatment for their condition. Meanwhile, this guarantee mechanism in Vietnam still needs improvement compared to Germany, reflected in need for coordination and data sharing by state agencies and the monitoring of discrimination acts against PwDs.

3.2. Some similarities and differences in the law on the right to access health services of PwDs in Australia and Vietnam

Firstly, the right to access health insurance for PwDs

Australian policies can be perceived prominently in ensuring that many different types of disabilities have access to information about health services. In addition, Australia has a developed medical facility system among the top in the world. The basic conditions to ensure the facilities for PwDs have been almost fully completed, so apart from ensuring the right of access to health services of PwDs in terms of physical aspects, the Australian government, in general, inclines to focus on mental health care for PwDs [13].

Thus, under Australian law, the right to access health services is based on diversity and compatibility with the status of PwDs. Many approaches are built, from information to physical and mental health care facilities for PwDs. In addition, the federal and state governments only develop strategies occasionally. They assign implementation plans to relevant agencies and organisations to ensure appropriateness to the situation of PwDs in each state.

In Vietnam, policies regarding the initial access to PwDs to health services have not been flexible in each period. The right to access health services of PwDs in Vietnam has not been diversified and suitable for each type of disability. Especially concerning access to information about health services, new policies and legal regulations are only built on a single format that is difficult to guarantee the right of access for other PwDs.

Secondly, the right to access the medical services of PwDs

In Australia, PwDs can access a separate insurance system exclusively for them and the universal insurance system. The system also ensures that each type of disability has access to the most proper support by directly examining the status of PwDs when they begin participating in the system. This insurance system provides financial support in the medical field and other costs to ensure that PwDs can integrate into society to their best. For example, providing financial support to help PwDs repair their homes to accommodate their disabilities or assist PwDs in finding and maintaining jobs. This is a very comprehensive insurance system and great support for PwDs.

Compared to Vietnam, the basic health insurance system can only meet the medical examination and treatment needs of PwDs. In addition, the requirement of the right level also causes many difficulties for PwDs at a severe level because the equipment and facilities in grassroots medical units still need to meet the requirements.

Thirdly, about human resources to take care of PwDs

In Australia, a separate law regulates the rights that carers for Australian workers are entitled to ensure and promote the role of carers in the community. Moreover, the government also spends a huge annual budget to support those who do this work. It shows that Australia highly values the role of carers in society. They believe that improving the quality and quantity of new carers can create a basis to ensure other rights of PwDs.

In Vietnam, the role of caregivers has yet to be promoted. The Ministry of Health has only coordinated with medical training schools nationwide to train and hone skills for health workers. There need to be clear preferential policies to enhance the role of carers in the community.

3.3. Some recommendations to improve Vietnamese law from the German experience

Through studying the law on the right to access medical services of PwDs in Vietnam and Germany in comparison, some recommendations are proposed to improve Vietnamese law as follows:

Firstly, the government needs to develop national strategies for PwDs in phases (every 5 years) to ensure implementation results and make timely adjustments to society when, in recent years, changes in socio-economic issues have happened more quickly, which easily create barriers to access for PwDs. Practice in Germany also shows that when promulgating the National Plan 2.0, the number of PwDs accessing medical services increases, helping them feel more secure about health care and protection, harmony and better integration into the community. This strategy will serve as an orientation to help Vietnam better fulfil its commitments to protecting PwDs in accessing health services and in all social fields.

Secondly, continue to improve the legal framework on the right to access health services of PwDs. As mentioned above, the legal regulations governing the right to access health services of PwDs are scattered in many legal documents, such as the 2009 Law on Medical Examination and Treatment, the Law on Prevention of Infectious Diseases 2007, and especially the Law on Medical Examination and Treatment, especially in guiding documents such as decrees, circulars, etc. The above situation induces challenges in practical application or even creates unnecessary hindrances for PwDs in realising their interests and relevant authorities when applying these codes. Germany's experience suggests that combining the above provisions in one law will make it more convenient to implement in practice and avoid the possibility of legal conflicts. State agencies, especially the National Assembly, need to put more attempts into codification to ensure the regulation of the right to access health services of PwDs.

Thirdly, for health insurance, currently, the state budget only supports paying health insurance premiums of 100% for severe and especially severe PwDs. Meanwhile, mild PwDs do not belong to poor households. In that case, near-poor households are able to enjoy policies for these subjects and do not have a job to participate in compulsory health insurance. They will not be entitled to any health insurance policies. In contrast, PwDs, in general, have weak health and often have to attend a lot of medical examinations and treatment. Therefore, it is necessary to amend the Law on Health Insurance (2014) as soon as possible, including a policy to support people with mild disabilities to create conditions for them to receive better health care. At the same time, it is essential to expand the coverage of health insurance for persons with severe and profound disabilities when using assistive devices, orthopaedic rehabilitation equipment and high-tech services during the medical examination, treatment and rehabilitation, including psychological rehabilitation services for people with intellectual, neurological, and psychiatric disabilities to improve the effectiveness of treatment and rehabilitation for PwDs.

Fourthly, Germany's experience shows that PwDs need support to access medical care in terms of physical aspects and mental health. Especially during the recent pandemic period, the situation of

people with neurological, mental or intellectual disabilities having difficulties in the medical process and not being able to access the necessary information and policies for them has aggravated their social disability and social barriers for PwDs.

Fifthly, it should diversify transmission methods of government policies to adapt to each type of disability. Information related to health policies should be presented in accessible formats suitable for people with hearing, and visual impairments, intellectual disabilities, etc. For example, electronic portals on policy information on access to medicine for PwDs should add reading features or display text in audio to ensure the accessibility of the visually impaired.

Sixthly, improve the quality of training and human resources for staff caring for PwDs. Recognising and respecting the values that carers of PwDs devote to society is the best focal point to help PwDs overcome social barriers and access their rights, especially the right to access health care. Especially at present, the right to equal treatment of PwDs has been recognised in the 2013 Constitution and specialised legal documents. However, PwDs still face discrimination and even contempt from some health workers. Therefore, it is necessary to pay the most attention to training in medical ethics, morality and awareness of disability, and the rights of PwDs to standardise behaviour, thereby assisting PwDs to remove guilt when using medical services./.

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Guarantee the right to participate in state and social management of persons with disabilities in Sustainable Development in Vietnam

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Abstract: Sustainable development is an urgent need and an inevitable trend in the development process of Vietnam. Intending to achieve sustainable development, it is necessary to attract people in general and PwDs, in particular, to participate in state and social management. However, PwDs need help exercising the right to participate in state and social management, making enforcing this right ineffective. The article studies the execution of the right to participate in state and social management of PwDs to propose solutions to improve the implementation in the context of sustainable development in Vietnam.

Keywords: PwDs, participation in state and social management, sustainable development.

Since the Democratic Republic of Vietnam was born after the August Revolution in 1945, the right to participate in state and social management of citizens in general and of PwDs, in particular, has always been paid attention to, respected, guaranteed and gradually perfected by the state, especially in the current period when Vietnam is fulfilling sustainable development goals. Given the characteristics of PwDs, it is necessary to research and propose appropriate solutions for them to more effectively exercise their right to participate in state and social management.

1. The concept and role of the right to participate in state and social management of PwDs

1.1. Concept

Citizens' right to participate in state management is an important political-legal right enshrined in the Constitution and laws of our country. The right to participate in state and social management is the right of citizens to engage in the management of the state and society through direct or indirect forms. Article 28 of the 2013 Constitution stipulates: "Citizens have the right to participate in the management of the State and management of society, and to discuss and propose to state agencies issues about their base units, localities and the whole country" [1]. Thus, according to the 2013 Constitution, the subject of the right to participate in managing the state and society is a citizen, which comprises all people with Vietnamese nationality, regardless of gender, age and other factors. The right to participate in state and social management of PwDs is recognised and protected like other citizens. Therefore, ensuring the exercise of the right to participate in state management of citizens in general and of PwDs in particular in the context of expanding democracy, building and perfecting the socialist rule of law state of the people, by the people and for the people are of great significance; is the measure of democracy, civilisation, freedom and social progress; thereby clearly showing the good nature of the State of the Socialist Republic of Vietnam.

Thus, from a legal perspective, it can be affirmed that the right to participate in state management of PwDs is one of the most basic and important human rights, recognised, respected and secured by the Constitution and the law; it establishes the equal legal capacity of PwDs with other citizens to participate directly or indirectly in the process of state management of society.

1.2. Role of the right to participate in state and social management of PwDs

Currently, there are different views about PwDs. However, in the current conditions in Vietnam; Article 2 of the Law on PwDs 2010, amended and supplemented in 2013, introduced the concept: "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" [2]. Types of disability include: movement disabilities; hearing and speaking disabilities; vision disabilities; neurological and mental disabilities; intellectual disabilities; other disabilities. According

to statistics of the National Committee for PwDs in Vietnam, by the end of 2020, the country will have about 6.2 million PwDs, accounting for 7.06% of the population aged 2 years and older [3]. Stemming from the characteristics of PwDs, exercising the right to participate in state and social management of PwDs encounters certain hindrances depending on each type of disability. However, the exercise of this right is critical for PwDs in the following aspects:

- The right to participate in state and social management of PwDs is a factor that institutes the equal legal status of PwDs with other citizens in socio-political life.

- The right to participate in state and social management of PwDs shows the democratic and equal nature of the socialist rule of law state.

- The right to participate in state and social management of PwDs is the foundation for ensuring the realisation of the economic, cultural and social rights of PwDs.

2. Contents of the right to participate in state and social management of PwDs according to current Vietnamese law

According to the current Constitution and laws, PwDs have the following basic rights to participate in the management of the state and society:

- PwDs can elect and stand for deputies to the National Assembly and People's Councils at all levels.

The right to vote is a legal provision on the ability of citizens - PwDs to exercise their right to choose their representatives to state power. Voting rights include nomination and introduction of candidates and voting. The right to stand for election is the right of citizens who fully meet the conditions and express their aspirations to stand for election to the National Assembly or the People's Councils at all levels. By the date the election is announced, PwDs in Vietnam who are fully 18 years old or older have the right to vote, and 21 years or older have the right to stand for election to the National Assembly and People's Councils at all levels.

- PwDs have the right to participate in discussions with and make recommendations to state agencies on local, grassroots and national issues.

- PwDs who are fully 18 or older have the right to vote when the state holds a referendum.

- PwDs have the right to complain and have their complaints settled against administrative decisions and acts of state administrative agencies or competent persons in state administrative agencies when there are grounds that such administrative decision or act is illegal and infringes upon his/her legitimate rights and interests.

- PwDs have the right to denounce to competent state agencies the illegal acts of state agencies, economic organisations, social organisations, armed units or any individual.

Thus, PwDs, in particular, and all Vietnamese citizens, who satisfy the conditions prescribed by law, have the right to participate in and manage the state and society. This is a very special political right in order to encourage and advance the strength of the whole people and society to participate in building a strong state; to operate effectively for the benefit of the people and the country; contribute to economic, political, cultural, social and environmental development; promptly remove difficulties and obstacles, arouse all potentials and resources, create new impetus for the rapid and sustainable development of the country.

The provisions in the Constitution on the right to participate in state and social management of Vietnamese citizens in general and PwDs, in particular, have proved the nature of the Socialist Republic of Vietnam as a socialist rule of law of the people, by the people and for the people.

However, exercising these rights must comply with the provisions of the law. The state prohibits the abuse of citizens' rights to harm the interests of the country, the state, agencies, organisations and other individuals.

3. Forms of exercising the right to participate in state and social management of PwDs in Vietnam today

The 2013 Constitution stipulates: “The people exercise state power by direct democracy and representative democracy through the National Assembly, the People’s Council and other state agencies” [4]. As citizens, PwDs exercise their right to participate in managing the state and society by participating directly or through an indirect form (representative democracy).

- Direct form of participation

PwDs directly exercise their rights to participate in state and social management as prescribed by law, such as participating in the right to vote by themselves and exercising the right to complain and denounce.

- Indirect form of participation

PwDs will enforce their rights through the National Assembly, the People's Council and other state agencies for the indirect form of state and social management participation. The Fatherland Front and other socio-political organisations; social organisations of PwDs such as Vietnam Federation of PwDs, and Vietnam Association of the Blind.

4. Advantages and disadvantages in exercising the right to participate in state and social management of PwDs in Vietnam today

- Advantages:

+ The law has recognised and protected the right to participate in the state and social management of PwDs. It has emphasised creating favourable conditions for PwDs to exercise these rights.

Law is a system of rules of conduct promulgated and guaranteed by the state, expressing the ruling class's will in society, and is a factor regulating social relations [5]. The right to participate in state and social management of PwDs is acknowledged by law as a prerequisite for this right to be realised in real life. For the exercise of the right to vote, Clause 3, Article 69 of the Law on Elections of Deputies to the National Assembly and People’s Council 2015 provides support for PwDs, *specifically*: “Any elector unable to write his/her ballot may ask another person to do that for him/her, but he/she is required to cast the ballot by himself/herself; the person who helps in writing the ballot must keep secret the elector's ballot. If, due to his/her disability, the elector is unable to cast the ballot by himself/herself, he/she can ask another person to cast the ballot into the ballot box”. Thus, pursuant to this rule, voters who are not restricted in movement, but may have defects that make it impossible to write or vote by themselves, can ask for the support of others. Clause 4, Article 69 of this Law on voting principles states: “In cases where an elector is ill, old or disabilities, being unable to go to the polling booth, the Election Team shall bring an auxiliary ballot box and the ballot to his/her residence so that he/she can receive the ballot and cast it. At Point b, Clause 3, Article 11 of the Law on Election of Deputies to the National Assembly and People’s Council 2015, a disability care facility with “50 or more voters may establish its voting area” [6].

Regarding the exercise of the right to complain, the 2018 Law on Complaints stipulates at Point a, Clause 1, Article 12: “In case the complainant is sick, old and weak, has physical weaknesses or for other objective reasons, If they cannot make a complaint by themselves, they may authorise their

father, mother, wife, husband, brother, sister, younger brother, adult child or another person with full civil act capacity to make a complaint.” [7].

With the above provisions, the state has partly ensured that PwDs exercise their right to choose their representative to participate in the National Assembly and People's Councils at all levels and exercise their right to complaints. The percentage of voters, including voters with disabilities, voting for the National Assembly and People's Councils at all levels for the 2021-2026 term is very high, reaching 99.6% [8]. This not only demonstrates the democracy and positivity of the socialist rule-of-law state but also shows the non-discrimination towards PwDs.

+ The capacity and quality of the contingent of state cadres and civil servants have been increasingly improved, ensuring more and more effective implementation of the right to participate in state and social management of PwDs.

In our country, the state apparatus is organised on the principle that state power is unified with assignment, coordination and control among state agencies while enforcing legislative, executive and administrative power. The state apparatus has a contingent of cadres and civil servants to exercise state power. These people must meet common standards of political ethics and professional competence. The state has developed an increasingly professional and modern contingent of cadres and civil servants by performing state administrative reform from 2001 to 2010, 2011-2020 and the current 2021-2030. The contingent of cadres and civil servants has good quality and can perform official duties of serving the national development and the people. It can be affirmed that the capacity and quality of the contingent of state cadres and civil servants is one of the pivotal factors that have a great impact on the right to participate in state management and social management of PwDs, especially in terms of formulating policies and laws for PwDs and ensuring the implementation of such policies and laws, as well as promoting legal education, propaganda, awareness raising, and eradication of prejudices about PwDs.

+ Awareness and qualifications of PwDs are increasingly comprehended.

State and social management encompass various legislative, executive and judicial activities. In order to participate in state and social management activities, PwDs must choose to perform certain activities and choose appropriate forms and methods. Therefore, awareness, qualifications and capacity factors greatly influence the exercise of the right to participate in the state and social management of PwDs. With knowledge and understanding of the law, PwDs will be able to promote their rights in political activities and life. Therefore, in the past years, by various forms and methods, state agencies and social organisations have paid attention to propaganda and education, so the awareness of the right to participate in state and social management is progressively enhanced.

+ The application of scientific and technological achievements to the state's operation; The construction of e-government and digital government generates more favourable conditions for PwDs to exercise their right to participate in state and social management.

- Difficulties:

+ Although the law has recognised and protected the right to participate in state and social management of PwDs and has given attention to creating favourable conditions for PwDs to exercise these rights, more is needed to guarantee the effective right execution for PwDs.

With a defect in one or more body parts or impaired function manifested in the form of disabilities that make it difficult to work, live and study, it is difficult for PwDs to perform their right to participate in the management of the state and society without attention and support by policies and laws. The law still lacks provisions to support PwDs to stand for election to the National Assembly or People's Councils at

all levels or to exercise their right to denounce, participate in discussions and make recommendations to state agencies about local, national and local issues.

+ The performance of grassroots democratic rights in communes, wards and townships has not considered PwDs.

The right to participate in state and social management of PwDs at the grassroots level is regulated in the Ordinance on Implementation of Democracy in Communes, 2007. These are significant direct democracy rights that help PwDs participate in state management in their locality. However, publishing information by posting it at the headquarters of the People's Committee of the commune, ward or township or through the loudspeaker system will trigger difficulties for PwDs to access information. Unfavourable access to information refrain PwDs from participating in the exercise of other rights.

+ The economic difficulties of PwDs partly lead to incomplete awareness of PwDs the importance as well as their negligence in exercising their right to participate in the state and social management (According to the 2016 survey, nearly 2 out of 10 households with a person with a disability are poor, while less than 1 in 10 households without a person with a disability is a poor household recognised by the commune/ward) [9].

5. Solutions to ensure the right to participate in state and social management of PwDs

To ensure the right to participate in state and social management of PwDs, it is necessary to pay attention to implementing the following basic solutions:

- Improve the law on the right to participate in state and social management of PwDs.

It is necessary to review, supplement and amend inappropriate regulations on the right to participate in state and social management of PwDs. Specifically, regarding the right to stand for election to the National Assembly and People's Councils at all levels of PwDs, the fact indicates that the number of PwDs who are members of the National Assembly and People's Councils at all levels is rare. There should be regulations on the proportion of PwDs in the National Assembly and People's Council structure at all levels. Supplement the Ordinance on the Implementation of Democracy in Communes, Wards and Towns (will be replaced by the Law on Implementation of Democracy at Grassroots) with provisions to facilitate PwDs to participate in the exercise of democratic rights directly at the base.

- Good implementation of job creation support for PwDs.

Most PwDs' lives are extremely harsh both in terms of living, psychologically and financially. Of the total number of households with PwDs who are poor according to the poverty category of communes and wards, nearly 87% of households live in rural areas, and 69% of households have the lowest living standards [10]. Support PwDs to find a suitable job not only helps this group of workers confidently overcome their circumstances, integrate into the community, and contribute to reducing the burden on the family and society..., but also affirms their role, helps them participate in state and social management activities and devote to the construction and development of the country. It is necessary to carry out activities such as orientation, employment and career counselling; training and fostering work and job-seeking skills; organising training courses; visiting and working at enterprises and organisations; job placement for PwDs.

- Promote propaganda and dissemination activities of the Party and State's policies and laws, contribute to raising awareness of the community and PwDs about the Party's guidelines and the state's laws and policies, the provisions of the International Convention relating to PwDs in general and the right to participate in the state management of PwDs in particular.

- Advance the role of organisations of PwDs.

Contemporary organisations of PwDs, such as the Vietnam Federation of PwDs, and the Vietnam Association of the Blind, aim to assist PwDs to live confidently, equally and fully integrate into society, strive to become useful citizens for the family and society, involving in protecting the legitimate rights and interests of members; constitute equal opportunities and favourable conditions for PwDs to study, live and work. These organisations gather opinions and aspirations of PwDs to reflect with the Party, State, Fatherland Front and relevant agencies and organisations in formulating relevant legal policies for PwDs. These organisations monitor, criticise and evaluate the implementation of legal provisions on PwDs and the International CRPD following the law. Intensification of the role of these organisations will help PwDs participate in state and social management more effectively.

- Strengthen the application of science and technology, especially information technology, to support activities of PwDs

Information and communication technology plays a particularly crucial role for PwDs, supporting PwDs to overcome barriers to social integration and participating in state and social management activities. PwDs find it difficult to exercise their right to participate in managing the state and society because of the impediments caused by their physical disability and impairment. The absence of hands and fingers makes it difficult to use the keyboard and mouse; the visually impaired person cannot use the utilities for the ordinary. Many other technology products, such as screen magnifying functions, speech synthesis browsers, voice recognition phones and typewriters, have solved these inconveniences. These utility applications allow users to use their voice to enter websites without using their eyes or hands. Besides, information technology such as telephones, computers and the internet have become tools to support people in daily activities, especially in labour, and have drastically changed lives. For PwDs, information technology becomes more and more meaningful in learning, working, living and participating in social activities. Therefore, for PwDs to easily participate in state and social management activities, it is necessary to strengthen the application of science and technology, especially information technology, to support the activities of PwDs.

Conclusion

The right to participate in the state and social management of PwDs is one of the important rights to help PwDs build a sustainable country and protect their legitimate rights and interests. However, when exercising these rights, PwDs face certain difficulties. Therefore, it is necessary to launch new synchronous solutions to ensure the effective implementation of the right to participate in the state and social management of PwDs.

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Demonstrate the factor of legal protection for persons with disabilities from the perspective of human rights

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Abstract:

The study analysed Vietnam's current legal structure and policies for PwDs and identified several areas of concern. Research indicates that although the government grants a large proportion of PwDs citizenship because of their disability, they are limited to specific sections. The majority of disabilities caused by mental illness, such as chronic anxiety and depression, are not recognised by the state as a disability, leading to an increasing proportion of cases of depression without measures. Settlement or housing society for their services and financial support. Furthermore, the study firmly established that while training programs and employment opportunities for PwDs have increased, socio-cultural biases and lack of awareness still prevail. The situation and the government have not been successful in ensuring non-discrimination. While increasing access is fundamental for this minority group, raising awareness and acceptance of PwDs is essential in Vietnamese society for any hope of disability, future growth of the SDGs, and improve opportunities for this minority group.

Keywords: Vietnam, PwDs, Human rights, Rights of PwDs, right to education and employment opportunities, National PwDs Act, Social exclusion

1. Theory of legal protection laws for PwDs

1.1 The Labour Code (2019)

The “Labour Code 2019” abolishes the 2012 version to expand the scope of “employee with an employment relationship” as an employee who does not have a legal employment contract [1]. It also redefines an employee as “a person who works for an employee by agreement, is remunerated, managed and supervised by an employer”. This law reform allows PwDs to claim the right to employment with appropriate certification and qualified employment and to exercise the right to refuse or fire an employer on the grounds of discrimination [2]. While the 1996 policy reform ensured significant poverty reduction, increased market economy opportunities, and modern industrialisation, the poor were disproportionately left behind. The exclusion is mainly due to the government's ignorance and lack of responsibility in disseminating more information about PwDs. Disability classification is a broad term encompassing many perspectives based on mental and physical characteristics. This study analyses a strategic, critical and comparative understanding of the rights of PwDs in Vietnam and the root factors of social exclusion [3]. The “National Law on PwDs” has been analysed and studied its problems, advantages and risks. The United Nations International Convention is also covered here, with an assessment of improving policies and approaches aimed at improving the lifestyles and market opportunities of PwDs.

1.2 Vietnam National Law on Persons with Disabilities (2010)

Adopted in 1992 and amended by the National Assembly in 2001, the “Constitution of the Socialist Republic of Vietnam” protects “PwDs” under Articles 59 and 67. Another strong government support includes can be seen in the 2010 edition of “Vietnam's National Law on Persons with Disabilities”, which introduced the inter-agency establishment of the “National Coordinating Council on PwDs (NCCD)”, provisions for PwDs of the “Vocational Law”, barriers to the issuance of free access codes and standards for construction and public transport. A recent UNICEF report identifies the number of PwDs in Vietnam as 6.2 million, accounting for about 7% of the country's population. Research

also shows that about 13%, including 12 million people, live with PwDs [4]. The study found that only 2.3% of Vietnamese PwDs received rehabilitation services, even though all were eligible to enrol in health insurance [5].

The Government of Vietnam is responsible for ensuring an equitable distribution of capital and legal assistance to this minority, which requires minimising concomitant discrimination and unequal lifestyle opportunities. Decree 28/2012/ND-CP of the Vietnamese Legislature stipulates the guiding provisions of the “Law on Persons with Disabilities”. In addition, the “Barrier-Free Access Code and Standards” of 2002, implemented under the support of the Vietnamese government, established a “national access standard” for the construction sector, providing PwDs with the right to have employment in this field with recognition by law [6]. The new decade launched by the government in November 2012 is named “Let's Deal It Right” and aims to promote the full realisation of the rights of PwDs, including the Implementation of the CRPD and the United Nations Essential Approval “Vietnamese Ministry of Labour” of “Invalids and Social Affairs (MOLISA)” has a legitimate political mandate on disability issues and is responsible for coordinating the implementation of laws on PwDs [7]. Persons directly implementing policies related to PwDs are the People's Committees of communes, provinces and districts.

Considering all these dynamics of change, widespread lifestyles and access to human rights facilities and other essential health care for PwDs are expected to increase significantly. The new “Asia-Pacific Decade for Persons with Disabilities” has been established by the Vietnamese government to achieve the goals of the Sustainable Development Goals for the period 2013-2022. In 2015 “Inclusive Education” was government support in Vietnam to provide inclusive education for “Children with Disabilities (CWD), with the continuation of the 2006 “Vocational Training Law” mandating organisation tax regulations for disability training services [8]. Ho Chi Minh City conducted a consultation workshop on “Monitoring the implementation of Article 27 of the CRPD (CRPD) on the right to employment of PwDs in Vietnam” in 2021, led by the “League of Persons with Disabilities” organised by the United Nations.

Community Development Program (UNDP) and the Norwegian Embassy. In partnership with the disability-specific organisation “Action to the Institute for Community Development (ACDC)”, it aims to strengthen the capacity of community leaders of PwDs and to strengthen synergies in monitoring “human rights indicators” [9]. Another primary goal of the workshop was to ensure inclusive employment for PwDs in Vietnam. Government support is essential for legislative and social actions to improve the quality of life and healthcare facilities for PwDs. A prominent example is the “National Action Plan to Support PwDs”, approved in August 2012, to provide suitable employment and vocational training to approximately 250,000 PwDs in the age group labour [10]. The project addressed, recognised and mitigated various socio-economic and environmental issues, such as accessibility to public buildings, health services, public transport, legal services and early intervention. These are recognised for the successful efforts of the Vietnamese government in identifying and taking responsibility for the healthy lifestyle of this minority.

1.3 Law on PwDs (1992)

National and socio-political perceptions of “PwDs” have changed dramatically over the past two decades. The “Government of Vietnam” has moved towards the general acceptance of social, charitable and health services and accepting the legal rights of PwDs citizens, much of which is reflected in the social policies and new laws [11]. Promulgated in early 2010, the “Vietnamese Disability Law” is the country's “Firstly comprehensive national law” representing the legal rights of PwDs [12]. The new law mandates equal social participation through accommodation and

accessibility for PwDs, where the new law covers cultural services, employment, “sports and entertainment”, information technology, information, occupational technology, rehabilitation, public places, education and health care. The origins of the law can be traced back to the passage of the “Disability Ordinance” in 1998, a series of initiatives for the “rights and interests” of PwDs [13].

The main challenge here is the exception of the DDDC's inability to determine assessment at the local level, sending cases to the “Medical Evaluation Council (MEC)” located at the provincial level. Children under 6 and those with “mental health problems” will likely be referred to the MEC. With the opportunity for a disability reevaluation, the challenge is the financial difference between the “direct application cost” and the “appeal assessment fee.” The former requires 50,000 dong, rounded up to more than 2 USD, while the latter is counted as 1,150,000 dong, marked at \$50 above, which reduces affordability. The Policy's “Evaluation and Disclosure of Key Information” has significant limitations in its assessment criteria that disproportionately focus on “Physical Function and Self-Care”, which tends to underestimate the impact of effects of some impairments, such as “mental health problems” and “hearing and profound communication impairments” [14]. Key informants have noted the increased likelihood of lower-level classifications or exclusions as the primary pathway to these failures.

It is in line with the inter-agency establishment of the “National Coordinating Council on PwDs (NCCD)” and the enactment of a barrier-free approach to “rules and standards” for public transport [15]. Enhanced by the “Social Protection Layer Recommendation of the International Labour Organisation (2012)” and the recognition of the 2015-2030 SDGs, the inclusion of PwDs in essential amenities and expectations of Human rights are necessary for the development of the country. According to Article 34 of the “Constitution of Vietnam (2013)”, “guaranteed rights” are codified, supplemented with a more detailed description of the strengthening of the national social welfare strategy 2012-2020 in Resolution 70/NQ -PR/2012 [16]. One of the socio-political challenges to be addressed in this framework is the high poverty risk of PwDs and the provision of adequate social assistance to these groups. It also includes the intention of social insurance to reduce financial risks associated with old age, illness and work-related injury. Challenges in this regard lead to various issues recognised and contested by the “Vietnam National Law on PwDs”, which sets out policies to improve the chances of decent work.

Vietnam's mission covers the areas of social protection “policies and programs” that apply, overseeing non-contributory benefits, such as disability awareness programs [17]. Disability targeting other groups and programs aimed at PwDs. Joint Circular 37/2012/TTLT-BLĐTBXH-BYT-BTC-BGDĐT is the “Disability Determination Council (DDDC)” that determines the “type and degree” of disability located in the administrative divisions level of Vietnam. Disability benefits require a disability assessment to qualify under the previously mentioned DDDC determinant, using two age-focused assessment tools. The factors of accessibility to social protection of Vietnamese PwDs, which add to potential challenges, are “attitudes towards PwDs and their need for social protection, accessibility [18]. geographical and financial, broader disability-based planning”, perceptions and perceptions of the usefulness of “local commune people's committees” programs, thus taking advantage of both national and local information and human rights resolutions.

2. Current reality of Vietnamese disability laws and inclusivity

2.1 Normative Approach and legal socialist state behaviour

“Discrimination, discrimination and violation” of human rights are all linked, reinforced and justified [19]. For example, stigmatising “a person with schizophrenia (PLS)” would become a form of discrimination; refusing their jobs because of their schizophrenia is another cause which erodes their

right to be employed. Discrimination fueled by stigma leads to human rights violations, thereby legitimising the stigma. If the cycle is not stopped, it will continue to repeat and intensify [20]. As a result, stigma puts the health of the PLMI at risk, with some threats constituting human rights violations. According to the “human rights framework”, stigma and discrimination violate fundamental human rights and the right to be free from discrimination. Other human rights, such as the right to health, dignity and privacy, and the freedom not to be subjected to harsh, inhuman or degrading treatment or punishment, are also violated where the PLMI is the objective. The target of discrimination. Significant health consequences can result from human rights violations.

Vietnam's ratification of the “United Nations CRPD (CRPD)” in 2015 marks a “fundamental commitment to human rights” for PwDs. On the other hand, previous research has shown the disadvantage of this minority. Studies have shown that the educational opportunities of academies used for employment are limited, resulting in a limited supply of financial means. The 2009 Vietnam Census report identifies 7.8% of the country's population as about 6.7 million people, including PwDs [21]. An important factor contributing to this minority's social isolation and exclusion was parental exposure to Agent Orange, a dioxin caused by the Vietnam War, which resulted in the birth of children - resulting in large numbers of the population suffering from variable neurological deficits and malformations. While the 1996 policy reform significantly reduced poverty rates, increased market economic opportunities, and modern industrialisation, PwDs were still disproportionately left within the poverty lines [22]. Contributing exclusion factors mainly arise from the government's ignorance and lack of responsibility in spreading more knowledge about PwDs.

The classification of depression is considered a universal word encompassing a wide range of perspectives depending on mental and physical characteristics. PwDs are generally defined as those with long-term sensory, physical, mental, or intellectual limitations. These can develop as barriers or impediments to effective interaction and participation depending on the social context. Social cognitive processes such as signalling, prejudice, and discrimination all contribute to the stigma associated with mental disability [23]. The public can use low social skills and physical characteristics, including psychiatric symptoms, but can also use labels to determine if “a person has a mental disability (PLMI)” [24]. Prejudice is described as a belief in and acting on the integrity of stereotypes. It stems from common beliefs about PLMI, such as incompetence, weakness, or danger. As a result, discrimination against PLMI is pervasive and manifests itself in various ways, including bullying, interference in interpersonal relationships, exclusion from the workplace and school, and social isolation.

General depression is also a prominent attribute of the PwDs minority with risk factors such as low folic acid, poor health, vitamin B12 deficiency, brain damage, and “high plasma homocysteine levels”. In Vietnam, people under 60 years of age and older are constitutionally referred to as “elderly people” [25]. A 2009 statistical report on the “Vietnam Population and Housing Census” showed an alarming increase in the number of elderly people with cases of family abandonment or severe developmental disabilities next year. In the framework of “Years of Living with PwDs (YLD)” in 2000, depression was assessed as necessary, in addition to being considered the 4th “main cause” of the global burden of disease. According to the measure “Disability-Adjusted Lives” Years (DALYs)” [26]. Because of the importance of maintaining and caring for the elderly, they are highly socially excluded and potentially undervalued in the relative nursing duty.

2.2 Economic lives and human rights well-being of PwDs

Vietnam's mandate includes monitoring the quasi-access rights of PwDs, trying to target other groups and unstable regimes, and establishing social welfare policies as well. as program scopes. Article 34

of the “Constitution of Vietnam (2013)” provides for guaranteed rights, which also clearly states the characteristics of the Strategy to strengthen “National Social Welfare” 2012-2020 in Resolution 70/NQ- CP / 2012 [27]. This model responds to two socio-political concerns: the high poverty risk posed by PwDs and the provision of sufficient government social assistance to these people. It also includes a social insurance scheme to reduce investment risks related to old age, illness and work-related accidents [28]. According to the study, while a large number of PwDs obtain government citizenship because of their disability, these are limited to specific groups.

The fact that the majority of disabilities related to mental illness, such as chronic anxiety and depression, are not recognised by the state as a disability has led to an increase in the number of unresolved cases of depression. Decision or housing society for their services and financial support. Policies are legally sanctioned by conducting organisational activities based on state infrastructure, and tangible and legal results are achieved [29]. Achieving policy objectives applied to solve pressing social issues is a requirement for policy implementation. Social Security programs are objective for people of working age and younger, including PwDs who cannot find work due to stereotypes rooted in nostalgia for industrial facilities. The barriers presented in this chapter ended the challenges recognised and questioned under the “Vietnam National Law” on PwDs, suggesting strategies to improve access to work [30]. Furthermore, the study concludes that although training programs and employment opportunities for “PwDs” have increased, socio-cultural biases and lack of awareness still prevail. Moreover, indeed, the government was unable to maintain non-discrimination.

2.3 Disability-inclusive social protection

The workshop's main aim was to promote the inclusive employment of PwDs in Vietnam. State support is essential for social and legal initiatives to improve the quality of life and access to health care for PwDs. A notable example is the “National Plan of Action to Support PwDs” [31]. Approved in August 2012, it aims to provide suitable employment opportunities and vocational training to an estimated 250,000 working-age PwDs. The initiative encountered, identified and addressed various socio-economic and living environment issues, including access to public buildings, health care, public transport use, legal advice and early intervention. This is recognised by the Vietnamese government's winning attempt to recognise and embrace the healthy lifestyle of this minority. Considering all these changing forces, it is expected that the lifestyle, accessibility of human rights facilities and other aspects of health care will require significant change.

The Government of Vietnam has established the “Asia-Pacific Decade for PwDs” to achieve the goals of the SDGs from 2013 to 2022. With the continued application of the “Vocational Training Law” in 2006 [32]. The Vietnamese government supports inclusive education for “children with disabilities”. Disabilities (CwDs) by proposing institutional tax provisions for training services for PwDs. In 2021, “The United Nations Development Program (UNDP)” and the “Embassy of Norway” organised a consultation workshop in Ho Chi Minh City. Its goal is to expand the synergy of monitoring “human rights indicators” while partnering with the disability-specific organisation “Action to the Institute for Community Development (ACDC)” to develop the capacity building of community leaders of PwDs. The role of the state as an issuer is essential for the implementation of “social security policies” and for regular evaluation of their application. With Vietnam's Firstly law recognising PwDs, facilitating social inclusion, and then forming a formal organisation, managed and facilitated by coordinating ministers, the country demonstrated a solid commitment to protecting the rights of PwDs.

After adopting the United Nations Convention, 63 legal aid centres were opened across Vietnam to support the legal access of PwDs. “Resolution No. 48-NQ/TWTW and No. 49-NQ/TWTW” were

incorporated by the Vietnamese government 17 years after 2002 to improve citizen security and favourable lifestyle laws related to employment, resource allocation and transmission, and access to health care [33]. PwDs are not considered to have any constitutionally protected specification as they are primarily viewed in most Asian countries as children living on emotional needs without any monopoly right. IE for PwDs has been a growing academic topic for almost 3 decades in this country, with various programs introduced to provide the potential for improvement and increase employment rates. While the government has legally authorised this minority's ability and right to work, conservative organisations oppose the idea due to the potential ignorance and rigidity of PwDs and their skills.

3. UN Convention's role in protecting PwDs' human rights

3.1 Validity of the Convention on Vietnamese PwDs

The CRPR ensures that PwDs have equitable access to and distribution of social, civic, and economic life. Switzerland's ratification of the Convention, approved by the “General Assembly of the United” on December 13, 2006, was commemorated on April 15, 2014. The relevance of this Convention resides in its guarantee that everyone has the right to live an independent, self-sufficient existence, which also includes the right to a family, access to education, appropriate social security, and a standard of living. According to the provisions of the Convention, the State parties are required to choose “focal points” to oversee the execution of commitments and to develop a new federal plan for the implementation and promotion of the Convention. On February 5, 2015, Vietnam became the last country, except for Brunei, to ratify the “2006 CPRD” treaty [34]. The VIE/01/021 “Support to Expand and Implement Agenda 21 for Vietnam” programme began in November 2001 and offered information on Agenda 21, including a strategic educational focus and a chance for PwDs to develop their skills. Adopting the Convention also increased awareness of the state and federal governments' duties in supporting this minority to live better and create more jobs.

3.2 Vietnamese CRPD ratification of PwDs human rights

Compared to the other states, except for Brunei, Vietnam accepted the “2006 CRPD” treaty on February 5, 2015. This was done to pressure the Vietnamese government into dealing with the “human rights concerns” of PwDs. Policies are given the legal authority and accurate results by executing organisational activities based on state infrastructure. For policies to be enforced, it is necessary to accomplish their goals while addressing pressing societal challenges.

The social security systems are fair to those working or younger, and they recognise the Poor as those who cannot obtain employment due to ingrained prejudice and industrial scepticism. Studies show that there are limited educational opportunities supplied by institutions regarding job employment, which leads to a need for more resources. The “2009 Vietnamese census” found that PwDs comprised 7.8 per cent of the town's total or around 6.7 million individuals.

3.3 PwDs-specific human rights policies in Vietnam

The Vietnamese government's duty entails managing quasi-entitlement programmes like “PwDs community awareness” and attempting to reach out to other groups in addition to disorder programmes and existing social protection laws and programme scopes. The right to security is codified in Provisions of the “Vietnamese Constitution (2013),” which also describes the 2012–20 strategic enhancement of “national social welfare” by Resolution 70/NQ–CP/2012. This template covers two socio-political issues: how vulnerable PwDs are to poverty and whether they receive enough government assistance. A social insurance programme is also included to lower the investment risk of old age, illness, and employment injuries. The challenges in this chapter end with

the many difficulties acknowledged and challenged underneath the “Vietnamese National Law” on PwDs, which either provides methods to improve access to respectable employment.

The survey also found that, despite improvements in training programmes and employment prospects for “PwDs,” socio-cultural prejudice and a lack of knowledge still predominate and that the government has previously failed to uphold non-discrimination. Increasing PwDs comprehension and acceptability within Vietnamese society is crucial for any potential SDG growth and beneficial benefits for this minority, even if broadening the scope is crucial for this minority. The social exclusion of PwDs is linked to unequal resource allocation, restricted access, and capacity returns, with a critical role for entitlements that influence social systems that are interactive and intelligible. The idea that PwDs run the risk of being excluded is incorrect; instead, it highlights the outrageously fundamental security flaws these individuals have because of the unjust and flawed societal institutions in place. Disability-targeted entitlements must apply two age-group-specific assessment instruments to evaluate a person's payment qualification under the abovementioned DDDC guidelines.

Conclusion

The study found that although many PwDs receive government citizenship because of disability, these benefits are only available to specific categories. This group's isolation & social alienation is primarily a result of parental exposure to Agent Orange, a dioxin produced during the Vietnam War. Because of this, a sizable fraction of the populace is born suffering abnormalities and other neurological disorders. In contrast, the “1996 Political Reform” led to a significant drop in unemployment rates and increased job possibilities. Decree No. 28/2012/ND-CP, passed in 2012, modified how local “commune-level People's Committees” handled the processing of social assistance applications and resumed for “PwDs,” using national and state peace and civil rights rulings.

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The right to vote of persons with disabilities in Vietnam

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Abstract:

Participation in politics, including the right to vote for citizens and PwDs, is the foundation of democracy, equality and inclusion in modern and effective national governance. International and Vietnamese laws encompass provisions that promote citizens to participate in political activities. However, PwDs face various barriers in most countries when exercising their voting rights. In this article, the author conducts an in-depth study on the voting rights of PwDs from a legal perspective and proposes solutions to promote those rights.

Keywords: the right to vote, PwDs, Vietnam

1. Overview of the right to vote for PwDs

A person with a disability is a person who has one or more physical or mental impairments that cause a significant and long-term adverse effect on a person's ability to carry out normal day-to-day activities [1]. In Vietnam, there are 6.2 million PwDs aged 2 years and older, accounting for 7.09% of the population [2].

The right to participate in political activities of people includes two basic rights: *Firstly*, the right to vote; *Secondly*, the right to stand for election. This is the source of all human rights in realising other rights, especially directly or indirectly influencing the decision-making process of national and local laws and policies.

The right to vote is widely recognised as a fundamental human right essential to a well-functioning democracy [3]. Voting represents both a right and responsibility within democratic political systems. At its simplest level, voting expresses a preference [4]. According to the law, the right to vote means that the citizens choose their representatives in the state agencies at the central and local levels.

The right to vote for PwDs is one of the basic and important human rights. Full, equal and democratic participation of PwDs in their voting activities ensures human social values in both Vietnam and other countries. The right to vote for PwDs contributes to recognising their diverse contribution to socio-economic development and removing legal barriers against their participation.

According to international law, the right to vote of citizens and the right to vote of people are regulated as follows:

STT	Document	Provision
1	<i>Universal Declaration of Human Rights 1948</i>	Paragraph 1, Article 21, "everyone has the right to participate in the government of his country, directly or through freely chosen representatives". Paragraph 3, Article 21 "the will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures".
2	<i>International Covenant on Civil and Political Rights 1966 (Vietnam acceded in 1982)</i>	Point b, Article 25, to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

3	<i>Convention for the Elimination of All Forms of Discrimination Against Women 1978</i>	Point a, Article 7, to vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.
4	<i>International CRPD 2007</i>	Point a, Article 29, i. Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use; ii. Protecting the right of PwDs to vote by secret ballot in elections and public referendums without intimidation, to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate; iii. Guaranteeing the free expression of the will of PwDs as electors and, to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice.

More than 1% of Americans are considered to have physical, developmental, or learning impairments [5]. In the United States (US), the US Constitution of 1976 and federal and state laws regulate elections. The Voting Rights Act of 1965 and the 15th Amendment of the US allow black people to vote in the US. In the 2008 and 2012 elections, Black Americans surpassed White Americans in voter participation. In the 2018 and 2020 elections, there was record participation by Latino, Asian American and Native American voters [6]. Blacks are the second group to be segregated by American social life after PwDs. According to the US law, there is an equal opportunity for PwDs and persons without impairment to participate in the voting process: “any voter who requests assistance in voting because of blindness or disability”, which requires each polling station to use an “assisting voting machine” that allows voters with disabilities to vote privately.

2. Assessment of the current status of voting rights of PwDs in Vietnam

2.1. Achievements on voting rights of PwDs in Vietnam today

Firstly, the state encourages Vietnamese citizens to exercise their right to elect deputies at the National Assembly and People's Councils.

In Vietnam, according to Article 2 of the 2013 Constitution, “*all the state power belongs to the People*”, Article 6, 2013 Constitution “, *the people shall exercise the state power in the form of direct democracy and of representative democracy through National Assembly, People's Council*”. Article 2, Law on Election of Deputies to the National Assembly and People's Council in 2015 stipulates: “*every 18-year-old or older citizen of the Socialist Republic of Vietnam is entitled to vote in the election, and every 21-year-old or older citizen is entitled to stand for the election to the National Assembly and the People's Councils as prescribed in this Law*”. Thus, our state encourages everyone to participate in the election of deputies to the National Assembly and People's Councils at all levels.

Secondly, the state prioritises and creates favourable conditions for PwDs

The state also promulgates prioritising policies to encourage PwDs to exercise their voting rights. According to Article 59, Constitution of 2013, “2. *The state shall create equal opportunities for citizens to enjoy social welfare, develop the social security system, and adopt policies to support elderly people, PwDs, poor people, and other disadvantaged people*”. Our state creates equal opportunities for everyone when participating in political life, especially policies to assist PwDs.

Special state regulations exist for conducting private voting or delivering ballot boxes to voters' homes. Article 11 of the 2015 Law on Election of Deputies to the National Assembly and People's Council stipulates: “The places which may have separate polling stations: a) People's armed units; b) Hospitals, maternity wards, convalescent homes, PwDs care facilities, elderly people care facilities which there are at least fifty electors; c) Reform schools, detoxification units, detention centres”. Article 69, Law on Election of Deputies to the National Assembly and People's Council in 2015, stipulates voting principles as follows:

“2. Electors shall cast their ballots by themselves, except for cases prescribed in Clause 3 and Clause 4 of this Article; the electors are required to present their electors’ cards for voting.

3. Any elector unable to write his/her ballot may ask another person to do that for him/her, but he/she is required to cast the ballot by himself/herself; the person who helps write the ballot must keep secret the elector's ballot. If, due to his/her disability, the elector is unable to cast a ballot by himself/herself, and he/she can ask another person to cast the ballot in the ballot box.

4. In cases where an elector is ill, old or disabilities being unable to go to the polling booth, the Election Team shall bring an auxiliary ballot box and the ballot to his/her residence so that he/she can receive the ballot and cast it. In cases where an elector is detained or stayed in a reform school or a detoxification centre which have no separate polling station or the elector is arrested temporarily, the Electoral Team shall bring an auxiliary ballot box and the ballot to the detention centre, arrest centre, reform school or detoxification centre so that he/she can receive the ballot and cast it”.

This is one of the features of our state to guarantee the democratic rights of citizens and PwDs.

Thirdly, PwDs exercising their right to vote for deputies to the National Assembly and People's Councils have increased in quantity and quality.

There were about 39.6 million PwDs in the US in 2014, accounting for about 12.6 per cent of the US population. Of those, 92.3% were of voting age (18 years or older); however, qualified shortfall companies were more likely to vote than qualified non-disadvantaged companies [7]. In recent years, many PwDs have actively participated in the election of deputies to the National Assembly and People's Councils. According to incomplete statistics by the Provincial Association of PwDs, there are 40,000 PwDs in Hai Duong Province. On May 23, more than 10,000 people voted for deputies to the National Assembly and People's Councils at the public polling station; and about 10,000 people with mobility and limited mobility impairments were unable to go to polling stations, so the election team brought the ballot-boxes to their home” [8].

Fourthly, some visually-impaired people also exercise their rights in various unique ways

There are smart ways to encourage visually-impaired people to exercise their rights. For example, a visually-impaired person shared that her mother requested the Ward People's Committee scan the candidates' list and copy it to USB for her. Because this is the Firstly time voters have requested such a scan, the Committee officials needed clarification. Moreover, they also did not have an A3 scanner. Thus, her mother did it by herself. She visited a few print shops until only one could scan those lists into USB [9]. It demonstrates that PwDs have the right to control their decisions. They do not need to ask for helpers but actively exercise their right to vote. My Firstly time participating in the election

was more than a decade ago when there were not many PwDs voting. I am one of the few PwDs who vote at the polls [10].

2.2. Restrictions on voting rights of PwDs in Vietnam today

Firstly, in terms of the standards of National Assembly deputies and People's Council deputies

Regarding the law governing the right to vote: the prevailing standards of the National Assembly and People's Council deputies are still general, qualitative and difficult to quantify. For example, standards of good moral quality, cultural and professional qualifications, sufficient capacity, health, work experience and reputation to perform delegate duties have yet to create favourable conditions for voters to choose the right delegates according to the criteria [11]. Since then, in the election process of deputies to the National Assembly and People's Councils at all levels, voters, especially the PwDs group, must be equipped with precise criteria to distinguish the candidate's ability.

Secondly, some PwDs are still shy, passive, and even do not dare to exercise their right to vote - their highest democratic rights

It is claimed that PwDs are one of the most disenfranchised groups in American society [12]. PwDs still have less capacity than persons without impairment when voting and participating in various activities [13]. Some people still have feelings of inferiority or indifference, or they ask others to vote on their behalf. Moreover, while voting participation of PwDs in America still lags behind that of the persons without impairment by 5.7 per cent, it had grown from a much lower percentage to 62 per cent in the high-turnout 2020 election, when voting processes were made easier for all Americans due to the pandemic [14].

Thirdly, approach the ballot box area

In 2016, the Government Accountability Office (GAO) found that 60 per cent of polling places were inaccessible to voters with disabilities in some way. The lack of compliance with the Americans with Disabilities Act (ADA) is not the only barrier to getting PwDs to the ballot box, however [15].

Some polling stations are not accessible to PwDs, especially PwDs in wheelchairs. It is difficult for some PwDs to access the bulletin board or ballot box in a wheelchair because the polling station is too small and crowded on Election Day. Some polling stations are located in halls or cultural houses, with a three-step staircase at the entrance but no ramp for wheelchairs. Some ballot boxes are placed at a relatively high position which is out of reach of PwDs. At the polling station, PwDs are supported by employees of the Election Team (accounting for 51.01%). Some PwDs are assisted by other voters or accompanied by a personal assistant from the Independent Living Center. These people help PwDs to move (24.00%) and read the list of candidates for them (19.00%). However, these supporting people are not always available due to the limited number of assistants (if any) at the polling station" [16].

Fourthly, there are still some people with severe intellectual disabilities or lack of civil capacity who are not allowed to vote in order to exercise their citizenship rights fully

The right to vote for individuals with disabilities other than intellectual or mental is the least elucidated issue by disability scholars. This fact is due to a greater emphasis on legal disenfranchisement, which influences preeminent persons with intellectual or mental disabilities because of guardianship, rather than procedural barriers that affect all PwDs [17].

Fifthly, the current law of Vietnam does not have specific and clear regulations on voting devices

Voters exercising their right to elect deputies to the National Assembly and People's Councils have not been well trained in using voting aids to improve users' experience.

3. Solution

The right to vote for PwDs inherently faces many barriers in practice. However, it is the foundation for realising the right of PwDs to stand for election to elected bodies.

Firstly, to raise awareness

Raising awareness of PwDs about the importance of the election of deputies to the National Assembly and People's Councils at all levels through the propagation, dissemination and education. In addition, the state should maintain policies to encourage and promote PwDs to exercise their citizens voting rights. It is not only the right but also the duty of citizens to choose those who satisfy the requirements of talent and ethics to set up plans for the country's socio-economic development.

Secondly, perfecting the institution

It is necessary to complete the provisions of the law related to the election of deputies to the National Assembly and People's Councils at all levels.

It is necessary to supplement regulations to enhance accessibility to braille forms for the visually impaired or to have sign language interpreters for people with language impairments.

It is necessary to supplement regulations on how to make ballot boxes accessible to everyone.

It is necessary to supplement regulations on the diversity of voting forms.

Thirdly, technology application

It is necessary to apply more modern information technology in the election process of deputies to the National Assembly and People's Councils at all levels. Thanks to the application of information technology on electronic portals, online connection networks and mobile radio systems, information about the election reaches all people in the country.

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Access online public administrative services for persons with disabilities

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Abstract

In the context of the current 4.0 technology revolution, the application of information and communication technology (ICT) in public administrative services is of great significance, contributing to the administrative reform of each country. Among the subjects for which the state provides public services, PwDs are more disadvantaged than other normal subjects. Not only are they limited in their capacity to function like the border population, but they also need more facilities. The following article discusses the access to online public administrative services of PwDs in Vietnam, proposing some policy implications to promote online public services, including building infrastructure facilities, designing declaration forms specifically for PwDs, and changing the attitude of civil servants at state agencies.

Keywords: Disabilities, services, public administrative services

1. Introduction

In the development of modern administration, providing online public services to PwDs will be different from ordinary people. Because PwDs are disadvantaged in using their eyes, hands, and feet to manipulate services. Meanwhile, online public administrative services require service users to manipulate computers, capture images, read words, and fill in the information in procedures. Therefore, research is needed to provide online public administrative services for PwDs to help them use this service most conveniently. The application of ICT in state agencies and administrative procedures plays an important role in the roadmap to build e-government to increase the people's efficiency, transparency and participation. Providing online public administrative services in the network environment facilitates people and businesses and lightens the pressure of paperwork for state agencies. This helps people and businesses save time and effort while using public services. Instead of going to a government agency, people only need a computer connected to the internet to perform administrative procedures on the website, pay charges online and then receive the results online or by post.

According to the UN report (2020), the world average online public service index increased from 0.4178 in 2010 to 0.562 in 2020. This shows an uptrend in the provision of online public services globally. The report also indicates that most local government portals are accessible via mobile devices, demonstrating an improvement in government awareness of the importance of technology in supplying public service. Especially during the Covid-19 epidemic, online public services are even more necessary for communication, leadership, and cooperation between policymakers and society. However, the world average online public service index in 2020 is at 0.562, implying that most local government portals are substandard (for example, they only provide information but are undersized or have no services provided) [1], [2].

In Vietnam, the government has launched a long-term plan for using ICT in providing public services to people and businesses since 2010. Some solutions can be mentioned, such as the National Document Linking Axis, No. 626/QĐ-VPCP dated August 1, 2019, Decision No. 28/2018/QĐ-TTg 2018 on sending and receiving electronic documents in state agencies and many other documents. As a result, Vietnam's OSI index increased from 0.30476 in 2010 to 0.6529 in 2020, higher than the world average (0.562 in 2020) [2]. However, in the government's report in 2018, the number of online filings was low; in the Firstly quarter of 2018, it reached 24.24% compared to the total number of

public services that were provided by the ministries, the ministerial-level agencies, and Vietnam Social Insurance; 9.69% of total public services provided by provinces and centrally run cities [3].

In developing online public services, accessibility to users with disabilities plays a critical role. Because PwDs face difficulties in both material and capacity to access services such as vision and ability to walk. Using online public services will help them not go to state agencies but need help using electronic devices. According to the Center for Promoting Education and Improving Women's Capacity survey results, up to 93% of PwDs out of the total surveyed people need to carry out public administrative procedures at the commune, district and provincial levels. Vietnam has initiated many programs and policies to support PwDs, e.g. Project Support for PwDs for the period 2012-2020, a Community-based project on social assistance and rehabilitation for mentally ill and mentally disturbed people for the period 2011-2020; The project of organising rehabilitation in the community for victims of toxic chemicals used by the US during the war in Vietnam in the period 2008-2016. However, the support for PwDs in accessing administrative services, especially online public administrative services, still needs to be improved. At the same time, this object faces much more difficulties than ordinary people in using services, especially electronic devices. Therefore, the next part of the article focuses on analysing the access to public administrative services of PwDs, thereby proposing policy suggestions for developing online public administrative services in Vietnam.

2. An overview

At the beginning of the 21st century, thanks to the e-government trend, abundant studies have analysed the application of ICT in public service delivery.

It is widely agreed that online public services significantly benefit developed and developing countries. In most developed countries, the application of ICT to public services has offered ample benefits for citizens and governments in recent years. As in EU countries, the increasing ICT applications bring governments closer to their people [4]. E-government has become popular in modern public administration worldwide [5]. According to the 2020 United Nations' E-Government Survey Outcome Report, more and more developing and least developed countries are pursuing an e-government strategy. Some of them are radically different from those guiding earlier e-government initiatives. Also, according to this report, global online public service delivery has improved significantly. About 84% of countries in the world now offer at least one public service online [2]. The application of ICT helps improve public agencies' transparency by providing information and increasing accountability for government activities [6], [7].

In addition, many studies refer to the influencing factors in developing online public services in different countries. This research focuses on three factors: economic, social, and institutional.

Firstly, the group of economic factors includes technology and the level of economic development. Technological developments have changed the way people communicate, leading to people demanding more information than the government provides [8]. Technological developments have pressured the traditional administrative system to provide more transparent, efficient public services (Pleger et al., 2020) and avoid corruption [10]. The country's economic development also affects online public administration services. Studies show that online public services are more common in developed countries than in less developed ones. Especially in developing and underdeveloped countries face financial, technological and even cognitive obstacles in public service delivery. This is evident in African countries, which still need to develop online services due to political problems, the economic environment and people's perceptions.

Secondly, social factors are represented by people's awareness of the network, gender, interests, age, education, and digital gap. In less developed and developing countries, people's limited awareness

has hindered the development of online public services. Besides, the digital gap (or digital knowledge) also leads to the failure to develop online public services in underdeveloped countries. The larger the digital divide, the more difficult it is to develop online public services [7]. In addition, adapting or accepting online public services also depends on interests [4], gender, education, income and network knowledge [11]. However, these factors will be overcome in the long term to develop online public services. Some authors believe that before developing the ICT system, it should invest in education. Firstly to improve online public services [12].

Thirdly, the institutional factors comprise the national policy and legal system in providing online public services. Tangi et al. (2021) argue that the government should solely replace all traditional public services delivery, such as telephone or front desk, to develop the online method. If the government provides both traditional and online public services, the development of e-government will be slower. This stems from the fact that people still prefer traditional public service. For example, traditional public administration in the Netherlands is still preferred despite the government's increased provision of online public service channels [13]. However, in less developed countries, where many poor people need to learn how to use or have little opportunity to access technology, it will be more difficult for governments to adopt online public services.

Thus, recent studies have focused on e-government in public service delivery. The research analyses the role of e-government and the influencing factors to the development of e-government in public service delivery in developed and developing countries. Economic, social and institutional factors affect efforts to apply ICT in public service delivery. However, only a few studies have addressed the access to online public services of PwDs in Vietnam. Especially in developing countries, where online public services are still new and uncommon, the state plays a pivotal role in developing online public services. Therefore, the following article will explore the access to online public services of PwDs to propose some policies.

3. Status of state management in the provision of public administrative services in Vietnam

The Covid-19 pandemic has broken out worldwide, causing unprecedented negative impacts on countries and Vietnam. According to Worldometer, as of February 18, 2022, there are 421,858,239 cases of Coronavirus in the world, with 5,890,730 deaths; this number is constantly increasing. To prevent the spread of Covid-19, countries were forced to use social distancing measures, which caused the worldwide economy to stagnate, and trade and investment between countries to be declined. Working online to keep the economy running is the only way that works during this period, or this is a golden opportunity for countries to promote online public services. Vietnam is no exception. The Government of Vietnam has accelerated the application of ICT in state agencies to improve the quality of public service delivery. During the Covid period, the Government of Vietnam issued a series of legal and guiding documents for central and local authorities to switch to online public service delivery quickly. To further clarify changes in state management in public service delivery, the article will analyse two phases, from 2019 to March 2021; and from 2010 to 2019.

** Period from 2019 to 3/2021*

- Create a unified focal point of document and electronic transaction portal providing public services. The text linkage between G-to-G, G-to-I and G-to-B is crucial in online public service delivery. Because when there is a document link, state agencies in any location can get the most updated text information by online sharing instead of by paperwork through the traditional method. Similarly, for businesses and people using public services, instead of going to a state agency or visiting a provincial or local website to get text information, they only need to access 1 address provided by state agencies to get all documents. This will reduce costs and allow them more time to focus on their professional

work. The year 2019 marks the milestone of the government approving the National Document Linking Axis project in Document No. 626/QD-VPCP dated August 1, 2019, and putting the national public service portal into operation via the website dichvucong.gov.vn, which plays an important role in providing online public services in Vietnam. The national public service portal is a tool for government, ministries, branches and localities to evaluate and supervise the settlement of administrative procedures and improve transparency in the implementation process, thereby reducing negative problems and corruption in handling administrative procedures. Besides, linking documents is an important premise to reduce the rate of paper usage, reduce work processing time, and provide tools to check and monitor the work execution process in a timely, quick, efficient and accurate manner, contributing to promoting administrative procedure reform.

Then, in 2020, the Vietnamese government issued Decision No. 20/2020/QD-TTg on electronic identifiers of agencies and organisations serving data connection and sharing with local ministries and sectors, dated July 20, 2020. Electronic identifiers help agencies and website users easily search and perform operations on the website. Also, in this period, the Government of Vietnam is promoting the implementation of granting identification codes to people through chip-based ID cards. On the one hand, this helps state agencies easily manage population data. On the other hand, it will be easier for people to use the website through this code because they do not need to declare much personal information.

- Improve the quality of infrastructure

Infrastructure is a critical factor in upgrading the quality of public service delivery, especially in developing countries that face difficulties in infrastructure as well as financial sources to invest in infrastructure. During this period, the Government of Vietnam has made great efforts to promote infrastructure development by upgrading the Government Architecture Framework in Document No. 11757/VPCP-KSTT on approving the Architecture Framework of Vietnam e-Government, version 2.0, dated December 26, 2019. Albeit this time, the government is facing difficulties in the state budget due to the consequences of Covid-19, investing in infrastructure helps the government to perform better online public services.

- Establish a focal point for e-government

In order to easily manage activities in public service delivery, the Government of Vietnam has established a focal point in charge of e-Government and issued operating regulations for this agency.

** Period 2010-2019*

Vietnam issued a plan to apply information technology in state agencies in 2010, from 2010-2019. Vietnam has built a legal foundation related to digital signatures, security issues and recognition of electronic versions in the administrative system.

- Promulgate a system of legal documents to create an online public service delivery platform

Vietnam issued a document recognising the legality of electronic documents as paper documents in Decision No. 28/2018/QD-TTg on sending and receiving digital documents between state agencies. This is a landmark in the Vietnamese administrative system when it recognises the legality of electronic documents exchanged between state agencies. This helps the government save time and costs more than paper documents, which is essential to create the premise to provide public services with high efficiency.

A digital signature is also one of the important issues in online public services because of its security. Although there was a plan to apply information technology in state agencies in 2010, it was not until 2017 that Vietnam issued regulations on using digital signatures in Circular No. 41/2017/TT-BTTTT

dated December 19 2017. Digital signatures have shortened the time to approve and send documents for state agencies, saving time waiting for documents for users of public services; this is a turning point in online public service delivery in Vietnam.

The provision of public services in Vietnam is uniformly regulated in all localities and state agencies, which is explicitly reflected in legal and administrative directive documents. Some documents such as Decree 43/2011/ND-CP on providing information and online public services on websites or portals of state agencies dated June 13, 2011; Circular No. 10/ 2016/TT-BTTTT promulgating “National technical regulation on identifier structure and packet data format for connection of document management and administration systems” dated April 1, 2016.

* The results of online public administrative services delivery in Vietnam

In Vietnam, in 2010, the Vietnamese government began to issue a national program on information technology applications in state agencies. Although the program was launched, due to limited funding, the implementation of online public service provision could be faster, stemming from the weakness of infrastructure, limited financial resources as well as the capacity of staff.

Table 1. OSI index for the period 2010-2020

Year	2010	2012	2014	2016	2018	2020
Vietnam	0.30476	0.42483	0.41732	0.57246	0.73610	0.65290
World average	0.4178	0.4328	0.4712	0.4623	0.5691	0.5620

Source: United Nations, 2020.

From 2010 to 2012, the OSI index of Vietnam increased from 0.30476 to 0.42483. In 2014, this index decreased slightly but not significantly. In 2010-2014, although the OSI index has increased, this level has stayed within the average level globally, reflecting the limitation of information technology applications in state agencies and the provision of online public services of state agencies for people and businesses. From 2016 to 2020, Vietnam's OSI index rose above the world average. In 2016, Vietnam reached 0.57246 while the world average was only 0.4623. In 2018, the OSI index surged to its highest, at 0.73610, while the world was only at 0.5691. In 2020, the world average OSI index witnessed a slight increase from 0.5691 to 0.5620, while Vietnam fell but not substantially (from 0.73610 to 0.65290). In 2020, both Vietnam and other countries recorded a decline in the OSI indicator caused by the change in how the United Nations calculated this index.

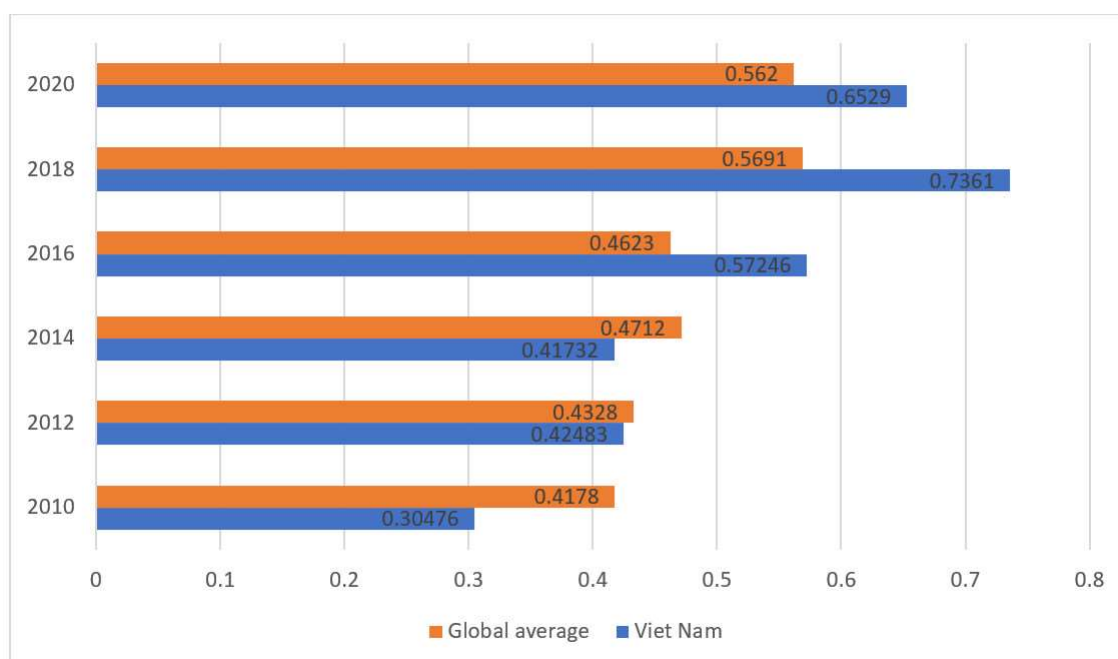


Figure 1. OSI index for the period 2010-2020

Source: United Nations, 2020

Figure 1 compares the OSI index of Vietnam and the world. In general, the upward trend of the OSI index of Vietnam is in line with other countries. The OSI index of Vietnam improved from 0.30476 in 2010 to 0.6529 in 2020 (the average OSI index of countries in the world increased from 0.4178 in 2010 to 0.562 in 2020). Figure 1 indicates that Vietnam's online public service has improved remarkably between 2014-2016, increasing from 0.41732 in 2014 to 0.57246 in 2016 (an increase of 0.155514 points), while the average level in the world dropped from 0.4712 to 0.4623 (a decline of 0.0089 points). This proves the progress in public service delivery in Vietnam. One reason for this success is that the Government of Vietnam issued Resolution 36a/NQ-CP in 2015 on e-Government, in which the government precisely defines the objectives and solutions to promote e-government in public service delivery. In addition, at this stage, the Vietnamese government also stipulates a periodical reporting regime on the situation of information technology applications in state agencies. Accordingly, ministries, branches and localities will have to report annually about the application of ICT in public service provision in state agencies, as required in Circular No. 06/ 2013/TT-BTTTT, which affirms the determination of the Government of Vietnam to advance the application of ICT in the supply of public services.

4. The current situation of accessing public administrative services for PwDs in Vietnam

Vietnam has made great efforts to protect the rights of PwDs, most notably through promulgating the Law on PwDs 2010. According to Article 4 of this Law, PwDs have the right to health care, rehabilitation, cultural education, vocational training, employment, access to legal aid, access to public works, means of transport, information technology, appropriate cultural, sports, tourism and other services with disability type and degree of disability. Furthermore, the government and ministries and agencies have enforced many specific plans, programs and projects to realise policies to support PwDs, such as the Project on Supporting PwDs in 2012 -2020, a Community-based project on social assistance and rehabilitation for mentally ill and mentally disturbed people for the period 2011-2020; The project of organising rehabilitation in the community for victims of toxic chemicals used by the US during the war in Vietnam in the period 2008-2016. Moreover, most recently, the program to assist PwDs in 2021 - 2030 stipulates maintaining, developing and upgrading

portals/websites to support PwDs to access information technology services. Develop tools and materials for PwDs to access and use ICT; develop online education and training systems and solutions for PwDs, including general tertiary education at all levels and vocational training.

Although these projects have achieved certain results, the administrative barrier must be overcome to ensure the linkage between public services for PwDs. Only now, the access of PwDs to online public administrative services encounters challenges in terms of facilities and administrative procedures.

According to the assessment report of the Center for Education Promotion and Empowerment of Women on accessing public administrative services for PwDs, out of 100 people, 57% are male, and 43% female; 19.8% are persons with profound disabilities, 62.4% are persons with severe disabilities, and 17.8% are people with mild disabilities. Preliminary survey results indicate that PwDs (93% of survey respondents are 18-44) have the greatest need to use public administrative services at the commune level (nearly 47%), 32% and 21% for the district and provincial level, respectively.

Furthermore, facilities at the agency carrying out administrative procedures, such as signposts, restrooms, parking lots, emergency exits and paths outside the office, and the guidance of administrative officers and security guards outside the office are essential in determining the frequency of PwDs in using public administrative services. The level of accessibility of infrastructure and facilities for people with mobility impairments and hearing and speech disabilities is not high. Deaf people do not understand almost all the information in the general instructions and fee tables listed at the People's Committee offices because they use a different grammar system. They also need more means to communicate with civil servants. In addition, PwDs still find it difficult to access other public services, especially the public transport system, resulting in inaccessibility or difficulty accessibility to public administrative services. Most works, such as toilets, doorsteps, and paths in public administration agencies, need wheelchair-friendly.

PwDs are given priority when carrying out administrative procedures. However, PwDs are unsatisfied because that priority means their right to independent living has yet to be recognised. At the same time, the lack of transparency and inconsistency in administrative procedures is also the reason for the inequality in accessibility among PwDs. In addition, despite regulations on exemptions and reductions for PwDs, PwDs have to pay fees for 70% of services. This percentage is even higher for non-urban areas. PwDs have made recommendations to state administrative agencies, mainly through direct complaints at the headquarters, for nearly half of the services experienced. However, the quality of feedback to the comments of PwDs could be higher. PwDs are unsatisfied with resolving complaints and suggestions about 73% of services.

According to survey results of The Center for Education Promotion and Empowerment of Women, PwDs denounce that civil servants are not enthusiastic in explaining and supporting them. When they did not understand the contents of the information in the declaration form, they were not explained, supported, nor had an example to refer to. When experiencing these services, PwDs have struggled to perform or ask other people for help. Moreover, PwDs feel discrimination and stigma due to their disability while performing public administrative services. Specifically, PwDs claim to be denied support, explain or perceive discrimination or stigma due to their disability when accessing.

Thus, PwDs still need help accessing public administrative services. Therefore, it is necessary to take measures to overcome existing difficulties and limitations to make it easier for PwDs to access public services.

5. Conclusion and policy implications

Online public service provision is an inevitable trend to improve the transparency and efficiency of the administrative system in the administrative reform process of countries around the world. Over

the past time, the Government of Vietnam has promulgated and implemented many legal regulations and allocated a state budget to apply information and communication technology in providing public services. Although the results of online public services have improved, people and businesses are still not satisfied and do not prefer to use online services.

In the context of the Covid-19 pandemic, governments and societies are forced to foster digital technology to respond to the crisis and recover and address socio-economic impacts towards sustainable development. Therefore, the Government of Vietnam should (i) perfect the population database system with identifiers, (ii) intensify its popularity by utilising online public service portals for citizens, and (iii) protect the privacy and reduce the risk of excessive surveillance associated with technology use.

Vietnam needs to develop a specific and feasible strategy from which state agencies and the people can jointly implement. In addition, the strategy here should be comprehensive, typically e-government, instead of just focusing on public service delivery. This strategy should focus on connecting within government Firstly and then connecting government with businesses and citizens. The connection within the government is between state agencies to help communicate state documents, saving time compared to the traditional method of transporting documents.

The Vietnamese government needs to invest in finance and infrastructure, select appropriate technologies that are not outdated, and agree with technological development in the world and in Vietnam. Avoid waste and ensure high efficiency in the investment process. However, to ensure the security of information and data for electronic public services, it is necessary to carry out security at many levels: network level, user authentication level, and database level. At the same time, data authentication and encryption require an authentication mechanism to grant access permission. Moreover, encrypted information and data for access to information and services need to identify the visitor to ensure electronic information sites' safety during exploitation and operation.

In order to facilitate users, the website needs to be designed in a friendly manner based on regular surveys of people and businesses. In addition, digital signatures need to be widely used and can be connected to banks, which both increases security and is very useful for payment activities of fees, charges or other payments for administrative procedures. To do this, forming an organisation providing electronic signature authentication services is essential. This organisation will provide electronic signature authentication services for agencies, organisations and individuals to use in public activities. Organisations and state agencies implementing electronic transactions in general and online public services, in particular, should apply electronic signatures during the implementation. It is required to have a roadmap, plan and specific steps to ensure efficiency, high feasibility, and focus on resource investment (training people with the profession and specialised knowledge in the field).

PwDs belong to the disadvantaged group in society and need special attention from society. Therefore, to enable PwDs to access public administrative services more easily, administrative agencies must focus on renovating/constructing/upgrading facilities and accessibility infrastructures for PwDs. In addition, administrative agencies should pioneer using the Sign Language Interpreter Switchboard to communicate between civil servants and the deaf and dumb. In addition, the State agency has to design a process for filling in the declaration forms exclusively for people with hearing and speaking disabilities under this group of people's Vietnamese grammar and communication method. The most important thing is to change the attitude of civil servants at State agencies to avoid discrimination and stigma towards PwDs.

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Ensuring the right to access information of persons with disabilities in Vietnam today

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Abstract:

Protecting and ensuring human rights and citizens' rights is one of the tasks and goals of building and perfecting the socialist Vietnamese rule of law State of the people, by the people, for the people. Over the past time, our Party and State have adopted guidelines, policies and laws to ensure the rights of PwDs (weak people in society), including the right to access information. However, ensuring rights has encountered many barriers, i.e. from legal regulations and law enforcement to physical and human conditions. Accordingly, the article focuses on analysing several theoretical issues about the right to access information of PwDs and the practice of ensuring the right to access information of PwDs in the past time, thereby proposing some solutions to ensure the right to access information of PwDs in Vietnam in the coming time.

Keywords: the right to access information; PwDs; rights of PwDs; access to information; Vietnam.

1. Introduction

Ensuring the rights of PwDs always draws special attention from our Party and State. The Platform for building the country in the transitional period to socialism (June 1991) clearly stated: “continually improve the material life of all members of society. Taking care of the lives of the elderly, lonely, handicapped persons, unemployed and orphans”; Subsequently, the 2013 Constitution affirms: “The State creates equal opportunities for citizens to enjoy social welfare, has policies to assist the elderly, PwDs,...” [1]. Therefore, in order to ensure the rights of PwDs, the State, with its functions and responsibilities, needs to establish a legal framework for PwDs to have their rights guaranteed, including the right to proactively access information with forms suitable to their status and disability level, through which they have equal conditions and opportunities to integrate into the community.

2. Content

2.1. Overview of the right to access information and ensuring the right to access information of PwDs in Vietnam today

2.1.1. The concept of the right to access information and methods of accessing information

In Vietnam, assuring citizens' right to access information is one of the tasks to ensure socialist democracy and implement the Resolution of the 13th National Congress of the Party on promoting the mastery and the leading role of the people.

According to the United Nations Universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights 1966, the right to access information is one of the basic human rights belonging to the group of civil and political rights. The convention asserts: “Everyone shall have the right to freedom of expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or print” [2]. Accordingly, the right to access information can encompass the right to seek, disseminate, and receive information in various forms as prescribed by law. In Vietnam, the right to access information is identified as one of the citizens' basic freedoms. Article 25 of the 2013 Constitution stipulates: “Citizens have the right to freedom of speech, freedom of the press, access to information, meetings, associations, demonstrations”. Concretising the provisions of the 2013 Constitution, the 2016 Law on Access to Information, passed by the XIII National Assembly (effective July 1, 2018), created a

legal corridor for people to exercise their right to access information. The Law on Access to Information in 2016 specifically specifies that “access to information is reading, viewing, listening, taking notes, copying and capturing information” [3]; on citizens’ rights and obligations to access information; on principles, procedures and process for implementing the right to access information, responsibilities and obligations of state agencies in ensuring the execution of citizens’ right to access information and measures to ensure the implementation;...

The assurance of the people’s right to access information, on the one hand, is to ensure that citizens exercise the basic freedoms stipulated in the 2013 Constitution, such as the right to participate in state and social management, the right to the election, candidacy, right to complain, right to denounce, freedom of speech, freedom of the press. On the other hand, people participate in state and social management activities, thereby contributing to improving the accountability of state agencies and competent persons; enhancing the publicity, transparency and efficiency in the operation of state agencies; stepping up the prevention and fight against corruption and negativity in state agencies in Vietnam today. Specifically:

Regarding the scope of information that citizens can access: *Firstly*, the information of state agencies, except for inaccessible information such as state secret information; information, if allowed to be accessed by the public, will cause harm to the interests of the state, adversely affect national defence and security, international relations, social order and safety, social morality, and community health [4]. *Secondly*, conditionally accessible information, such as information relating to business secrets, accessed with the owner's consent; information related to private life secrets, personal secrets with that person’s consent.

Regarding the responsibility to provide information: according to the provisions of the Law on Access to Information in 2016, State agencies are responsible for providing information created by themselves (except for cases prescribed by the law as inaccessible or accessible under particular conditions).

Regarding the way to access information: people are free to access information publicised by state agencies and request state agencies to provide information.

2.1.2. The concept of PwDs, measures to ensure the right to access information of PwDs

The Law on PwDs 2010 passed by the 12th National Assembly (effective from January 1, 2011) institutionalises the Party's views and policies and concretises the provisions of the 1992 Constitution (amended and supplemented in 2001) on policies related to PwDs, thereby creating a legal environment, equal conditions and opportunities for PwDs in society. Clause 1, Article 2 of the Law on PwDs 2010 defines: A person with a disability as a person with a defect in one or more body parts or a functional impairment manifested in the form of a disability that makes working, living, or learning difficulties.

Implementing the Law on PwDs 2010, the government issued Decree No. 28/2012/ND-CP dated April 10, 2012, detailing and guiding the implementation of several articles of the Law on PwDs, which identifies 6 types of disability, i.e. mobility disabilities, hearing and speaking disabilities; vision disabilities; neurological and mental disabilities; intellectual disabilities; other disabilities. At the same time, the Decree also outlines three levels of disability, namely profound disabilities, severe disabilities, and mild disabilities [5].

PwDs face many barriers when exercising their basic rights recognised, protected and guaranteed by the Constitution and laws, including the right to access information. Law on Legal Dissemination of Education 2012 (Article 20) considers PwDs as one of the specific subjects that need the right to access relevant legal information under appropriate forms, methods, means and documents. In

addition, the Law on Access to Information in 2016 asserts the guarantee of the right to access information of organisations and individuals, including PwDs: “The State creates favourable conditions for PwDs... to exercise the right to access information”. Then, Decree No. 13/2018/ND-CP dated January 23, 2018, of the Government detailing and implementing measures to the Law on Access to Information (Article 3) explicitly stipulates measures to enable PwDs to exercise their right to access information, such as [6]:

- (1) Information directly related to the life, activities, production and business of PwDs must be promptly publicised on the mass media in accessible information for PwDs.
- (2) Based on actual conditions, state agencies set up their own web portals and websites, which provide basic functions to assist PwDs in accessing and utilising information and communication technology for accessing information posted on the Portals and Websites.
- (3) The information-providing agency ensures that the forms of providing information are suitable for the accessibility of the requester for information and the actual conditions of the agency; arranges audio-visual equipment and ancillary equipment fitting to the type and degree of disability of the person requesting information and to the practical conditions of the agency; facilitates requesters to use personal audio-visual equipment, ancillary devices and other technical means to access information upon request.
- (4) Information-providing agencies shall arrange for officials and civil servants to guide, explain and assist PwDs who face difficulties filling out forms, signing request forms for information or accessing information.
- (5) Mainstream knowledge and experience in providing information to PwDs in professional training programs and improving professional qualifications for the focal department, key officials, and civil servants.
- (6) Priority is given to PwDs by the law on access to information and the law on PwDs.

In principle, the guarantee of the right to access information means that all citizens are equal, without discrimination in the exercise of the right to access information; The information provided must be accurate, complete, timely, transparent and convenient for citizens and obey the procedures and process as prescribed by law.

2.2. The current practice of ensuring the right to access information of PwDs in Vietnam

Over the past time, institutionalising the Party's stance on ensuring the rights of PwDs, including the right to access information, the state has established a legal corridor to assure rights such as promulgating the Law on Access to Information in 2016, the Ordinance on implementing democracy in communes, wards and townships in 2007; Law on PwDs 2010; Law on Anti-corruption 2018; Law on Protection of State Secrets 2018; and the guiding documents. In particular, in 2020, in order to either ensure compliance with the situation of Covid-19 epidemic prevention and control or ensure that all requests of the people are handled smoothly, the government issued Decree No. 45/2020 /ND-CP dated April 8, 2020, on implementing administrative procedures in the electronic environment; Decree No. 47/2020/ND-CP dated April 9, 2020, on management, connection and sharing of digital data of state agencies. In particular, the Law on Access to Information precisely sets out the principle of ensuring the right to access information and the responsibilities and obligations of state agencies in ensuring the right to access information of citizens. The forms of accessing information are also more diversified in both quantity and type, such as through the system of electronic portals (websites) of state agencies; through the media such as the press system (written newspapers, spoken newspapers, video newspapers); publishing, library and archival activities; internet, advertising;

conferences, seminars and talks organised by agencies, organisations and units on specific fields in social life. Furthermore, the responsibilities of state agencies in ensuring the right to access information for the people (PwDs in particular) have been more distinctively defined concerning forms of information disclosure, updating information and responsibility to respond to people's requests for information provision. For example, state agencies have publicised their regulations, the focal points, and lists of information that must be publicised on their portals (Government portal and Government Office have posted and updated legal and administrative documents under the government's authority. For PwDs, to effectively execute legal documents of the National Assembly, Government, and the Prime Minister on ensuring the right to access information of PwDs, the Minister of Information and Communications issued Circular No. 26/2020/TT-BTTTT dated September 23, 2020, regulating the application of standards and technologies to assist PwDs in accessing and using information and communication products and services. Information and communication services are regulated in two forms: mandatory and recommended. Press agencies are responsible for applying the standard and technology to assist people with hearing disabilities to access general news programs daily; Other organisations and individuals are also encouraged to apply standards and technologies to assist PwDs in accessing and using information and communication products and services on websites/portals of organisations and individuals [7].

However, besides the achieved results, there are still some limitations on ensuring the right to access information of PwDs, such as:

Firstly, the law on access to information and its enforcement still reveals many shortcomings. Although the current regulations have clearly defined the principles, process and procedures for information provision, publicity and transparency of information by state agencies, ensuring the people (PwDs) access such public information has yet to be determined. Furthermore, according to a survey by the research group (Oxfam), there is still a situation where officials and civil servants do not clearly understand the regulations on responsibility for providing information and dealing with people's requests for information [8], thus leading to delays in accessing and responding to people's requests for information, especially PwDs. Additionally, implementing the contents and forms of information that some state agencies provide could be more effective. A review by the research team (Oxfam, 2021) on the portals and websites of 324 state agencies shows that the percentage of state agencies that have not yet performed (well) the tasks as required by the Law on Access to Information, such as have not yet assigned the focal points is 82.4%, have not yet found the regulations on information provision is 83.6% and the list of information that must be made public is 91.3%. The list of conditioned information was not found on the portal/website of any of the 324 surveyed government agencies [9].

Secondly, restrictions from the legal rules.

Currently, the Law on PwDs 2010 does not specifically mention the right to access information of PwDs, especially access to information publicly announced by state agencies. However, the Law on PwDs 2010 refers to the right to access information and communication technology of PwDs. Meanwhile, information and communication technology is information transmission tools to provide information. Therefore, it is necessary to reconcile the provisions to ensure the right to access information of PwDs in these two legislative documents.

In addition, the current regulations on the responsibility of media agencies in facilitating access to information for PwDs are still recommendable, leading to the right to access information of PwDs needing to be secured in practice. Moreover, if they fail to do so, there is an absence of sanctions for entities responsible for assisting PwDs to access information through information and communication

technology applications. For example, albeit there are different types of disabilities, the news and art of the program with sign language for them are scarce with limited broadcasting time, which hinders PwDs from effectively accessing information through information and communication technology.

Thirdly, the responsibilities and obligations of some information providers (state agencies, competent persons) in ensuring the right to access information of PwDs still have some limitations. In some cases, cadres and civil servants acting as focal points for providing information and documents to PwDs need to understand the requested content clearly or are still reluctant to provide information to PwDs.

Fourthly, regarding physical conditions, equipment, and human resources to assist PwDs in accessing information.

Existing facilities and means of support; human resources, and methods to assist PwDs in accessing information for life have yet to be adequately invested; Currently, there is no clear policy to support and enable PwDs to use devices and applications to access information. For example, at the time of the 2016 national survey of PwDs, the percentage of households with PwDs owning media was lower than that of households without PwDs, specifically: Television (87, 7% vs 94.4%); internet subscribers (16.8% vs 30.9%); computers (13.7% vs 28.6%) and phones (84.7% vs 96.2%). There is a large gap in mobile phone usage rates between PwDs and those without disabilities (38.85% vs 73.09%). The fraction of internet users varies among groups of PwDs and has large disparities between PwDs and Persons without impairment. The rate of persons without impairment using the internet is 6.5 times higher than that of PwDs (42.9% compared to 6.7%) [10].

2.3. Some solutions to ensure the right to access information of PwDs in Vietnam today

Firstly, continue to review, amend and supplement relevant laws to ensure the right to access information of PwDs, such as:

(1) Amend the regulations on access to information in the Law on Access to Information 2016, the Law on PwDs 2010, and the Law on Legal Dissemination and Education 2012 to ensure consistency between laws on the rights to access information of people, including PwDs.

(2) Amend the Law on Access to Information 2016 in the direction of apparently defining the responsibilities of agencies in information disclosure and transparency, developing regulations on access to and handling citizens' requests for information; supplement regulations on sanctions to competent agencies and individuals that are slow (or cause difficulties) for people to access information; Continue to innovate the form of access to information in consonance with actual conditions when information technology rapidly develops with diverse forms and means of transmitting information to people, which must be suitable for each type of PwDs.

(3) Research on amending and supplementing the Law on PwDs 2010 in the direction of clarifying the responsibilities of press and media agencies in facilitating access to information for PwDs (removing the incentive regulation), thereby ensuring the right to access information of PwDs in practice; supplement regulations on sanctions applied to entities responsible for assisting PwDs to access information when they fail to perform or improperly perform their responsibilities as prescribed by law.

Secondly, strengthen the enforcement of the Law on Access to Information and the Law on PwDs and guiding legal documents.

State agencies should develop and launch programs and plan to ensure the best and necessary conditions for PwDs to access information quickly, accurately and in line with their health status. For example, portals/websites of agencies, departments and sectors should build an application/gateway

to access information about people with hearing, speaking and vision disabilities; at the same time, it is essential to maintain training programs on communication skills and sign language for officials and civil servants who are in charge of providing information and documents for PwD through which they can understand and meet the information request of PwDs. In addition, it is suggested to research modern technologies further to support PwDs and produce utilities to assist them in accessing information and communication technology in the most timely manner.

Thirdly, foster the responsibility of the information providers (state agency, competent person); responsibility of social organisations in ensuring the rights of PwDs.

On the ground of legal provisions articulating the responsibility to ensure the right to access information of PwDs, agencies and organisations should be obligated to advance the right to access information of PwDs, thereby determining the measures to enhance the efficiency of the access information for PwDs, such as applying administrative sanctions to subjects who fail to properly comply with the contents of providing information and responding to PwDs' request for information; intensify inspection and supervision and handling violations of the law for subjects who commit violations or fail to properly and fully fulfil the mandatory obligations towards PwDs.

In addition, competent state agencies need to increase their responsibilities in investing in facilities and supporting means, arranging human resources and facilities to support PwDs to access information and avoid the “afraid” of providing information by responsible agencies.

3. Conclusion

In Vietnam today, one of the pivotal pillars of the process of continuing to build and perfect the socialist Vietnamese rule of law, state of the people, by the people, for the people, is to protect and assure human rights and civil rights, including the right to access information of PwDs. Simultaneously, the assurance of the right to access information of PwDs will contribute to safeguarding socialist democracy and the people's right to mastery. Therefore, based on the theory and practice of ensuring the right to access information of PwDs, the synchronous implementation of the above solutions, on the one hand, contributes to further developing the state of the rule of law in society. The Socialist Republic of Vietnam, on the other hand, guarantees that Vietnamese law gradually achieves the goal of ensuring the right to access information for PwDs as committed when participating in the CRPD, thereby contributing to changing awareness, attitude, and sense of responsibility of agencies, organisations, and the whole community towards PwDs, assisting them to integrate into the community truly.

References

- [1] See: Clause 2, Article 59 of National Assembly; Constitution of the Socialist Republic of Vietnam. 2013.
- [2] See: Article 19 of the International Covenant on Civil and Political Rights (ICCPR 1966).
- [3] See: Clause 3, Article 2 of National Assembly; Law on Access to Information. 2016.
- [4] See: Article 6 of National Assembly; Law on Access to Information. 2016.
- [5] See: Articles 2 and 3 of Decree No. 28/2012 dated April 10, 2012 of the Government detailing and guiding the implementation of a number of articles of National Assembly; Law on PwDs.
- [6] See: Article 3 of Decree No. 13/2018/ND-CP dated January 23, 2018 of the Government detailing and implementing measures to the Law on Access to Information.
- [7] See: Article 3 of Decree No. 13/2018/ND-CP dated January 23, 2018 of the Government detailing and implementing measures to the Law on Access to Information.

- [8] According to Oxfam and partners, *Summary Report on the implementation of the Access to Information Law (third edition)*, 2021.
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- [10] General Statistics Office (2018), *Vietnam - National Survey of PwDs 2016*, Statistical Publishing House, Hanoi, 2018.
- [11] Ministry of Information and Communications, Circular No. 26/2020/TT-BTTTT dated September 23, 2020 stipulating the application of standards and technologies to assist PwDs in accessing and using products and services information and communication services.

An analysis of controlling the lives of persons with disabilities and the intervention of human rights

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Abstract:

The CRPD is an ongoing agreement establishing core international criteria for human rights dissemination, awareness, and recognition of PwDs. In this study, an examination of the management of PwDs' lives and the interference with human rights was noticed. According to current Vietnamese scenario documentation, unfavourable views of relatives of PwDs and usually PwDs themselves prevent them from fully engaging in their employment, families, and local communities. The problems that persons with mental illness or disability must cope with also include disinformation, a lack of comprehension, limitations on access to care, and a significant degree of social marginalisation.

Keywords: PwDs; Discrimination; CRPD; Vietnam; Human rights; social exclusion; OHCHR.

1. Human Rights of PwDs

1.1 Socio-political theory of disability

In contemporary social studies schools, the prevalent individualistic concept of PwDs is replaced with a comparatively socio-political definition. According to recent studies, the socio-political model is subject to implying the rise of disability as a cause-and-effect element from the social environment's failure to adjust to the basic requirements expected by PwDs [1]. This model is against the prevalently used argument of PwDs failing to adapt to the primary expectancies and accommodation provided under societal demands, postulating the inability of adaptability and personal change to origin from the social incapability of administering proper techniques, strategies, tools, and facilities of services provided to the persons with an impairment. While varying administrations and legislations are experiencing inclusivity and diverse representation of human rights expectancies prioritising PwDs' human rights, the income factors still stand as prominent equality barriers [2]. Because changing these rules would necessitate a substantial shift in how the government approaches unemployment and a comprehensive overhaul of the “Social Assistance system,” policies relating to “income and employment” remain individualised.

PwDs are considered excess labour during high unemployment, and the Vietnamese government determined that “rising unemployment” is politically feasible. Increases in “social assistance” are hampered by factors including a commitment to hard work and the belief that payments from social assistance need to be lower compared to what one has the potential to make professionally [3]. It also considers the factors of the “private insurance and legal sectors”, which profit extensively from the dominant income system. The “socio-political understanding of disability” is propositioned to be directed from recognising public policies playing vital roles in shaping environmental aspects. The understanding that environmental regulations reflect social norms and attitudes and that many “negative or discriminatory” conceptions about PwDs exist in society's “so-called attitudinal environment” make this concept even more inclusive.

It fosters awareness toward the postulation that discriminating elements of any demographical or regional external environment will not be taken as mere “coincidences or accidents” [4]. Because of this, the “minority-group model” of disability, which goes against the conventional “functional-limitations paradigm,” is being given more and essentially requires attention. Additionally, diverse conceptual focuses and a propensity to incorporate multiple cost-benefit assessments with “civil

rights concerns” have made economic evaluations of “employment discrimination of PwDs” difficult. In sociology, the focus on “ideas of social deviance” tends to obfuscate the parallels between the discriminatory obstacles that PwDs face and those faced by other minority groups. Therefore, any method for developing a disability policy that excludes consideration of the “political dimensions of this issue” may be insufficient [5]. The three definitions' policy ramifications exhibit substantial differences as well. The medical approach does not seem to have any significant implications for “comprehensive government initiatives” to address the issues that PwDs face.

1.2 Protecting rights of PwDs

“Violations of human rights” may have serious adverse effects on health. As an illustration, the creation and execution of “health policies and programmes” can either uphold or violate human rights; as a result, actions made to “defend, protect, and fulfil” human rights can reduce the possibility and impact of poor health [6]. PwDs inclusion in fundamental human rights accommodations and expectancies is national growth essentiality, as promoted by the “International Labour Organization's Social Protection Floor Recommendation (2012)” with SDGs 2015-2030 acknowledgement. According to Article 1 of the CRPD, this convention aims to promote the promotion, protection, and guarantee of “full and equal enjoyment” of all fundamental freedoms and human rights by all PwDs. The “right to security” is formally recognised in Article 34 of the 2013 Constitution. As an additional addition, Resolution 70/NQ-CP/2012 adds a more detailed explanation of the 2012–2020 strategic strengthening of “national social protection” [7].

The initiative, launched with support from the “Endowment Fund for Education” Scholarships, intends to raise awareness of PwDs organisations (DPOs) and maybe inspire such groups to recognise their entitlement to protection in catastrophic circumstances. The study examined three catastrophe scenarios in which DPOs effectively oversaw community-wide activities to improve local communities' disaster readiness. The Vietnamese government's mandate includes social protection “plans and programmes” already existing and monitoring non-contributory entitlements like disability-specific programmes and PwDs awareness campaigns that target other groups [8]. The “Disability Degree Determination Council (DDDC)” is a body that determines the “kind and degree” of disabilities and is housed inside the decentralised Vietnamese government.

The variables of social protection accessibility among Vietnamese PwDs include “attitudes on disability and social protection need, geographical and financial accessibility, broader disability-inclusive planning”, programmes for utility awareness and perception, and “criteria and processes” for disability assessment. These aspects may exacerbate possible difficulties. Because of its substantial safeguards for “individuals with disabilities” and inclusive negotiation process, the CRPD marks a watershed moment in the evolution of “human rights legislation” [9], despite these innovative features, as was previously mentioned in this research. The administration of social security application forms for PwDs under “local commune-level People's Committees,” thereby leveraging both “national and local information” documentation and “human rights resolutions”. The enactment of Decree No. 28/2012/ND-CP in 2012 altered the everyday provincial capital conduct of disability-targeted programmes [10]. The main issue in this situation is that the DDDC cannot conduct an evaluation locally and must submit cases to the provincial-level “Medical Evaluation Council (MEC)”.

1.3 Convention of the Rights of PwDs

The CRPD defines disability as a term that lacks any precise terminological meanings and offers a broad range aimed at greater inclusivity. The CRPD is an ongoing agreement establishing core international criteria of “human rights distribution”, awareness, and recognition for PwDs [11]. The

Convention's Introductory Section (a), which is sometimes referred to as “ISL146 21 ER UN Conflict,” recalls the principles of the “United Nations Charter,” which state that every component of the social framework has intrinsic “dignity and worth” and that inherent “equal and inalienable rights” serves as that of the cornerstone of universal “freedom, justice, and peace [12]. According to Article 25, PwDs are entitled to “high achievement standards” of pleasure without facing any prejudice because of their impairment.

Every state party is required to adopt all necessary, suitable, and time-sensitive measures, including legislative, administrative, and other ones that are subject to regulatory affairs and implementation under the PwDs-specific present Convention, according to Article 4 of the CRPD, Section 1(a) of which [13]. As noted in Section 1(c), the linked authorities and bodies are required to take steps that account for the human rights “protection and promotion” of PwDs in all planned or authorised “policies and programmes.” Section 1(b) mandates implementing suitable legislation-inclusive measures for altering or eliminating existing PwDs discriminatory practises, laws, customs, and regulations. The CRPD was ratified by Vietnam in 2015, demonstrating the country's “fundamental human rights commitment” to PwDs. On the other hand, previous studies highlighted this group's isolation [14]. According to studies, there are few educational prospects for job employment at available institutes, resulting in a restricted supply of financial resources.

The CRPD, which consists of Articles 1 through 60, is known as the “social model of disability” because it acknowledges that social exclusion and alienation of PwDs are caused by “barriers and hindrances” that are connected to the individual's “full participation ability”, rather than by intrinsic participation inability outcomes. According to the social framework, these might become impediments or barriers to communication and beneficial engagement [15]. Cues, preconceptions, bias, and discrimination are only social-cognitive mechanisms contributing to the stigma linked to mental illnesses. To be prejudiced is to believe that stereotypes are accurate and to act in ways that support those beliefs [16]. PwDs are guaranteed equitable distribution and access to social, public, and economic life under the CRPR [17]. The relevance of this convention resides in its guarantee that everyone has the right to live an independent, self-sufficient existence, which also includes the right to a family, access to education, appropriate social security, and a standard of living.

2. Controlling the lives of PwDs

2.1 Economic lives of PwDs in Vietnam

Studies revealed few educational options available from institutions for job employment, which reduced the supply of financial resources [18]. The increased likelihood of PwDs falling into poverty and providing enough social support for such groups are two socio-political issues addressed in this approach. Additionally, it contains social insurance policies with the goal of reducing the financial risks connected to ageing, illness, and work injuries. The variables of social protection accessibility among Vietnamese PwDs include “attitudes on disability and social protection need, geographical and financial accessibility, broader disability-inclusive planning”, programmes for utility awareness and perception, and “criteria and processes” for disability assessment [19]. These aspects may exacerbate possible difficulties. The difficulty arises from the financial distinction between “direct application expenses” and “appeal assessment charge” with regard to the re-evaluation possibility offered to PwDs [20]. In order to improve “quality of life”, this research evaluates the current socioeconomic and societal status of individuals with disabilities, identifying challenges, equitable drivers and impediments, and detailing recent global initiatives. In accordance with Article 4(2)'s provisions, which call on the state to gradually realise PwDs' “economic and social rights,” the latter should likewise be established [21].

The state's obligation to appropriately recognise this right leads to a continuous implementation effort with the rapid advancement and equitable access to health services and opportunities. The “Committee on Economic, Social and Cultural Rights (CESCR)” also offers recommendations on the definition and applicability of accessibility in the context of health in conjunction with the CRPD. The previous factor costs VND 50,000, equivalent to more than US\$2, while the latter costs VND 1,150,000, equal to more than US\$50, reducing the potential for financial accessibility [22]. The survey found that although many PwDs receive government citizenship due to disability, these benefits are only available to specific categories. Most mental illness-related impairments, such as chronic anxiety and depression, are not acknowledged as disabilities by the state. This has led to an increase in depression cases without a resolution or societal accommodations for their “services and financial” support.

Social protection accessibility issues among Vietnamese PwDs include views regarding disability, the necessity for social protection, and “geographic and financial accessibility” [23]. This includes “criteria and processes” for disability assessment and more extensive disability-inclusive planning, utility knowledge and perception, and programmes. The majority of “mental illness-related impairments”, such as “chronic anxiety and depression”, are not recognised by the state as disabilities, resulting in an increasing number of depression cases with no resolution or societal adaptation for their “services and financial” support. While expanding the scope is crucial for this minority, Vietnamese society must also work toward increasing PwDs' acceptability if there is any chance of this group achieving future SDG development and benefiting from improved opportunities [24]. The potential and prevalent social exclusion factors, which may be divided into social, political, economic, and cultural exclusion, are numerous and pose a serious human rights concern for PwDs.

2.2. PwDs discrimination in Vietnam

Discrimination, expenses, a lack of adequate “services and resources,” stigma and accessibility are just a few of the many obstacles that PwDs must overcome in order to obtain healthcare services [25]. Lack of or ambiguous health access equity causes “depleted social capital”, secondary co-morbidities, social isolation, ongoing abuse, and substantial dangers linked with delayed diagnosis in PwDs. The CRPD instructs States parties to concentrate on “non-discrimination laws, accessibility, reasonable accommodations,” and positive activities to implement the right to work for PwDs. Political exclusion is a proactive stimulator for just about every social exclusion, including “lack of policy” or their execution in obedience to equality chances promotion in various workplaces, as well as social exclusions like reduced employment possibilities and prejudice in job requirements [26]. Every day, prejudice is experienced by PwDs. It results from common misconceptions regarding PLMI, such as its incapacity, fragility, or threat. Because of this, there is much prejudice towards PLMI, which takes many forms, such as bullying, interfering with personal relationships, rejection from employment and educational opportunities, and social marginalisation.

Human rights “discrimination, stigma, and violations” are all related, supported, and justified by one another [27]. Stigma and discrimination, in accordance with a “human rights framework,” are violations of fundamental human rights in general and of the “right to be free from discrimination” in particular. When PLMI are the focus of discrimination, other human rights, including the “right to health, dignity, and privacy”, as well as the “freedom from harsh, cruel, or degrading treatment” or punishment, are also infringed [28]. For example, stigmatising a “person with schizophrenia (PLS)” turns into a form of discrimination; another is denying them jobs because of their schizophrenia, which violates their right to employment. Human rights are violated due to discrimination driven by stigma, which in turn helps to justify stigma. Misinformation, a lack of understanding, access to care

restrictions, and considerable social marginalisation are among the issues that people with mental illnesses or disabilities must deal with [29].

Individuals are more likely to engage in discriminatory behaviour when they are only recognised for their impairments and the “normal worker idea”. The aforementioned mental models are not only capable of causing social exclusion but also act as catalysts for persecution, discrimination, and alienation, all of which harm job prospects and lower-than-average expectations for attainability or skill-set growth. Employment and low income are “socioeconomic and structural” exclusion factors, with the former highlighting unemployment, down payment requirements, and expense opportunities in other settings as the linkages and pertinent implications [30]. PwDs regularly discuss their interactions with stigma, prejudice, and discrimination from medical and other staff members. PwDs experience “widespread human rights abuse,” which includes issues with institutionalisation, lack of access to healthcare, “stigma and prejudice,” loneliness, and possibilities for education and work.

3. Intervention in human rights

3.1 Vietnamese perceptions of the PwDs community

The “social security policies” include PwDs as those who are unable to find jobs owing to long-standing discrimination and industrial scepticism, and they are objective to people under or below working age [31]. The “social security policies” recipients are bound by the pay-benefit concept, in which people risk experiencing hazards, impairments, and challenges for both personal and impersonal causes. Mistakes in building projects that cause damage and frequent disability to on-site personnel are a primary example. A criterion for the goal of policy enforcement is the accomplishment of objectives for relevant policies and the resolution of critical societal concerns. The social security schemes are fair to individuals younger than retirement age and also include PwDs being unable to obtain employment due to ingrained discrimination and industrial scepticism [32]. PwDs face barriers to finding employment opportunities, most notably discrimination and stigma, a lack of accommodations, a lack of conveniently accessible transportation, and an unwillingness to offer them “education or vocational training.”

The potential and prevalent social exclusion factors, which may be divided into social, political, economic, and cultural exclusion, are numerous and pose a serious human rights concern for PwDs [33]. Political confinement is an engaged stimulant for every social alienation, including “lack of policy” or their execution in obedience to parity chances promotion in various workplaces, as well as social exclusions like reduced employment possibilities and prejudice in job requirements. When PwDs work, they “limitedly participate in the labour force” and are typically employed in low-paying jobs. In light of this, it is unsurprising that those with disabilities are more likely to be poor [34]. The “UK Social Exclusion Unit” sees socioeconomic policies, demography, and the employment market among macro-drivers allowing this distinction, with the latter appearing as this factor's “promoter through low pay” increases and income gap across varied social groups, according to the “Social Exclusion Unit 2004a” [35]. Relatives of PwDs individuals who hold negative attitudes and commonly PwDs themselves impede them from fully participating in their workplaces, family, and local communities.

People who work in low-wage occupations are typically handicapped, unusual in their behaviour, and physically unappealing. They may also “rebel in some sense” even against global hierarchy and be poor, jobless, and “culturally unassimilated” [36]. The connectivity of social safety nets for Vietnamese PwDs is influenced by their views on disability with the need for social protection, including geography, debt capital, relatively comprehensive “disability-inclusive planning, programme awareness” and assessment, and the norms and techniques for impairment evaluation.

3.2 OHCHR accessibility increase for Vietnamese PwDs

Reduced educational capabilities are frequently shown to be effective causes of adverse health outcomes, such as an increase in newborn mortality rate, sickness, and hunger [37]. This highlights the need to improve learning availability and value for everyone as part of a larger healthcare picture. State parties are expected to create laws and implement policies to establish evidence-based and successful “inclusive education systems.” As a result, it is not unexpected that a disproportionate number of PwDs live in poverty or are excluded from society [38]. In addition to potential demographic factors like high youth unemployment, an increase in single-parent households, and “ageing and migration,” social policy factors like benefit modifications, housing costs, and “health and social services” can also contribute to discrepancies. Due to the unfavourable attitudes that their family members, frequently including individuals PwDs themselves, hold, PwDs are unable to participate fully in their workplaces, families, and local communities. Governments, provinces, and communities throughout the country have supported the CRPD, with many vehemently criticising the government's failure to ratify the Convention [39].

These are crucial foregrounds in OHCHR's attempts to create a system that performs better and is more sociopolitically responsive equitably through measurements of increased PwDs awareness and widespread bias reduction. One of the main goals of OHCHR is to promote the recognition, understanding, and comprehension of disability as a “human rights concern,” as it is specifically named and highlighted in the CRPD. Another action to do after this is to create guidance on “the rights of PwDs” and fundamental mainstream interests across the “United Nations organisation,” particularly through the “UN Disability Inclusion Strategy (UNDIS)” [40]. Nevertheless, as was previously mentioned in this research, not all government leaders shared the convention's excitement despite these ground-breaking features.

According to the statute mentioned above, State Parties are expected to enact laws and carry out policies to create “inclusive education systems” that are successful and based on evidence [41]. It also suggests that “free primary education” may have the power to lessen the exclusion of PwDs. They are predominantly discriminated against due to the specific characteristics of their disabilities and the biases attached to them. The concept aims to link communal life with the related ideas of “autonomy and choice,” according to the convention. Like a specialised agency, OHCHR works to stimulate and organise policy conversations on the rights of PwDs across intergovernmental, as well as across “humanitarian and development” objectives such as the “Sustainable Development Goals (SDGs).” When PwDs work, they limitedly engage in the labour force and are frequently employed in low-wage positions.

3.3 Enforcing and coordinating disability Rights

“Policy Implementation” refers to the legal sanctioning of policies, providing them with actual and legitimate consequences via implementing organisational actions supported by governmental machinery. The realisation of objectives for policy applicability and resolving “pressing social problems” is a requirement for the “policy enforcement” purpose. A fundamental example is building project failures that result in on-site worker injuries and, in some cases, disability. Although these individuals had not previously fallen into this group, organisations frequently need to pay more attention to these workers because of the biased attitude of PwDs that reflects a sluggish, ineffective, and unproductive workplace culture. The state's function as a promulgator is essential for the execution of “social security policy” and ongoing application evaluation. With the creation of the official organisation, the “Firstly Vietnamese law” to officially recognise PwDs and the ability for social inclusion. Seventeen years before 2022, the Vietnamese government included “Resolutions

No. 48-NQ/TW and No. 49-NQ/TW” for an improvement of the safety of the populace and favourable lifestyle legislation governing employment, resource allocation and transfer, and national healthcare accessibility.

Following the United Nations' adoption of the CRPD, PwDs proceeded to legislative changes to address the progress of the “freedom, equality, and dignity” that PwDs have been expected to enjoy as rights while also analysing the contemporary legal system discrimination. In this aspect, there are 5-6 dimensions that include avoiding ambiguity, long-term orientation, indulgence, individualism, and masculinity, with the two globalising factors complementing each other to “positively affect addictive behaviours.” In-depth social marginalisation and a lack of work opportunities are two factors that contribute to addiction disability, according to research done on Vietnamese PwDs in the past. To establish a person's eligibility to obtain benefits “under the DDDC mentioned above” criteria, disability-targeted entitlements necessitate using two age-group-focused assessment tools.

The administration of social assistance employment applications for PwDs under local commune-level People's Committees, utilising national and state information documents and civil rights decisions, was amended by Decree No. 28/2012/ND-CP, which was implemented in 2012. The Vietnamese mandate includes managing quasi-entitlement, including such PwDs community awareness, and attempting to target other groups and disorder schemes, in addition to existing social protection policies and programme ranges. Article 34 of the 2013 Constitution codifies the right to security, which also describes how Resolution 70/NQ-strategic CP/2012's upgrading for “national social welfare” over the 2012-2020 period would be done.

Conclusion

Vietnam's adoption of the CRPD around 2015 indicated a “basic human rights commitment” to PwDs, in contrast to past research that emphasised the marginalisation of this group. According to surveys, there are limited educational opportunities for job employment provided by institutions, resulting in a need for more resources. For the purpose of determining a person's eligibility for benefits under disability-focused entitlements, two age-group-focused assessment tools are required. In addition to the fundamental limitations brought on by their disability, PwDs are especially susceptible when a crisis occurs since they may face “adverse socioeconomic outcomes” more frequently than “those without disabilities.” The high rate of poverty that has increased in this demographic subgroup is mentioned, and “poorly designed catastrophe responses” and inadequate recovery efforts are cited as factors escalating these inequities. PwDs are left to suffer during a situational emergency and after it has passed. This PwDs-centric approach to human rights highlighted that PwDs now had this as a top human rights priority.

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Equality rights and access rights to health care services of persons with disabilities in Vietnam towards inclusion, accessibility and sustainability

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Abstract: Health care for PwDs means creating conditions for PwDs to participate in social activities, fully exercise their rights and obligations as citizens, and contribute to the construction and development of the country. Due to the characteristics of illness and disease, PwDs are difficult to achieve comfortable conditions like border population. The greatest desire of PwDs is to be rehabilitated and supported so that they can carry out their activities and serve themselves, their families and society to integrate into the community. Based on secondary documents, the article researches the rights of PwDs in accessing health services and assurance of the rights of PwDs in medical examination, treatment and rehabilitation; barriers to the realisation of equal rights and access rights to health care services of PwDs; thereby recommending measures to ensure the best implementation and access of these rights of PwDs.

Keywords: PwDs, health care services, equality rights, access rights, enforcement.

1. Introduction

There are about 6.8 billion PwDs worldwide (equivalent to 14% of the population) with varying degrees of physical, intellectual, sensory or mental impairments. Statistics from the United Nations show that in developing countries, 80% of PwDs live below the poverty line, and they have very limited access to health services, education and employment (Federation of PwDs, 2020). In Vietnam, there are estimated to be over 7 million PwDs across the country (accounting for 7.8% of the population). There are nearly 600,000 severe PwDs (Department of Social Protection, 2015). PwDs are considered disadvantaged groups restricted in accessing medical services, medical examination, treatment and rehabilitation. In order to gradually support the community with disabilities to integrate into society in all fields, including medical services and health care, the United Nations CRPD A/RES/61/106 that United Nations General Assembly adopted on December 13, 2006, reaffirmed “the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for PwDs to be guaranteed their full enjoyment without discrimination” and “emphasising the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development”, “States parties to the convention must ensure the right to enjoy all public services of PwDs” (United Nations, 2007).

The Communist Party of Vietnam, the state and the people always give PwDs great attention and care with appropriate policies and regimes being issued and ensure the most favourable conditions for PwDs. Vietnam ratified the United Nations International CRPD on October 22, 2007, followed by the internalisation of the UN regulations on the rights of PwDs into Vietnamese law to ensure its implementation. Specifically, the Law on PwDs in 2010, the Law Emendation of the Law on Health Insurance in 2014, the Labor Code in 2012, 2019, the Decrees and guiding circulars, “Project on Supporting PwDs in the 2012 period” approved by the Prime Minister; building a program to help PwDs: Decision 1190/QĐ-TTg of the Prime Minister approving the program to help PwDs from 2021 to 2030. This research focuses on equal rights and access rights to health care services for PwDs in the United Nations Convention and Law on PwDs. However, up to now, there are still many limitations in the content and implementation of the policy on the rights of PwDs. This research studies the current legal regulations and barriers in exercising equal rights and access rights to health care services of PwDs through secondary information and documents, thereby proposing

recommendations to improve legal policies and measures to ensure the best implementation of these rights.

2. PwDs and challenges to equal access to health care services

“Disability is an evolving concept, and disability is the result of an interplay between people with functional impairments and attitudinal and environmental barriers that prevent their full and effective participation in the society on an equal footing with others”. PwDs include persons with long-term physical, mental, intellectual or sensory impairments that, when interacting with various barriers, may preclude their full and effective participation in society (United Nations, 2007).

According to Vietnamese law, “PWDS is a person who has a defect in one or more body parts or a functional impairment manifested in the form of a disability, causing difficulties in working, living and studying (National Assembly, 2010).

Medical service (health care) is one of the four basic types of social services (1. Services to meet basic physical needs; 2. Medical services; 3. Educational services; and 4. Information and entertainment services), meeting the minimum needs of people according to Maslow's theory of human needs (A.H. Maslow, 1943). Especially for PwDs - the disadvantaged group, the ability to access services in general and medical care services, in particular, is due to inequality in accessing health care services of PwDs.

Most health systems often benefit the dominant group in society over PwDs. Challenges related to equal access to health care services encompass challenges from service providers (health system) and stakeholders receiving services (patients and service-seeking customers). These two types of challenges interact with each other. PwDs need the health system to provide adequate facilities, infrastructure, drugs, human resources and health services to use those services. Moreover, vice versa, PwDs have little need for high-quality services (because most PwDs are in the poor and near-poor groups), which can lead to difficulties in mobilising resources and political commitment to overcome the limitations of the current health system.

Regarding the set of criteria of hospitals, according to the survey results of the Center for Research on Education for the Deaf (CED), there are no criteria in hospitals to support PwDs who do not know sign language or PwDs with hearing loss. In terms of cost, medical interventions for PwDs induce an additional cost. The PwDs with hearing impairments find it challenging to communicate with medical staff due to a lack of sign language, lack of interpreters.

3. Equality rights and access rights to health care services of PwDs as prescribed in the International Covenant

The CRPD recognises the right to equal access to health care services; right to access health care services. Article 25 of the United Nations Convention on Disabilities recognises that PwDs have the right to enjoy the highest attainable standard of health without discrimination based on disability. States Parties shall take all appropriate measures to ensure access for PwDs to health services, including medical rehabilitation. In particular, a State Party shall: a. Provide PwDs with the same type, quality, and standard of free or affordable health care and programmes as provided to others, including sexual and reproductive health and residential community health programs; b. Provide special medical services that PwDs need because of their disability, including early detection, intervention, and services to minimise and prevent further disability, including for children and adults; c. Provide these health services close to the community, including rural areas; d. Require health professionals to provide medical care to PwDs of the same quality as to others, including based on voluntary and informed consent by, inter alia, raising awareness of human rights, dignity, self-reliance and needs of PwDs through training and communicating ethical standards to public and private

healthcare facilities; e. Discrimination against PwDs in health insurance and life insurance is prohibited if such insurance is permitted by national law, and such insurance must be provided reasonably and fairly; f. Prevent discriminatory denial of medical care and medical services or food and drink on the basis of disability.”

Article 26 of the United Nations Convention on Disabilities stipulates the right to exercise and rehabilitation, specifically: *“1. States Parties shall take appropriate and effective measures, including through peer support, to enable PwDs to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organise, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes: a. Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths; b. Support participation and inclusion in the community and all aspects of society are voluntary and are available to PwDs as close as possible to their communities, including in rural areas; 2. State Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services. 3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies designed for PwDs related to habilitation and rehabilitation”*.

Thus, the United Nations Convention on Disabilities has recognised and affirmed the equality and fairness of PwDs in healthcare services and access to healthcare services. Furthermore, it is required that all parties to the convention (as of January 2022, 184 countries have ratified it) (Kim Lien, 2022) must ensure equal access to all healthcare services for PwDs. In addition to the CRPD, the international legal system on human rights of PwDs includes the Declaration on the Rights of Persons with Mental Disabilities (1971); Principles for the protection of persons with mental disabilities and the promotion of mental health care (1991); Standard rules on the equalisation of opportunities for PwDs (1993) or regional treaties such as the Incheon Strategy on the Biwako Millennium Framework of Action on PwDs in the Asia-Pacific region. However, the CRPD is an “umbrella” treaty, comprehensively regulating the human rights of PwDs with all forms of disability, with the broad participation of the United Nations members, and has a strong effect on the human rights of member states.

4. Legislation and practice on enforcing equal rights and access rights to health care services for PwDs in Vietnam

4.1. Regulations on equal rights and access rights to health care services of PwDs

Vietnam has developed a relatively comprehensive legal framework to ensure the rights of PwDs. The 2013 Constitution has made important strides in establishing the ideology on the rights of PwDs and the main responsibility of the state in assisting PwDs: Article 34 affirms that *“Citizens have the right to social security guarantees”*; The rights of PwDs are mainstreamed in the content of the right to social security, associated with a strong innovation in the concept of human rights as noted in Article 14 *“In the Socialist Republic of Vietnam, human rights human, civil, political, economic, cultural and social rights are recognised, respected, protected and guaranteed according to the Constitution and the law”* and Article 16 *“No one shall be discriminated against in political, civil, economic, cultural and social life”*.

Along with the Declaration of rights, Article 59 asserts that *“The State creates equal opportunities for citizens to enjoy social welfare, develops the social security system, and adopts policies to assist the elderly, PwDs and the poor, and other disadvantaged people”*. Article 2 of Resolution No.

84/2015/QH13 of the National Assembly strongly stated, “*The Socialist Republic of Vietnam is committed to implementing the United Nations CRPD in all fields*”.

In addition to the 2013 Constitution, Vietnam has enacted other specialised laws to stipulate the rights of PwDs. For example, the Law on PwDs, the Law on Medical Examination and Treatment 2021, which stipulates Rehabilitation (Rehabilitation) and Community-Based Rehabilitation (CBA); Law Emendation of the Law on Health Insurance, including the goal of increasing the coverage of health insurance payments for PwDs by 2021, having issued health insurance cards to over 1.1 million PwDs; promulgating many documents guiding localities, medical facilities and social protection establishments on Covid prevention for PwDs. In general, the content of the above legal documents has been institutionalised to cover the recommendations in the CRPD.

According to Article 22 of the Law on PwDs No. 51/2010/QH12 dated 17/07/2010, amended and supplemented in 2013, when the patient is entitled to medical examination and treatment: The State ensures that PwDs have access to medical examination and treatment and appropriate medical services, i.e. medical facilities must have beds for PwDs, basic or specialised medical services related to PwDs, and equipment and supplies for PwDs. PwDs are entitled to health insurance policies following the law on health insurance: PwDs do not have to pay fees and health insurance premiums; instead, the health insurance of PwDs is paid by the state budget; Families with disabilities are responsible for creating conditions for PwDs to receive a medical examination and treatment, support PwDs to go to medical facilities for medical examination and treatment, not prevent PwDs from enjoying medical examination and treatment; PwDs who are mentally ill in a state of agitation, depression, have suicidal thoughts and behaviours or endanger others are supported with living expenses, travel expenses and treatment expenses during the critical treatment period at medical service providers. Supported expenses include living expenses during medical examination and treatment, travel expenses (taking PwDs to medical facilities) and treatment costs (inpatient or outpatient). These incentives encourage organisations and individuals to support the provision of medical examination and treatment and to provide free medical examination and treatment for PwDs; encourage individuals and organisations to participate in providing financial support, transportation, and helping PwDs to conduct medical examination and treatment. The system of social organisations participates in formulating and criticising social supervision policies and implemented policies and laws.

However, several regulations still hinder access to quality and good medical and rehabilitation care. The health insurance system is still overlapping. Regarding the legal provisions on health insurance: (i) There are no separate regulations to facilitate PwDs; (ii) Regulations on the place of primary medical care, medical examination and treatment procedures or the list of drugs covered by health insurance still make it difficult for PwDs to enjoy the health insurance regime.

4.2. Barriers to exercising equal rights and access rights to health care services for PwDs

According to statistics, PwDs are classified into 6 groups of disabilities: movement disabilities (30%), mental and neurological disabilities (16%), intellectual disabilities (10%), vision disabilities (12%), hearing and speaking disabilities (11%), multiple disabilities (20%). Over 75% of PwDs live in rural areas, of them, the majority have low and unstable incomes. Their lives are difficult. Nearly 30% of households with PwDs are poor or near-poor, and over 40% have disabilities. Family and relatives provide the main source of living. Approximately 40% of PwDs have their main source of livelihood from social allowances, and just under 10% of PwDs have stable incomes from labour and employment (Department of Social Protection, 2011). The state budget only supports paying health insurance premiums with 100% coverage for severe and especially severe PwDs (nearly 29% are

severe and especially severe disabilities) (Thanh Ha, 2019). Meanwhile, suppose people with mild disabilities do not belong to poor or near-poor households to be eligible for priority policies for these subjects and do not have a job to participate in compulsory health insurance. In that case, they will not be entitled to any incentives on health insurance, although PwDs generally have weak health and regularly take medical examinations and treatment.

Moreover, rehabilitation work has been included in the Resolution of the Central Executive Committee on “Developing a complete system of medical examination and treatment and rehabilitation in each province and city directly under the Central Government and the hospital system under the Central Government; strengthen military-civil medicine coordination”. The CBR program has been implemented in 51 provinces/cities and 5,220 communes/wards. The main activities include screening and assessment of needs, providing rehabilitation services at home and in medical facilities and setting up records for PwDs; 100% of central general hospitals have rehabilitation departments; 90% of general hospitals and 40% of provincial specialised hospitals have rehabilitation departments; 70% of district hospitals have a separate rehabilitation department or combine it with another department; 95% of health infirmaries have assigned staff in charge of monitoring rehabilitation work, about 50% of which are trained in rehabilitation and CBR (Hong Phuong, 2022).

However, in reality, there are still many barriers to accessing health services for PwDs, as follows:

- The availability of healthcare services: healthcare providers for PwDs still need to meet the requirements in terms of quantity and quality. Health facilities do not have comprehensive support services such as support for victims of violence, psychological support, and legal aid. Emergency medical services in disadvantaged areas and places affected by natural disasters are not yet available. PwDs need more facilities and support services to access health services.

- The accessibility of health care services: due to cost, distance, and lack of information/disclosure. Health facilities are degraded. The architecture of facilities is not convenient for PwDs. Barriers from service providers, such as unfriendly attitudes, lack of support, prejudice, insensitivity, lack of awareness, and even discriminatory treatment towards disadvantaged groups; lack of specialised knowledge and skills in working with disadvantaged people and coping with health problems related to disability, e.g. ways using sign language to communicate with deaf groups, ways to help victims of violence, victims of human trafficking; not arrange sufficient time and priority to be able to provide PWDS-friendly services). Barriers of limited knowledge and attitudes of PwDs and their families about general health issues and services, i.e. PwDs may not know service providers, many PwDs do not know benefits, health problems and what services are available. Economic barriers, i.e. health interventions such as assessment, treatment and medication, often require PwDs to pay additional costs, triggering difficulties for them and their families, whose income is limited. Physical and geographical barriers: Lack of accessible means of transportation and public buildings for PwDs are examples of common barriers, or limited availability of health resources in rural areas (where the majority of PwDs live) and the long distance from residential areas to service providers in big cities are also great barriers. Information and communication barriers: Contact and communication between PwDs and health care workers can be difficult; for example, a person with a hearing impairment may find it difficult to express through their sign language, or the absence of illustrations to enable people with intellectual disabilities to communicate with health care workers;

- The discrimination in the family, service provider, community, and self-stigmatisation of the disadvantaged: Discrimination from the family (many families of the vulnerable hide their children's status for fear of facing discrimination from the community); Discrimination from the community and service providers (it is the lack of knowledge and understanding about disadvantaged groups that

cause service providers themselves to have an unbiased, sometimes discriminating view towards some disadvantaged groups, especially PwDs, such as homosexuals); Self-stigmatisation: The vulnerable groups also stigmatise themselves, engendering barriers for themselves. They live a closed life with limited communication skills and opportunities to express their needs, which makes them fall into the vicious circle of self-stigmatisation.

- Group of institutional and policy barriers at all levels and aspects (from the government, programs, agencies/service providers, and social organisations). There need to be more policies or appropriate policies on PwDs. Even when the policies are enacted, they may need to be properly implemented. For example, there may be no sanctions, and discrimination may still exist in dealing with PwDs while providing medical services. Alternatively, there needs to be adequate investment in research and providing appropriate models and approaches in health care for disadvantaged groups. There needs to be comprehensive and unified plans and guidelines on providing appropriate reproductive health services for children and plans and orientations for vocational education, employment and development. Another obstacle is needing more counselling, communication facilities, and legal and psychological support centres. The policies of socialisation support and create conditions for the system of social organisations, social enterprises, and non-public medical facilities, to participate in accessing and providing services. There are many drawbacks of health care services for the weak.

5. Conclusion and policy implications to ensure the implementation of equal rights and access rights to health care services of PwDs

Wishing that PwDs would be increasingly secure and improve their quality of life, it is also recommended that the Government, the Ministry of Health and other relevant ministries and branches review and issue documents regulating health care (public and private) to develop or have a roadmap to develop mechanisms and measures to ensure equal and appropriate access to health care and rehabilitation services for PwDs, including arranging human resources and means to assist PwDs in accessing facilities, medical equipment or information and procedures during medical examination, treatment, and rehabilitation (such as having language interpreters, sign language, Braille, audio, electronic text or developing appropriate smartphone applications).

Firstly, it is necessary to amend the Law on Health Insurance (2014) as soon as possible, including a policy to support people with mild disabilities according to their disability levels to receive health insurance support in medical examination and treatment so that PwDs can enjoy better health care.

Secondly, expanding the scope of health insurance coverage for persons with severe and profound disabilities when using assistive devices, orthopaedic rehabilitation equipment and high-tech services during medical treatment and rehabilitation, including psychological rehabilitation services for people with intellectual, neurological, and psychiatric disabilities, to improve the effectiveness of treatment and rehabilitation for PwDs.

Thirdly, amending Clauses 7 and 8 of Article 23 of the Law on Health Insurance so that the examination and treatment of strabismus, myopia, refractive errors of the eyes at a severe degree and rehabilitation tools such as crutches and splints for mobility PwDs, eyeglasses, canes for the blind, hearing aids, cochlear implants for the deaf are included in the list of medical supplies covered by health insurance or partially supported on a pro-rata basis or specify the maximum payment (Nhat Anh, 2022).

Fourthly, providing necessary information related to disadvantaged groups (posters, leaflets, reference materials on disadvantaged groups, language handbook for the deaf, phone number support

of several specialised volunteer groups) at medical facilities so that PwDs can look up, use, and seek support.

Fifthly, improving the existing service to be more friendly and accessible to disadvantaged groups. Taking up their suggestions to perfect the service. Service providers must learn and equip themselves with the necessary knowledge and skills about the psychophysiology of each group of PwDs.

Sixthly, it is necessary to seize every opportunity to access and provide services to disadvantaged groups, especially emergency medical services in disadvantaged areas and places affected by natural disasters. Ensure access to public health communication and information through voiceovers, the sign language of all events and direct communication, translating all documents into an “easy to read” format so that they are accessible for intellectually or cognitively impaired people. Develop accessible written information products using appropriate document formats.

Besides, it is necessary to have appropriate policies that do not discriminate against PwDs in the process of providing medical services; research and come up with appropriate models and approaches in health care for disadvantaged groups and, more especially, reduce and no longer stigmatise the families themselves, service providers, social community in which PwDs and disadvantaged people live (Nguyen A, 2021).

Seventhly, in order to ensure the reality of the right to medical care and rehabilitation following the spirit of CRPD recommendations, it is necessary to add different regulations on health insurance regimes for PwDs in the direction of simplifying procedures, expanding medical examination and treatment places, and increasing payment of certain drugs to serve the specific treatment needs of PwDs (Dinh Thi Cam Ha, 2015).

Eighthly, to prioritise medical examination and treatment for PwDs with severe and severe disabilities, children with disabilities, elderly PwDs, and pregnant women with disabilities under the law on medical examination and treatment.

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Improving access for persons who are blind, visual impairment and with print disabilities in India: time to act on Indian Copyright (Amendment) Act, 2012

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Abstract:

Recent World Health Organization (WHO) findings suggest an estimated 285 million blind and visually impaired people worldwide. India is home to a larger segment. However, thankfully Indian Copyright law was amended in 2012, creating a copyright exception for persons with visual disabilities in as much as it affirmed their right to read. The amendment did away with the requirement of prior approval from authors and publishers for the reproduction and distribution of copyrighted works into any alternative format for the benefit of persons who cannot read print, therefore, ruling out commercial gain. Interestingly, a year later, the Treaty of Marrakesh echoed what India had already anticipated, with an even further provision for importing and exporting such accessible versions. This landmark paradigm change in the law has the potential to open up access to a record variety of published works to the blind and print disabled. However, this all could be realised if informants act on this new opportunity and fulfil the pressing needs of this section. Therefore, this paper is an attempt to suggest a broader framework on how information providers need to put in place services, collections, equipment and facilities which will assist an individual with a print disability to access and use resources and help eradicate the current “book famine,” a term coined by the World Blind Union with respect to the print-disabled. As this paper argues, it is alone through such interventions that the much-hyped slogan of “universal and inclusive education” could be realised.

Keywords: “Braille, Book Famine, Copyright, Education, Marrakesh”.

1. Introduction

In India, the right to life, dignity, speech and expression, education and information are the hallmark characteristics or founding blocks of the Indian Constitution. India is also assessed to possess about a hundred million individuals with infirmity. Since the right to access information is restricted, fully exercising the fundamental rights becomes practically difficult. Consequently, Individuals with a disability find it difficult to access printed material. The printed material can only be opened once it is transformed into 'accessible formats' like audio besides other electronic forms with the .txt file extension, Microsoft Word and PDF files and, importantly, Braille. Moreover, contemporary technological developments have restricted access and use of such converted works. This scenario is acknowledged as “Book Famine”, where few specialised organisations have panic possessions that provide widely held printed material in “accessible formats”. Additionally, the specialised organisations must work towards maximising and increasing the quota of books available to Persons having Print Impairment to share these books across national boundaries.

Persons having Print Impairment are those individuals who, due to some form of disability, are unable to access printed material. These include persons with blindness or low vision, dyslexia, and autism. The published material is usually converted into accessible formats like Braille or other electronic formats for these persons to read. Such information is then read along with aiding devices fixed in any electronic devices through a screen reader or electronic book reader. The aiding technology is further required to comply with universally applicable standards, such as “Unicode for Indic font or EPUB 3.0”.

Today, an estimated 285 million blind and visually impaired people are worldwide. Out of this, India is home to approximately 47 million. Moreover, the World Blind Union (WBU) estimates that less

than 10 per cent of blind children attend school. This situation is alarming and can be improved if schools have ready access to texts adapted by visually impaired children. The biggest barrier to achieving full and effective participation of print disabled is the lack of access to information. World Blind Union (WBU) states that only 5 per cent of books worldwide are available to persons with print impairment. Further, less than 0.5 per cent of books are available and accessible in formats such as Braille, large font, and digital format to individuals having a print impairment. Additionally, those at socio-economic disadvantage face other challenges in accessing the written word. This is large because of the rigours of the erstwhile copyright law in India. Therefore there is a need to develop a conducive environment for learning. Lack of access to reading material in accessible formats has further pushed persons with print disabilities towards 'book famine'.

According to World Health Organization, contributing factors to rising disability include an ageing population, chronic health conditions, and lack of a conducive environment. Many countries worldwide have recognised, identified and drafted policies and laws to protect the rights of the differently abled. However, there is a need to address the alarming situation with utmost integrity, honesty and sincerity for full and effective participation of the differently abled. In India alone, around 2.21% of 2.68 crore persons are PwDs. This problem is serious and needs to be redressed with effective and efficient solutions for the balanced growth of our society.

Though India is among the major nations that advocate the rights of persons with print disabilities, they are facing the tremendous challenge of providing access to print material in accessible formats. The commercial interest of publishers, lack of acceptance from society, lack of access to technology and inefficient administration have further crippled their inclusive, sustainable growth in society. However, later India became a signatory and ratified the United Nations CRPD (UNCRPD); they were required to adopt appropriate measures to protect the rights of the print disabled. Some of these measures involved legislation requiring altering or eliminating current laws, regulations, customs and practices. Additionally, definite guidelines on accessibility were supplied to the community.

2. Marrakesh and its other contemplations: An exclusion to copyright for persons having a print impairment

World Intellectual Property Organization Member states, on June 27, 2013, approved the MVT in Marrakesh, Morocco. Further, the Treaty came into force on September 30, 2016. This Treaty aimed to facilitate different visually disabled access to any Printed Works. The main objective of this Treaty was to highlight the problems faced by Persons having Print Disabilities, referred to as the 'global book famine'.

The Marrakesh Treaty (MVT or VIP treaty) was formed to facilitate access to 'published works' for Individuals who are Blind, Visually Impaired, or Otherwise 'Print Disabled'. This Treaty required countries to amend their copyright laws to allow the recreation of cultural works in accessible electronic arrangements without taking the informed consent of the original copyright holder.

The Marrakesh Treaty was made to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled. The Treaty required countries to amend their copyright laws to allow the reproduction of artistic works in accessible formats without the informed consent of the original copyright holder. Individuals covered under this Treaty and non-profit agencies providing services to such people could reproduce cultural works like books and plays in accessible formats without the authors' permission, playwrights or publishers (i.e. copyright holders). Thanks to the Treaty, these copyright holders cannot take any legal action against those reproducing their works for accessibility purposes.

On June 24, 2014, India, at the Standing Committee of the 28th session on the Copyright and Related Rights Act, 2000, held in Geneva, became the Firstly country to ratify MVT. Since then, the Treaty has witnessed 79 countries across the globe have signed the MVT treaty for effective implementation of this Treaty. This step has given confidence to more than 285 million persons around the globe having a print disability. Currently, only 1-7 per cent of such published books and other printed materials are readily made and offered in accessible formats to Persons with Print disabilities. Further, 90 per cent of these people live in low-income settings based out of developing nations. It is pertinent to note that each year 95% of such published work (s) made available to the public cannot be enjoyed by Persons who are Blind, Visually Impaired, or otherwise Print Disabled due to inaccessibility.

In June 2014 World Intellectual Property Organization (WIPO), along with other key partners, developed and launched the Accessible Books Consortium (hereinafter called ABC) for the actualisation of MVT. It aims to expand the quota of books and make them available worldwide in “accessible formats” to “Individuals of visually impaired, blind and otherwise print disabled”.

Further, the accessible books consortium has taken initiatives to include and involve advocacy organisations, authors, standard bodies, publishers and various libraries for the blind across the globe for such purpose. Many believe initiatives like that of the accessible books consortium will empower people with Print disabilities.

Further, the books need to be adapted into accessible formats by libraries for the blind, organisations serving the print-disabled or at the source by publishers (including Departments of Education) so that the texts can be “read” using assistive technology on computers, phones or electronic Braille devices. Once produced, these accessible books must be distributed to the people who need them, including those who may live far from major urban areas.

For example, the ‘Accessible India Campaign’ has provided a nationwide flagship campaign for universal access for PwDs. Moreover, India has begun the implementation of the Marrakesh Treaty through a multi-stakeholder approach, which includes collaboration among key players such as government ministries, local champions like the DAISY Forum of India, and the private sector. This led to the launch in August of India's largest collection of online accessible books called “Sugamya Pustakalaya”, which counts 200,000 volumes. Nineteen libraries for the blind from 16 countries are already participating in this service.

Today, less than 10% of published materials are accessible to blind persons with low vision. The “books for blind” Treaty, 2013 has benefited the member states regarding availability and access to such works. ABC Book Service (Accessible Book Consortium) allows readers to access many published works in accessible formats. “It provides training in producing and distributing works in accessible formats; promotes inclusive publishing standards; offers an international online catalogue of accessible titles for libraries serving people who are PwDs”. However, the dream of an inclusive growth model (increasing access to protected works in accessible formats) is far from being achieved.

3. Right to Education: Right of blind, impaired and print PwDs in India

Despite being a fundamental right, many differently abled still need quality, inclusive education. Therefore access to accessible material formats becomes an essential part of their inclusive growth. The commercial interests of publishers have been one of the major barriers to the lack of access to information. Further, due to this, the reproduction and distribution of published works in accessible formats have suffered. The focus on making accessible information available has put the focus away from already available published work to be distributed in accessible formats. This approach needs a balance, where the role of society needs to be strengthened. Where conducive environment needs to be prepared by industries to provide persons with a print disability access to resources, tools and

information in accessible formats for overall positive growth. Problems to access to information include lack of infrastructure, including schools, toilets, classrooms, technology, transport aiding facilities and facilities including (hearing aid, spectacles, Braille, and all other necessary aids), training of teachers, and accommodation measures. The lack of trained teachers and restrictive curriculum have affected the quality of education. Article 21-A of the Indian Constitution, 1950 states that free primary education in India must be provided to all children from 6 to 14 years of age. *Unni Krishnan v. State of Andhra Pradesh* recognised the right to primary education as a fundamental right. Similarly, in *TMA Pai Foundation v. Union of India*, the court upheld and confirmed the right to free primary education as a fundamental right. Further, the 86th constitutional amendment in 2009 made it compulsory for all children between 6 to 14 years of age to have compulsory education. However, even today, many differently-abled students are excluded from mainstream school education, that is, public schools. In *Social Jurist, A Civil Rights Group v. Government of NCT Delhi and Others*, the court held that no differently abled person could be denied admission in any state, local, or state-funded educational institution even on lack of necessary facilities. In *re T (a Minor)*, the House of Lords held that the resource considerations could not be relevant to the question of what is suitable for education. As the House stated, only educational standards would be relevant in deciding suitable education for a child with special needs. Another discussion that must be considered in light of providing access to free and quality education to differently-abled has special schools as against traditional inclusive education schools. The advocators of such inclusive education propound that the educational environment can be conducive to inclusive learning. Since special schools promote isolation, alienation and social exclusion from mainstream society. Article 14 of the Indian Constitution, 1950, further validates this stand. The segregated model of special schools has faced criticism for failing to inclusively shape children's social and cultural experiences. Therefore inclusive education is a better model to improve confidence and develop the differently abled to become a part of mainstream society. Children with learning disabilities also form a part of persons with a print disability. In *Vincy D'Silva v. St.Mary School and Others*, the court recognised Persons with learning disabilities under (PwDs) Act, 1995. It directed the Maharashtra Government to formulate a scheme to provide additional facilities to dyslexic, dysgraphia, and / or dyscalculia for modified curriculum and examination pattern changes. Further, in *Disabled Rights Group v. Delhi University & Others* court included dyslexia within the definition of disability under the PwDs Act, 1995.

4. Rights of PwDs Act, 2016: Right against non-discrimination

The Act mentioned above replaces the Disability Act 1995. It further fulfils the obligation on the part of India as a signatory to the United National CRPD. The number of disabilities recognised under the law has been increased to 17 from 7 recognised under the Old Act and has been elaborately defined. Further, for persons with benchmark disabilities, a reservation of not less than 5% is to be made in the allotment of agriculture and housing land, in poverty alleviation schemes and allotment of land at a concessional rate. Moreover, in doing so, priority has to be given to women. Private establishments have also been covered within the ambit of the new Act.

Special powers have been conferred on the Executive Magistrate and Police Officer to deal with complaints of abuse, violence or exploitation against the person with disabilities. The Act requires the State Governments to notify District Court/Court of Session in concurrence with the Chief Justice of the High Court of any such complaint. Such District Court/Court of Session shall act as special courts for speedy trial of offences under the Act. The Act provides for the setting up of a National Fund for PwDs. The Act focuses on multiple aspects such as education, skill development, employment, recreation, rehabilitation, health and social security of a person with disability.

The New Act can say to have brought a positive change towards the welfare of the PwDs. The law has become more profound towards the need and well-being of the PwDs, but effective implementation is needed.

5. The Copyright Amendment Act, 2012: Confiscating obstructions

Before the 2012 amendment, copyright owners had the exclusive right to use, reproduce, adapt, make copies and communicate their work to the public. However, after the amendment to the Copyright Act in 2012, the copyright owner's consent for converting the published work into accessible works for Persons with Print disabilities is not a requirement. Indian copyright law now allows PwDs access to copyrighted works without paying any compensation to the copyright holders. Further, any organisation working for the benefit of PwDs on a non-profit basis can access copyrighted works. Similarly, those taking reasonable steps to prevent the entry of reproductions of copyrighted works have also been allowed access to copyrighted works. Section 52(1) (zb) to this concern has made an exception to the copyright law allowing protected copyright works to be converted into accessible formats for the benefit of differently-abled persons. Thereby allowing the following works to be used only for private/personal use and research purposes. This provision further clarifies that if an individual or business wants to work for the benefit of differently-abled on a profit basis or for business purposes, i.e. commercial interest, such person shall apply to the copyright board for the license of the said protected work.

Today the real problem revolves around the availability and access to books, magazines and other print materials. However, the road ahead looks promising with the government's and non-governmental organisations' initiatives. This paradigm change in the law has potentially opened up access to a wide variety of published works to the blind and print disabled, ensuing a phenomenal new reading and learning experience.

However, action on the part of public libraries, including university libraries, is required to fulfil the pressing needs of this section of the population. The 2012 Copyright Amendment Act permits all public libraries in India to provide free of cost by converting the materials they possess for the welfare of the disabled into accessible arrangements. Such arrangements will generate huge collections for print and visual impairment persons. With this, there is no requisite permission to transmit the work in traditional form, even over the virtual form from publishers, distribution of information to PwDs. This arrangement resolves the print and visually impaired's difficulty in otherwise having access to materials.

This amendment allows public libraries to convert their materials into any language. In fact, for the welfare of the disabled, it is the duty cast on public libraries to keep the work available in any electronic form to enhance its accessibility.

6. Hitches in Accessibility to Blind, Impaired and Print PwDs in India

In India, under the consortium mode project through text-to-speech technology has grown to 13 languages, but many local languages to assist the visually impaired and print disabled are yet to be developed. "There is no text-to-speech engine available for the Punjabi language in India, so even if we have digital text files, they cannot be read by the user. We need to bridge these gaps. In many developing countries, where it exists, text-to-speech technology is often basic and expensive (costing up to a third of a monthly salary)".

Despite being the most populous nation, India is not free from persons with disability. It is very unfortunate on our part that every year ninety thousand books are getting published, and out of them, only 19,000 are available to date for print-impaired persons despite the technology available and publishing capacity.

However, despite the different measures, the availability of books could be better. While the legal issues have been sorted out to a large extent by the Copyright (Amendment) Act, the practical situation is harder to deal with, and there are significant hurdles in creation and dissemination, as well as equipping users to read accessible books.

A recent initiative to address some of these challenges is launching a national online library of accessible books known as Sugamya Pustakalaya. This online library is a joint effort of the Government of India, the DAISY Forum of India and corporate support. Accessible books from various libraries across the country, along with those from renowned international agencies such as Bookshare and Accessible Books Consortium, are available here so that users can obtain full content on a single platform. “Though Bookshare has expended millions to convert books in different countries, it has only succeeded in making 500,000 accessible books available in all. Further, many of these books are unavailable in many jurisdictions due to copyright issues. Today, over 2 lakh books are available in diverse languages in Accessible Formats for people with visual impairment and print disabilities. Integrating libraries like that of Bookshare (The largest international library) has provided access to the same”.

The users can also access these publications on any device of his/her choice, including mobile phones, tablets, computers, and DAISY players, as well as in Braille. Other DAISY files (available in MP3 and XML format) replace the material for the disabled.

Recently Lakshya, an initiative in Ranchi toward PwDs, has had a tie-up with Bookshare. The blind, impaired and print-disabled can now download all the material at a press and need not rely on someone who reads. The new system will save time, energy and money against searching for friendly formats to prepare for competitive exams and professional courses. A person must fill out a form including all his personal information to access Bookshare.

Then disability certificate is to be submitted to either NAB or Lakshya. Another disability form and a medical certificate duly authorised by a competent government authority are sent to Zainab in Pune via email. Upon receipt of such form, every confirmed candidate gets an ID and a password is also sent by email. The users can then download books in any arrangement he likes on any electronic device.

Another feature of Bookshare is an electronic script file called Braille Ready Format. Most devices automatically do not recognise BRF because the particular hardware/software is required to disclose and read the file. However, operators in a Duxbury (specialised software) can access the document that permits inspecting, editing, or embossing the book and transferring the file to a Braille note taker. Further, all states must agree with Bookshare to allow downloading all government textbooks in suitable formats. Rajasthan is one of the states that has already taken up this initiative. Such initiative will help print disabled at the school level and contribute to their inclusive growth.

Apart from the challenges of creating and disseminating accessible books, other digitisation activities can also add to the problem. For instance, the Digital Library of India Project, a spectacular effort to digitise books of all genres, is said to have 550,603 books, including several really old manuscripts and historical books. However, these are scanned and saved as inaccessible image files, rendering them useless to the print-impaired.

Another problem is in the case of Indian languages, where content is often created in a non-Unicode font, making it unreadable for persons using screen reader copyright owners and persons of print disability.

It is important to note that the challenge of any administration is to recognise and identify persons with a print disability. The problem lies in data collection, statistics design, and coverage based on categorisation. The information collected is often flawed due to the stigma attached to disability. Friendly questionnaires must be prepared for the target population to identify the differently abled correctly. Such statistics would help national governments develop cost-effective policies to fully and effectively participate differently abled. For example, National Policy for Persons with Disability (2006) treat persons with disability as valuable human resource for the country and seeks to create an environment of equal opportunity by protecting their rights and thereby allowing full participation in society. Many such measures are being adopted to identify and categorise areas where the rights of PwDs are being violated and therefore need redressal. UNCRPD is a measure that uses the human rights instrument in the social development dimension. Such an instrument can identify the needs and aspirations of persons with a print disability.

Today, persons with print disabilities are suffering due to inefficient administration and red-tapism in bureaucracy. Their inability or failure to lobby for increasing access to information in accessible formats has put the differently abled on the verge of vulnerability. This approach/attitude needs to change. This is only possible if policymakers, government and advocacy groups have persons with print disability representatives come together to reach a common solution. Such a solution must be economically viable and fruitful for the inclusive growth of persons with a print disability. One such initiative taken by the government is making ABC services improve access to education.

7. Conclusion and Suggestions

Today in India, transforming any work/material in braille format is not an issue. However, with changing information and communication technology dynamics, there is a need to re-look at the law. No specific provision in the Copyright Act (1957) facilitates the production and/or distribution of books for persons with print disabilities. The existing laws have yet to go beyond developing electronic arrangements and acoustic books. Considering the increasing frequency of the disabled and education among them designates that shortly, Braille will become useless. Therefore there is a need to create innovative models to disseminate information.

Earlier, where the translation of books and other printed materials required permission from original copyright authors and institutions. With MVT coming into force, organisations must refrain from taking permission from copyright owners and institutions to facilitate access to copyrighted work. MVT has helped India to move away from its cumbersome legal process, where law took its course. Transfer of knowledge has also become easier than ever before. Further, MVT allows other signatories to break the deadlock of distribution facts with the print incapacitated. Therefore Marrakesh Treaty is a measured blessing of India.

The World Blind Union (WBU) was set up to make the world accessible to blind and partially blind persons. This Treaty ushers an innovative step towards engaging the VIP world and increasing access to the world of knowledge and information. India has taken up the role of leading the campaign through the Marrakesh Treaty.

On the technology front, an NGO-driven project over the past four years has made text-to-speech available for several Indian languages using the open-source text-to-speech engine e-Speak, which works with both laptops and Android phones. The government, with institutions like the Indian Institute of Technology, is driving initiatives to develop text-to-speech and optical character recognition (OCR) software for Indian languages. However, a long road is ahead before these become available to end users.

To sum up, we have the law, we have the technology, the books and the people, but there is a need for concerted efforts from multiple stakeholders-the government, publishers, educational institutions and NGOs-to bring all of these together so that every print-impaired person in India can enjoy the right to read. However, certain suggestions are as under:

- To confirm the ability to interact with blind and visually impaired persons, adequate training must be provided to the administrative staff of any public library. This training can include a short refresher course and consultation with the print disabled, along with experts working for PwDs. This will help the library staff to identify and categorise the type of information required by the stakeholders.

- The books keepers should recruit enthusiastic individuals to cooperate with individuals with infirmities. These individuals must remain trained and sensitised on various forms of disability, made familiar with sign language and should be provided with specific training to guide PwDs to use books and to acquire manuscripts from the internet.

- Specialised services must be offered to blind, print and visually impaired persons, including home delivery and various helplines over the telephone to order different books. Interpretation amenities must be available at the chosen sitting room in a public library.

- The public libraries, including the university libraries and information providers in India, must collect, equip, assist and facilitate the access and use of published materials to print disabled. This will help eradicate the current “book famine” situation. This is the only way forward to achieve the objective of “universal and inclusive education”.

- The simplest way to address accessible book creation would be for publishers to adopt EPUB 3.0 and ensure that books are “born accessible” since they produce a digital book file before bringing it out in print. This would obviate the entire cost, time and effort spent on conversion. Also, selling accessible e-versions to the print impaired could be a huge business opportunity for publishers, considering the large market for such books in India and globally. More information can be obtained from Accessible Book Consortium or by writing to Book Share.

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Some issues about the rights to participate of persons with disabilities in conditions of Sustainable Development in Vietnam today

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Abstract: The Party, State, and society have paid special attention to PwDs through policies to ensure their comprehensive development rights. In particular, PwDs are allowed to express their views and opinions to develop relevant policies and laws by exercising the right to participate. The right to participate has been acknowledged by the International CRPD and codified by Vietnamese law. However, there are certain limitations in recognising and enforcing the right to participation of PwDs. Therefore, it is necessary to come up with solutions both in terms of legal institutions and methods of implementation so that PwDs can enjoy the right to participate in the best way in practice, meeting the requirements of the sustainable development of the country today.

Keywords: Right to participate; PwDs; Sustainable Development; Acknowledgment of rights; Organise the exercise of rights.

1. Introduction

Vietnam's ratification of the CRPD is a strong political commitment to protecting and promoting development for the benefit of PwDs. This is the legal basis for Vietnam to express its consistent stance on human rights in general and PwDs in particular. This constitutes equality and non-discrimination for PwDs, contributing to realising the set criteria of socially sustainable development: the harmony of interests between social actors. One of the contents of socially sustainable development is to enhance the public's participation in decision-making processes. Therefore, ensuring the right to participate in PwDs is also one of the issues that need to be focused on in the context of sustainable development in Vietnam today.

2. Content

2.1. Concept, characteristics, and contents of the rights to participate in PwDs

Participation is an open concept and has been interpreted in diverse ways. The right to participation is generally conceptualised as a process by which a person participates in decision-making processes that affect the community he or she lives [4]. In a broad sense, the right to participate in people's participation in all economic, political, social activities and legal proceedings.

The right to participate in PwDs has the following characteristics:

Firstly, the participation rights of PwDs are specific to vulnerable social groups. Physical disparities and difficulties in walking and learning manifest the PwDs. Therefore, this group is considered a vulnerable social group, so the acknowledgement or organisation of the implementation of the rights to the participation of PwDs must also have distinct characteristics and priority over other social groups.

Secondly, the participation of PwDs requires the support of many actors in society. Derived from the physical characteristics of PwDs, exercising the right to participate in PwDs requires the collaboration of representative organisations and other entities. However, PwDs, when exercising their right to participate in all cases, are required to go through a representative organisation.

Thirdly, the right to participation of PwDs is an issue associated with the development of modern society. For modern society, especially in the current trend of sustainable development in all aspects, the discrimination against PwDs will be eliminated and replaced by the harmony of interests and the

development of all people. Subjects in society are equal when participating in political and social life, especially taking part in decisions that are significant to their interests.

Although no provision of CRPD directly stipulates that PwDs have the right to participate, the basic principles and some contents of the CRPD have recognised and demonstrated the assurance of the rights to participate of PwDs. Article 3 of the CRPD affirms the principle of: *“Full and effective participation and inclusion in society”*. Concretising that principle, the content of the right to participate is manifested in the following aspects:

Firstly, the right of PwDs to participate in political life.

From this perspective, PwDs are entitled to contribute opinions on legal and social policies, especially legal and social policies related to the legitimate rights and interests of PwDs [11]. In addition, PwDs have the right to participate in other political activities, such as electing an organisation to represent their legitimate rights and interests. Article 29 of the CRPD also details the rules on participation in the political and public life of PwDs. Accordingly: *“States Parties shall guarantee to PwDs political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to ensure that PwDs can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for PwDs to vote and be elected; Promote actively an environment in which PwDs can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, ...”*.

Secondly, the right of PwDs to participate in cultural life, recreation, leisure, and sports.

In addition to the right to participate in political life, PwDs are guaranteed to participate in cultural, entertainment, recreational, and sports activities to promote their overall development without discrimination when physical and intellectual disadvantages exist. Article 30 of the CRPD stipulates that *“States Parties recognise the right of PwDs to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that PwDs Enjoy access to cultural materials in accessible formats; enabling PwDs to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures to encourage and promote the participation, to the fullest extent possible, of PwDs in mainstream sporting activities at all levels; ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system; ...”*

However, within the framework of the article, the author approaches the right of PWDS to participate in political life and decision-making related to their interests.

2.2. Assurance of the right to participate in PwDs in Vietnam today

The right to participation of PwDs can only be realised when there are certain guarantees through the recognition in legal documents and the organisation of the implementation of the right to participation of PwDs.

2.2.1. Recognising the right to participate of PwDs in legal documents

In addition to the Constitution, which recognises human rights values in general, including the right to participate in PwDs, the Law on Persons with Disabilities 2010 directly regulates social relations related to PwDs. Accordingly, the state has assigned organisations of PwDs to participate in developing and supervising legal policies toward PwDs. Full and comprehensive participation in policy development ensures the principle of full and effective participation and integration into society in the CRPD. Specifically: Article 4 of Law on PwDs 2010 recognises the right of PwDs to

participate equally in social activities. In addition to recognising the right to participate in PwDs, the Law on PwDs 2010 also stipulates the responsibilities of state agencies and organisations in ensuring the exercise of rights as in Article 7: *“The Vietnam Fatherland Front and its member organisations shall campaign for social assistance to PwDs in access to social services and integration into the community; to participate in and supervise the implementation of policies, laws, and programs as well as projects to assist PwDs”*. Furthermore, Article 9 of Law on PwDs 2010 acknowledges not only the right of PwDs to participate but also the right to participate of organisations representing PwDs, i.e., *organisations of PwDs are social organisations set up and operating under the law to represent the legitimate rights and interests of their members being PwDs, to participate in the formulation and supervise the implementation of policies and law on PwDs*.

The Law on Promulgation of Legal Documents 2015 stipulates in Clause 2 - Article 6: *Organisations of PwDs are social organisations set up and operating under the law to represent the legitimate rights and interests of their members being PwDs, to participate in the formulation and supervise the implementation of policies and law on PwDs*. The state has realised the importance of the directly affected subjects in developing legal documents, ensuring the spirit of the international principle “nothing about us without us”. In order to ensure the full participation of the affected target group and limit the situation of being “left behind”, it is required that the regulations on the documents submitted for project approval must encompass the opinion of the affected subjects. This is an important legal basis for PwDs to participate in developing regulations related to their rights and interests.

It can be seen that the right to participate is only realised in the current legal documents, especially the Law on Persons with Disabilities, in general concept, but has not been concretised in other laws. The sub-law documents also do not refer to the right of PwDs to participate in political activities. However, they are most interested in participating in social and legal policies related to their rights and interests. Meanwhile, the CRPD asserts this issue. This leads to a need for more regulations related to the responsibilities of state agencies, individuals and other organisations in society in ensuring the right of PwDs to participate in social and legal policies.

On the other hand, the Law on PwDs 2010 only stipulates that organisations of PwDs can participate but does not emphasise the right of PwDs to participate in policy formulation. Currently, according to the report of the Vietnam Federation of PwDs, there are about 22 provincial-level disability associations in Vietnam. At the same time, Vietnam has 63 provinces and cities with 713 district-level units, but only some localities have an organisation of PwDs. The absence of agencies representing PwDs will lessen their voice in society, and this may lead to cases in many localities that need organisations of PwDs to invite PwDs to participate in the policy-making process.

2.2.2. Enforcement of the right to participation of PwDs in Vietnam today

Regarding the organisation of the implementation of the right to participate of PwDs in Vietnam today, it is impossible not to mention the efforts of the Party, State and organisations in society in creating all conditions for PwDs to participate in political and social activities; to not leave PwDs on the margins of society or subject to discrimination in the process of exercising their right to participate.

Firstly of all, the Central Committee of the Communist Party of Vietnam has issued Directive No. 39 on strengthening the Party’s leadership in the work of PwDs. Accordingly, the Directive affirms that the Communist Party, State, and society have always been concerned about works related to PwDs and have promulgated and implemented many caring guidelines and policies in order to ensure the right and promote the role of PwDs, which contribute to the promotion of social progress and

sustainable development. PwDs work has achieved many remarkable results. The awareness and responsibilities of provincial Communist Party organisations, authorities, and unions at all levels towards PwDs have improved. PwDs are becoming more confident and comfortable integrating into social life. Although not referring to the right to participate, the spirit of the Directive is to ensure the rights of PwDs.

From the perspective of state management, on August 5, 2020, the Prime Minister approved the Program to assist PwDs from 2021 to 2030 in Decision No. 1190/QĐ-TTg. It is the general objectives of the Program that assert the responsibility to ensure the right to participation of PwDs, i.e.: *“Promote the implementation of UN's Convention on Rights of PwDs and Law on PwDs to improve the life quality of PwDs; enable PwDs to participate in social activities equally; develop an unrestricted environment in order to protect legal rights of PwDs and assist PwDs in utilising their potentials”*. These goals lay a foundation for relevant individuals and organisations to launch practical programs and actions to ensure the rights of PwDs, including the right to participate.

While organising the implementation of the right to participate for PwDs, organisations representing PwDs and associations set up by PwDs have also published policies and regulations and drafted legal documents related to PwDs for PwDs to comment on. However, the number of published information is still limited.

Many organisations representing for PwDs responded that they were not invited to participate in the local policy-making process. Although the Law on Promulgation of Legal Documents explicitly specifies that the drafting agency must organise consultations with those directly affected by the document, however, in reality, many agencies do not invite PwDs or representatives of organisations of PwDs to engage in meetings or seminars to obtain their feedback opinions about the drafts of legal documents. Consequently, many documents are enacted without the participation of PwDs [6].

Many PwDs need to be made aware of their right to participate in developing legal documents. Apart from PwDs who know but find it difficult to access this right, others with disabilities are unaware they have the right to participate in formulating policy and legal comments [2]. This also indirectly reveals the inadequacies of the propaganda and dissemination of legal provisions on this right for PwDs.

2.3. General assessment of guaranteeing the right to participate of PwDs in Vietnam today

Firstly of all, although the Party, State and society have enabled PwDs to participate in political and social life without any discrimination, there are still major shortcomings in terms of promoting the PwDs' engagement in drafting legal rules and policies that are relevant to their rights and interests, as follows:

Firstly, Vietnam has ratified the CRPD, but the Law on Persons with Disabilities has not yet made significant amendments consistent with the provisions of the CRPD. At the same time, legal documents do not embrace specific provisions on the right to participate in PwDs, mainly through representative organisations. There need to be more guidelines related to facilitating PwDs to involve in and give comments on matters related to their legitimate rights and interests and the absence of regulations on the responsibilities of relevant parties to ensure participation rights of PwDs because they face barriers in accessing information. Since then, there has been a shortage of sanctions when PwDs are refrained from exercising their right to participate.

Secondly, although the Program to assist PwDs for the 2021-2030 period has defined goals related to the right to participate of PwDs, there is yet to be a target for PwDs to participate in the development of relevant social policies and laws in the action plan.

Thirdly, organisations representing PwDs need to prove their roles effectively and widely propagate the rights of PwDs, so PwDs understand and enjoy their rights in practice.

Besides, localities have not conducted propaganda activities regarding the right to participate in PwDs. Some localities have done it but not in different forms to correspond to different types of disabilities. For example, people with hearing and speech disabilities will be unable to access if the dissemination is conducted only through loudspeakers, radio or television without sign language interpreters, or people with visual impairments may not be able to access the propaganda through newsletters or newspapers.

The limitations mentioned above mainly stem from the fact that the Party, State and society need to pay more attention to and are aware of the important role of ensuring the right to participation of PwDs. The policies primarily focus on subsidies and employment but neglect to create a legal framework for PwDs to participate in public political life, typically the right to participate in the law-making process. Moreover, organisations representing PwDs need to be made aware of their roles and responsibilities in caring about the right to participate in PwDs. In particular, PwDs themselves need to be more conscious of their entitlement to the right to participate.

2.4. Some proposed solutions to enhance legal institutions and enforcement of the right to participate in PwDs in Vietnam today

Derived from the assessment of the situation of ensuring the right to participation of PwDs in Vietnam, it is possible to propose some solutions to intensify the participation of PwDs in both aspects of acknowledging and executing the rights in Vietnam today as follows:

Firstly, the Law on Disabilities 2010 must be revised to be compatible with the CRPD. Specifically, it must expand the right to participate in developing social policies and laws, especially concerning PwDs, to other entities, except for the current organisation representing PwDs. It should explicitly identify the parties' responsibilities in organising the exercise of the right to participation for PwDs. Provide precise sanctions if violations hinder the exercise of the right to participation of PwDs. Regulate the responsibility of organisations representing PwDs to update information on relevant legal documents and policies so that PwDs can access information to exercise their right to participate effectively.

Secondly, localities and organisations representing PwDs need to organise activities for PwDs to join and integrate the chance to expression of PwDs' views and suggestions on current policies in those activities. By dint of this, PwDs are well aware that the right to participate in one of their eligible rights that PwDs.

Thirdly, it is necessary to escalate the propaganda and dissemination of the rights of PwDs to participate and make policy suggestions through various forms of propaganda suitable to each type of disability.

Furthermore, the process of drafting documents and consultation with PwDs should be widely announced on media channels to intensify the contribution of PwDs in this process.

3. Conclusion

The right to participation of PwDs is important in contributing to social inclusion, limiting discrimination against PwDs, and providing an opportunity for PwDs to express their views and opinions on social policy and legal regulations. Therefore, guaranteeing the right to participation must also agree with other rights of PwDs to ensure the harmonisation of interests among social actors - a sustainable development goal. Therefore, the Party, State and society must facilitate PwDs to enjoy

their best participation by recognising the right to participate and effective organisation to exercise the right through specific and various policies, regulations and operational practices.

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Experience of the United States and some European countries on the right of persons with disabilities in donors, receiving human organs and tissues and lessons for Vietnam

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The article results from research within the framework of the doctoral thesis “*Right to donate, receive human tissues and organs and donate and collect corpses according to the provisions of Vietnamese civil law*” that the author is conducting at Hanoi Law University.

Abstract: The rights of PwDs in general and the right to donate and receive tissues and organs of PwDs, in particular, is one of the basic human rights that has been recognised in international legal documents as well as in the Constitution and the practical Law governing the right of PwDs to donate and receive tissues and organs of many countries, including Vietnam. The article analyses the experiences of the United States (the US) and some European countries regarding the rights of PwDs in donating and receiving tissues and organs, and on that basis, it draws valuable lessons for Vietnam.

Keywords: Experience, the US, Europe, rights of PwDs, tissue donation, human organs, lessons, Vietnam

Introduction

Humans are subjects of social relations. All sovereign countries are concerned with human rights to varying degrees; thus, human rights in general, including the right to donate and receive human organs and tissues, are always recognised and protected by international law as well as the applicable law of each country. Donating tissues and organs is a noble act of humanity in modern society. Thanks to science and technology achievements, people’s lives are increasingly guaranteed due to better living circumstances and especially better health care conditions, so the average life expectancy of people has increased. Advancements in medicine have made it possible to transplant human parts from one person to another if that part is already diseased and can not perform the body's function. Transplantation and replacement of some tissues and organs have been done for a long time in many countries worldwide with advanced medicine, such as the United States, Spain, the United Kingdom, and the Russian Federation. Vietnam also performed transplants of human tissues and organs since the 90s of the twentieth century.

In order to ensure the right of individuals to donate and receive tissues and organs in general, including the rights of PwDs, many international legal documents have been issued, such as the Universal Declaration of Human Rights in 1948 (UDHR); The International Covenant on Economic, Cultural and Social Rights 1966 (CESCR); International Covenant on Civil and Political Rights (CCPR); The CRPD 2007. International legal documents assure the right of individuals to donate tissues and organs and the right to treatment, which recognises the rights of PwDs.

From the perspective of practising law, many countries, the US, the Russian Federation, and the United Kingdom... have also developed specialised legal documents governing and recognising the rights of PwDs in donating and receiving tissues and organs to save lives, scientific research and teaching.

1. Concepts of the decisions of PwDs in donating and receiving human tissues and organs

NGOs and the United Nations and international intergovernmental organisations, countries, and academia commonly use the concept of the decisions of PwDs. This concept of human rights and the rights of PwDs, i.e. basic civil, political, economic, social and cultural rights. Suppose human rights are understood as natural, inherent and objective human needs and interests recognised and protected in national laws and international legal agreements. In that case, the concept of the rights of PwDs

can be understood: The rights of PwDs comprise fundamental human freedoms to dignity, needs, and natural, inherent and objective interests of the person – as a member of the human community and to receive special care and protection as well as a particular group of vulnerable people due to disability to be recognised and protected by international and national law.

From the perspective of the decisions of PwDs, like other border populations, PwDs also have the right to donate their tissues and organs. At the same time, they are still alive and after death to save others' lives and serve the purposes of scientific research and teaching. Vice versa, they also have the right to receive tissues and organs donated by others to treat their diseases when they suffer from serious diseases requiring tissue and organs for transplantation. No one is allowed to hinder PwDs from exercising their right to donate or receive tissues or organs.

2. Experience of the United States and some European countries on the rights of PwDs to donate and receive tissues and organs

2.1. The US experience on the rights of PwDs to donate and receive tissues and organs

The Americans with Disabilities Act of 1990 (ADA) was enacted by the United States Congress to ensure that all qualified PwDs enjoy the same opportunities available to persons without disabilities. The ADA offers civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, colour, sex, national origin, age, and religion. It ensures equal opportunity for PwDs in employment, transportation, and state and local government services [1]. The Americans with Disabilities Act also prohibits discrimination against PwDs and promotes their social inclusion. PwDs are not considered to be defective, and this is a natural feature that PwDs can be proud of [2].

Concerning the right to donate or receive human tissues and organs, US law stipulates that Americans in general and PwDs in particular, who fully meet the conditions prescribed by US law, are eligible for donating and receiving human tissues and organs, which is specifically expressed in the Uniform Anatomical Gift Act (UAGA) passed by the US Congress in 1968 and 1987 and 2006. The Act provides a basic legal framework for tissue donation in general, including for individuals with disabilities. This is a basic legal framework for US citizens to exercise their right to donate tissues and organs to scientific research, health care, and education and receive tissues and organs from others to help them heal [3].

According to UAGA, US citizens in general and PwDs in particular aged 15 years and older have the right to donate their tissues and organs for transplantation, therapy, scientific research or teaching, and this right is self-determined by the individual, regardless of whether family members agree or not (that is to say, US law allows citizens aged 15 years or older to register to donate their tissues and organs while alive as well as after death). This means that PwDs aged 15 years and over have the right to donate. In addition, UAGA also allows relatives or legal representatives of deceased PwDs to donate tissues and organs of the deceased if they have not previously exercised the right to donate tissues and organs. Consent is given in the order of preference: (i) the spouse of the dead individual with a disability; (ii) adult children of dead individuals with disabilities; (iii) the father or mother of the dead person; brother, sister (adult) of the deceased; (iv) the adult grandchild of the deceased individual with a disability; (v) the grandparents of the deceased person disabilities with disabilities; (vi) any other person authorised by law to perform the burial of a deceased person with a [4] disability. The above provisions of UAGA can be understood that an individual with a disability can donate his or her tissues or organs after death, or a representative can authorise the donation of tissues and organs at the time of his or her death. UAGA calls this provision “a second chance at life”. This is one of the

important legal elements of the system because it offers two different legal options to reach a “consensus” regarding exercising the right to donate tissues and body parts of PwDs in particular.

Suppose the person with a disability has registered. In that case, it is legally binding to authorise a donation at the time of the donor's death under UAGA. Family members do not have the power to override this decision. Most PwDs still register to donate even if their families object. In such cases, a measure will be taken to determine that the registration of donation of tissues or organs is the sole discretion of the individual donor and is a voluntary and autonomous decision of the donor's tissues and organs in accordance with the provisions of law and medical ethics. In rare cases, organ or tissue donation from a registered person with a disability can not proceed because of family objections, which is often due to the potential for marginal transplantation or other unusual circumstances related to registration. In such cases, from a legal perspective, the donation of tissues or organs is not revoked; rather, there is no transfer or receipt (the second and third elements under UAGA).

In addition, UAGA also establishes three legally recognised options: (i) authorised donation; (ii) no decision and (iii) refusal to donate [5]. Before dying, a person with a disability can switch between these three options. A disabled donor, when registering to donate his or her organs or tissues, can be evaluated as a positive choice, which means that at this time, it is understood as an authorised donation of tissues and organs. If the registration is subsequently reversed, the individual with a disability donating tissues or organs will convert back to the neutral selection. Legal revocation corresponds to never having registered to donate tissues and organs of PwDs. UAGA does not provide information on the intent to revoke a donor's donation decision. At the same time, the previous revocation does not prevent the principal from authorising the donation of organs or tissues at the time of death of the donor with a disability. If a person with a disability does not want to donate, UAGA will acknowledge that through their one-time refusal. This refusal can be made through a signed document legally binding for individuals with disabilities registered to donate organs and tissues.

2.2. Experiences of some European countries on the right of PwDs to donate and receive tissues and organs

Firstly, the right of PwDs to donate and receive human tissues and organs in the Russian Federation

The Russian Federation is one of the countries in the world that highly respects human rights, including the rights of PwDs. In the Russian Federation, the term “individual rights” appeared in Russian legal science very early. According to VI Kruss, somatic rights are a group of rights based on a fundamental worldview confidence in the right of a person to independently control their body, carry out modernisation, restoration and even fundamental reconstruction of human rights [6]. According to M.N. Maleina, the right to live includes the right to sustain life (personally) and the right to control someone's life. According to N.V. Kalchenko, the right to life combines three elements: the right to live fully, the right to control life and the right to protect life (including the right to cure). S.M. Nesterova defined somatic rights as a combination of various human rights aimed at achieving the highest degree of mental and physical health, including the right to freedom of decisions and to take responsibility for one's body and life with the application of medical and technological achievements and reflecting the degree of development of the state and society as a unified entity. The Constitution of the Russian Federation states that: The basic provisions of all human rights, such as the right to life, human dignity and human integrity, are respected and observed (from Articles 20 to 22). In addition, it is also developed and inherited in other provisions of the Constitution, respecting freedom, individual dignity, privacy, and personal and family secrecy. Besides, the Federal Constitution of Russia also stipulates: “*Every person has the right to health protection and medical care. In state and local government health facilities, citizens enjoy free medical care through state*

budgets, insurance premiums and other sources” [7]. Human rights in the structure of the Constitution of the Russian Federation have established, within the framework and under the influence of their respective powers, specific rights that are not only stated in the existing legislation but also need to be specified in the private legal system.

As for the right to donate and receive tissues and organs of PwDs, this right has been recognised in the Constitution of the Russian Federation and concretised in the 1992 Law on Constitution, Organ Transplantation and Human Tissues, Law on Protection of the Health of Citizens 2011 and Decree No. 908n of the Ministry of Health of the Russian Federation on Diagnostic Procedures for Brain Death in Humans 2014 and the Law on PwDs of the Russian Federation. Moreover, the right to donate and receive tissues and organs of PwDs is a human right to exercise the right to life as if it were a right to life and human dignity, which forms the basis of all other human rights. Because the right to medical treatment is the right to use life and restore the health of citizens and is exercised on the basis of compliance with the laws of the Russian Federation and human rights according to ethical principles adopted by the international community.

In the Russian Federation, human organs and tissues cannot be the object of purchase. Any violation will be handled in accordance with the legislation of the Russian Federation. Transactions on the transplantation of tissues and organs for recipients are carried out on the basis of medical indication according to general rules and performed surgery. The executive branch of the Russian Federation and the Academy of Sciences of the Russian Federation determines the human organs and tissues subject to transplantation.

According to the provisions of the legislation of the Russian Federation, the removal of tissues or organs from a living person with a disability can be carried out only for the benefit of the recipient's health, and when there are no tissues or organs of a deceased person whose tissue or organ is suitable for life-saving transplantation or alternative treatment. Currently, the application of human organ and tissue transplantation in the Russian Federation is unrelated to living disabled donors. In the Russian Federation, organ and tissue transplants for patients with disabilities are performed mainly from brain-dead or cardiac-death [8] donors (i.e., post-mortem donation).

Regarding collecting tissues and organs of PwDs after death for transplantation to patients, the Law on Donation, Organ Transplantation and Human Tissue of the Russian Federation also provide for “presumed consent”. This assumption implies that tissues and organs cannot be removed from a cadaver if the health care provider has previously been informed of the time to remove tissues and organs from a deceased donor or family members who do not agree to take them for transplantation to others after their death. The Russian Federation Law on Burials and Funerals of 1996 also stipulates that “assumption without consent” means a will of a person who has the right attitude towards the posthumous body and wishes to express verbally in the presence of a witness or in writing giving consent or disagreement regarding the collection of organs or tissues from the corpse of a person with a disability. If there is no will of the deceased person with disabilities, family members or their legal representatives will have the right to authorise the medical facility to take tissues and organs of deceased donors with disabilities to transplant to patients.

In the Russian Federation, the law specifically provides for consent that if an adult with a disability and a citizen with full capacity for civil acts have not expressed a desire to disagree to the donor the tissues and organs while they are alive, then their tissues and organs can be taken after they die [9]. In addition, the law also prescribes the consideration of the consent of the spouse or family member of the PwDs person to agree or disagree with donating tissues and organs of the deceased person with disabilities (meaning without the consent of the deceased, they were still alive) [10]. This provision

is in stark contrast to the provisions of the Constitutional Court of the Russian Federation expressed in the Case Law of December 4, 2003, and the Case Law of February 10, 2016, which concluded that the assumption of consensus is based on the recognition that: it is inhumane to consult a family member about the removal of organs or tissues at the same time as announcing the death of a family member or just before surgery.

The Law on Organ Donation, Transplantation and Human Tissue of the Russian Federation also specifies the forms of expression of will donate tissues, organs and body in writing for PwDs, which consists of a declaration of consent or disagreement concerning the collection of their tissues or organs after their death to serve the transplantation and replacement of human tissues and organs. The declaration must be confirmed by the head of the medical facility or the state notarisisation office (public notary). However, in reality, a healthy person without any disease might not think of dying young for any reason (even in the case of force majeure), so they might not go to any medical facility or public notary to express their wish to post a tissue donation or donation of their body parts. The wish of PwDs of the Russian Federation to consent or not to donate their tissues and organs is expressed through a record in the donor registration number. Therefore, a complete record of the donation of tissues and organs of the donor has profound humanitarian and humanistic meanings, so it reflects not only the interests of the potential donors but also the interests and concerns of tissue and organ recipients, as well as the donor's family and medical staff.

In the Russian Federation, the medical certificate and the need (right) to receive a tissue transplant or body part of a person with a disability is consulted by the doctors of the health care organisation, i.e. surgeons, anesthesiologists and other specialists, based on the guidance of the executive body of the Russian Federation, which is responsible for performing the functions of development and implements state policies and legal regulations in the field of health. Tissue and organ transplantation are conducted with the recipient's consent in writing. Before performing a tissue or organ transplant, the recipient will be warned about possible complications to health in connection with the surgery. Suppose a recipient is a person with disabilities under 18 years of age. In that case, the consent to transplant tissues or organs for medical treatment will be based on the written consent of the parent or legal representative [11]. The Law on Basics of the Protection of Citizens' Health of the Russian Federation of 2011 provides that in the event of a person with disabilities under the age of 18 or a deceased person who, while alive, is confirmed to lose civil act capacity, the removal of tissues and organs from that person for transplantation to the patient will be permitted based on the consent by the child's father or mother, or of a family member of the deceased person or person without civil act capacity [12].

The receipt of tissues and organs for transplantation for PwDs is not only from donors after death but also from living donors. In this case, the legislation of the Russian Federation stipulates the conditions under which it is possible to take tissues and organs from a living donor for transplantation to a person with disabilities suffering from a serious illness. The donor will be warned about the possible complications to their health related to the surgical intervention to remove the tissue or body part. At the same time, disabled donors are also free to express their consent in writing to collect their tissues and organs and will have to undergo medical checks before donating to the diseased patient with disabilities. The receipt of tissues and organs of a person with disabilities from a living donor is conducted if the donor is genetically compatible with the recipient, except in the case of bone marrow transplantation [13]. In addition, the legislation of the Russian Federation specifies that the collection of tissues and organs from a living donor can only be performed if it does not affect the health of the donor on the basis of the conclusion of a specialist doctor [14].

Secondly, the right of PwDs to donate and receive human tissues and organs in the UK.

Based on the International Convention on Human Rights and the International CRPD, the European Convention on Human Rights to which, the UK is a party. In order for all UK citizens, including PwDs, to enjoy human rights in general, in 1998, the UK Government passed the Human Rights Act (HRA). The HRA Act recognises and protects the rights of UK citizens, including the right to life, the right to medical treatment and several other moral rights, including the right to donate and receive tissues and organs [15].

In 2004, the UK Government enacted the Law on Donation of Human Organs and Tissues to popularise the right to donate and receive human tissues and organs in society. The State parties to this Act embrace England, Wales and Northern Ireland. And the Scottish Tissue Act 2006. The Acts are enacted to guarantee UK citizens (including vulnerable groups of PwDs) the right to donate or receive tissues and organs for life-saving healing, scientific research and teaching.

The Acts establish the patient's (recipient's) prior consent. For PwDs donors, the registration in the registry of tissue and organ donors implicates their consent or permission for the donation. In this case, the donor family cannot object, albeit donation is never mandatory for a dissenting family in the UK. The Act is significant for the development of the UK. Health sector as there are more voluntary disabled donors of organs and tissues for life-saving treatment, which means that there are abundant sources of human tissues and organs for transplantation, facilitating to upgrade of expertise of medical staff and doctors who directly perform transplants.

The Law on Donation of Human Organs and Tissues has recognised four forms of tissue and organ donation: Living donor; tissue donation, donation after brain death (DBD); donation after cardiac death (DCD). If the PwDs donor is still alive, organ donation must attain the donor's consent [16]. DCD in the United Kingdom typically involves a mechanically ventilated patient with primarily fatal organ failure (usually the brain) for whom a prior decision has been made to discontinue life-sustaining treatment. This decision is made when the medical team caring for the patient assesses that the ongoing treatment is not giving the person a full life and that the patient's death is inevitable. The patient's brain dead, at this time, PwDs individual with the disease has the right to make tissue and body organ donations.

In the United Kingdom, the law provides for the principle of “presumed consent”. Accordingly, the donor has the right to register to donate a part of their tissues or organs while they are alive to transplant to someone with a serious illness who need tissues and organs for transplantation, provided that this registration is completed at medical facilities. After individuals with disabilities exercise their right to donate, medical facilities grant the donor a donation registration card. In case a person dies, but when s/he was alive, s/he has not registered to donate, then it is automatically understood that while they were alive, they agreed to donate their tissues and organs after death. Moreover, at this time, medical facilities can take tissues and organs of the dead person for transplant, cure or serve scientific research and teaching [17]. Suppose the donor is a child with disabilities under 18 years old, and the recipient is under 18. In that case, the consent of the child's parent or legal representative is compulsory whether disabled donors under 18 are alive or dead.

In addition, UK law stipulates that an adult can designate one or more people to represent him/her after his/her death to exercise the right to donate his/her tissues and organs. The authorisation can be made in writing. Specifically: (i) Signed by the designee in the presence of at least one witness certifying the signature; (ii) Signed at the direction of the designee in the presence of that person and at least one witness attesting to the signature, or (iii) Mentioned in the will of the designee, executed as required by: Section 9 of the Wills Act 1937 of the United Kingdom or Article 5 of the Wills and

Administrative Procedures (Northern Ireland) Regulations 1994 (SI1994/1899 (NI13)). When a person appoints two or more representatives involved in the same activity, they work independently or together depending on the specific content of the appointment. This appointment can be cancelled anytime if they donate tissues or organs after death. Simultaneously, UK law also stipulates that a minor or a person with limited civil act capacity cannot act as a representative in the case of a tissue or body organ donor who authorises him or her to act as a representative to donate after their death [18].

For end-of-life care for PwDs who donate tissues and organs. If a patient is on the verge of death, they are guaranteed special medical care, and that care is delivered in an appropriate setting, and a plan of care for the last days of life for PwDs donor is guaranteed. Disability donation must be performed by suitably skilled and experienced medical personnel. After the donor with a disability dies, the doctor, who directly treated the donor with a disability while they were still alive, will take the necessary actions to facilitate their organ or tissue donation (such as tracheal intubation, ventilator support, mechanical compression, closure of aortic box for donors who have died of cardiac arrest or brain death), enabling doctors to directly perform the procedure of taking tissues and organs from deceased donors to transplant recipients.

3. Lessons for Vietnam on the rights of PwDs in donating and receiving tissues and organs

Studying the rights of PwDs in donating and receiving tissues and organs in the US and some European countries such as the Russian Federation and the United Kingdom discloses that western countries uphold and protect human rights, and moral rights, including the right to donate and receive tissues and organs of PwDs. It is undeniable that PwDs are vulnerable and unconfident because of their impairments. However, their defects do not affect their rights, especially the right to donate organs or tissues, which is a completely distinctive right. Because this right is attached to their organs, thus they have the right to donate the organs to treat others' diseases or for scientific research or teaching; and to receive donations from others to treat their illnesses. On the basis of reviewing the assurance of the rights of PwDs in donating and receiving tissues and organs in the United States and some European countries, some valuable experiences for Vietnam can be drawn as follows:

Firstly, the current practical law of Vietnam, specifically the law on donation, transplantation of human tissues and organs, and donation and collection of corpses, should be revised in the direction of clearly stipulating that PwDs fully meet the prescribed requirements are entitled to donate tissues and organs for life-saving treatment, scientific research and teaching, and also have the right to receive tissues and organs from other donors if the donors tissues and organs are compatible with the body of PwDs patient, like the model of the United States and some European countries.

Secondly, the applicable law of Vietnam should also be revised in the direction that minors who are PwDs also have the right to donate tissues and organs after death for humanitarian purposes to increase the source of tissues and organs in order to save more patients who require tissues and organs like the US and UK models.

Clause 3, Article 20 of the 2013 Constitution stipulates: *“Everyone has the right to donate human tissues and organs, to donate and to collect corpses according to the provisions of the law. The testing of medicine, pharmacology, or any other test on the human body must have the consent of the person being tested,”* and Clause 1, Article 35 of the 2015 Civil Code states: *“Individuals have the right to donate one's tissues or organs while alive or to donate tissues or organs, to donate one's body after death to cure another's disease, or for medical, pharmacological and other scientific researches”*. In the spirit of the 2013 Constitution and the 2015 Civil Code, all individuals in general, including PwDs who are adults and people under 18 years old, have the right to donate their tissues and organs for

medical treatment, scientific research and teaching, therefore, applicable law governs the right to donate, receive tissues and organs of individuals in general, including PwDs.

Thirdly, the applicable law of Vietnam should also be amended to supplement the care regime for PwDs before and after donating organs and tissue and issuing lifetime free health insurance cards for PwDs when they donate and receive tissues and organs under the models of the above countries. With such a social security policy, it is possible to encourage PwDs to exercise their rights by registering to donate tissues and organs in our country after death and brain death. At the same time, it should also be revised to unify all contents into a specific legal document, avoiding the dispersion of the content in a scattered legal document. For example, the health insurance coverage of PwDs who donate human tissues and organs is regulated by the Law on Health Insurance or the medical examination and treatment policy for PwDs who donate or receive the law governs tissues or organs on Medical Examination and Treatment. This causes difficulties for the competent agencies in charge of donating and receiving tissues and organs during the search and comparison between legal documents.

Thus, the legislation of the United States and some European countries on the rights of PwDs in donating and receiving tissues and organs are strict to ensure the rights of PwDs in donating and receiving tissues and organs. Any person with disabilities who meets all the conditions prescribed by law has the right to donate human tissues and organs, and all PwDs, whether they are adults, minors, or people with limited civil act capacity, have the right to receive tissues and organs for medical treatment. It is noted that the laws of those countries are manageable in legal documents but only in specific documents. These are valuable lessons for Vietnam to readjust the current laws.

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Access to information technology for persons with disabilities - from legal practice in Vietnam

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Abstract:

This article focuses on a fundamental human right recognised in international documents and Vietnamese legal documents, i.e. the right to access information technology of PwDs. Thereby clarifying the current legal status in Vietnam on information technology and the right to access information technology of PwDs, to propose recommendations to ensure that PwDs have better access to this right in practice.

Keywords: PwDs; right to access information technology; access to information technology by PwDs

1. The basic concepts

In order to affirm and protect the rights of PwDs, uphold the responsibility of states and the international community to pay attention to supporting and assisting PwDs, removing all barriers, creating opportunities for PwDs to integrate into the community, on December 13, 2006, the United Nations adopted the CRPD with a view that all approaches related to PwDs are based on the right to “*promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all PwDs, and to promote respect for their inherent dignity*”. Accordingly, the Convention defines: “*PwDs include those who have long-term physical, mental, intellectual, or sensory impairments which, in interaction with various barriers, may hinder their effective and full participation in society on an equal basis with others*”.

On November 22, 2007, Vietnam signed the CRPD, demonstrating the Vietnamese State's spirit and sense of responsibility for ensuring and implementing human rights and the rights of PwDs. The spirit and contents of the Convention have positively influenced the building and perfecting of the legal system on PwDs in Vietnam, specifically the Law on PwDs 2010.

On that basis, Clause 1, Article 2 of the Law on PwDs 2010 stipulates: “Person with a disability is a person who is impaired in one or more body parts or suffers functional decline manifested in the form of a disability which causes difficulties to his/her work, daily life and study”. It shows that PwDs will face more difficulties than those without disabilities in accessing public services and products, particularly information technology.

Clause 1, Article 4 of the 2006 Law on Information Technology stipulates: “Information technology is a collection of scientific methods, technologies and modern technical tools for production, transmission, collection, processing, storing and exchanging digital information”. In the context of the explosion of the fourth industrial revolution, outstanding achievements such as 5G technology, IoT, cloud computing, artificial intelligence (AI), big data (Big Data), experience augmented reality (AR) and virtual reality (VR)... and various applications of these technologies will have a huge impact on PwDs, who already suffer more adverse socio-economic outcomes than persons without impairment in terms of education, lower employment opportunities, higher poverty rates, underemployment or economic inability.

The right to access of PwDs is understood as the right to facilitate access to and use of social services, to participate in social activities, and to exercise rights equally with persons without impairment.

Since then, the right to access information technology of PwDs has been understood as the ability of PwDs to be facilitated to learn, to be trained with necessary knowledge and skills, to use technical tools, such as computers, smartphones, televisions, other smart electronic devices and applications

and services in education, health, life and socio-economics, to ensure equality and social inclusion, especially ensuring digital inclusion for all.

Thus, the right to access information technology of PwDs is a basic human right in modern society, especially when the impact of the fourth industrial revolution achievements on social life is increasingly evident. Clarifying this right is crucial, in line with the global commitment through the UN's fundamental principle “no one should be left behind”.

2. Basic contents of the right to access information technology of PwDs under international law and Vietnamese law

The 1948 Universal Declaration of Human Rights, with its Preamble and 30 articles, has created a fundamental and comprehensive system of rights, including civil, political, economic, cultural and social rights. The Declaration declares these rights and calls for a social and international structure change to guarantee these rights in practice. With such legal importance, the Universal Declaration of Human Rights affirms: “*Everyone has the right freely to participate in ... to enjoy the arts and to share in scientific advancement and its benefits*”. This can be seen as an extremely important premise to assert the right to “*enjoy scientific advancement*” - “*this right implies that everyone must have access to those advancements: computers and the internet, new communication technology and others*”, or specific expression is that the right to access information technology is a basic human right. The Declaration also affirms that “*everyone*” has that right, without distinction of “*any other status*”. Both PwDs and persons without impairment have this right - the right to access information technology. PwDs have certain disadvantages in physical health compared to persons without impairment. The regulation of this right is also very important for the exercise of related rights such as “*having the right to freedom of opinion and expression... the right to seek, receive and impart information through any media regardless of frontiers*” or “*... have the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services*”.

The International Covenant on Economic, Social and Cultural Rights 1966 (adopted and opened for signature, ratification and accession by Congress Resolution No. 2200A (XXI) of December 16, 1966, of the Congress Council of the United Nations, which entered into force on January 3 1976) required States parties to “commit to ensuring that the rights enunciated in the present Covenant will be exercised without any discrimination of any kind as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or another status”, specifically to create conditions for “*everyone has the right to: Enjoy the benefits of scientific advancement and its benefits*”. Thus, the Convention inherits the 1948 Universal Declaration of Human Rights and continues to affirm: the right of PwDs to access information technology is considered a very important human right that must be respected, protected and ensured actual enforcement. The International CRPD adopted by the United Nations General Assembly on International Day of PwDs - December 3, 2006 - at UN Headquarters in New York - is the Firstly human rights treaty in the 21st century – it was opened for signature on March 30, 2007. As an international human rights treaty, the mission of the CRPD is to promote and protect human rights, furthering the development of human rights content, including alternative approaches to improve the enjoyment of human rights and fundamental freedom effectively and substantively. Strongly affirm and clarify the human rights of PwDs on an equal basis with persons without disabilities. Accordingly, in paragraph 1 of article 9 of this Convention, which aims “*to enable PwDs to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to PwDs access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including*

information and communication technologies and systems, and other facilities and services open or provided to the public, both in urban and rural areas...". Thus, in that spirit, the right to access information technology continues to be affirmed as a fundamental right of PwDs.

Vietnam signed the United Nations CRPD on October 22, 2007. However, at that time, because the Vietnamese legal system on PwDs still had certain limitations, especially the 1998 Ordinance on PwDs, it took time to amend and supplement the law in compliance with the provisions of the CRPD. By the time the National Assembly ratified the Convention, our country's legal system on PwDs was relatively complete and consistent with the Convention. Therefore, Article 2 of Resolution 84/2014/QH13 on ratification of the CRPD strongly states: "The Socialist Republic of Vietnam is committed to implementing the United Nations CRPD in all fields".

The 12th National Assembly approved the Law on PwDs 2010 at its seventh session on June 17, 2010. The law took effect on January 1, 2011. The Law on PwDs 2010 has established a legal framework at the highest level and a relatively complete and comprehensive policy system to encourage, create favourable conditions and promote equal opportunities for PwDs to perform their political, economic, cultural and social rights and promote the ability of PwDs to stabilise their lives, integrate into the community, and participate in social activities. The law affirms that PwDs have "access to public facilities, means of transport, information technology and cultural, sports, tourist and other services suitable to their forms and degrees of disability". This is considered a fundamental right of PwDs. Accordingly, the State must develop and implement policies annually to ensure that PwDs have "... access to public facilities and information technology". PwDs are disadvantaged groups in society. However, the strong development of information and communication technology has opened up new opportunities to overcome barriers to grasp job opportunities in the digital economy, improve their capacity, integrate and contribute to society. Recognised this, the State always "encourages agencies, organisations, enterprises and individuals operating in the field of information technology to apply and develop information technology for PwDs". At the same time, there are "policies on tax exemption and reduction, loans with preferential interest rates and other support for research, manufacturing, production and service provision, and means of supporting PwDs to access information and communication technology". In addition, Point 6, Clause 1, Article 5 of the 2006 Law on Information Technology also provides for "*preferential policies for organisations and individuals to have information technology application and development activities for ... PwDs...*", which attaches the responsibilities of different agencies to implement these policies such as the Ministry of Information and Communications, People's Committees at all levels. With the above spirit and practice over the past time, these agencies have had many specific activities such as:

The Ministry of Information and Communications has researched and developed several technologies to assist PwDs in accessing information technology. All products are posted on Google Play for users to download and use, such as: Developing Vietnamese synthesis engine integrated into screen reading software for the blind; Vietnamese speech synthesis software supports reading the screen of smartphones running the Android operating system; Software to help blind people use Vietnamese voice on smartphones (VIVAVU). Researching and organising the production of useful tools to assist PwDs. As a result, many software are successfully developed, such as devices to assist the blind in walking; an integrated two-way Vietnamese voice conversation control system for smart electric wheelchairs; hearing aid design and manufacture; building a production management system of online products for PwDs; building and testing a system to support visually impaired people to access and use online public services; building an Information Technology training model for PwDs, researching and manufacturing many supporting utility products such as gloves to support deaf and hard of hearing people in communication by converting finger movements to voice speak.

On September 23, 2020, the Ministry of Information and Communications issued Circular 26/2020/TT-BTTTT stipulating the application of standards and technologies to assist PwDs in accessing and using information and communication products and services. Accordingly, the press agencies that serve the country's essential political and propaganda tasks are responsible for applying standards and technologies supporting people with hearing disabilities to access daily political news programs on their channels. Encouraging press agencies with licenses to operate radio and television in provinces and centrally run cities to apply standards and technologies to assist PwDs in hearing the news. The website of the Ministry of Information and Communications is the Firstly website of the Ministry/sector in Vietnam to meet some basic criteria of the WCAG standard 2.0 that supports PwDs to access and use services provided on the website. Vietnam ICT Accessibility Portal is a channel to provide information related to the results of the Project to support PwDs in the past time in the field of information and communication and update information related to product and service aids for PwDs to various subjects. An information and communication technology portal for PwDs that meets WCAG 2.0 standards is maintained.

Researching and developing an electronic training system (E-learning) to serve the visually impaired with electronic lectures on how to use computers; developing software to support reading voice messages on smartphones; developing a toolkit to develop e-learning materials for the deaf and hard of hearing; developing electronic lectures in service of information technology training for people with mobility impairments; formulating a list of vocabulary words for popularising voice commands for information technology equipment and services serving PwDs to access information and communication; developing electronic lectures for information technology training for people with mobility impairments at the Will to Live Center.

Therefore, the number of people with vision, hearing and speech disabilities who can fluently use computers, smartphones, and the Internet has increased, and their cultural and spiritual life has been markedly improved.

Through research, the author finds several issues that need to be solved from the practice of Vietnam's regulations and law enforcement on PwDs and the right to access information technology. Specifically:

Policies and laws on PwDs still encompass some points incompatible with the CRPD.

The list of standards to support PwDs in accessing and using information and communication products and services attached to Circular 26/2020/TT-BTTTT stipulating the application of standards and technologies to assist PwDs access to and use of information and communication products and services is mainly recommendable (16/18 regulations are recommendable), causing barriers to the right to access information technology of PwDs.

Regulations on sanctions to handle subjects assisting PwDs to exercise their right to access information technology need to be completed and imprecise.

The access to information technology of PwDs still needs to be improved. The rate of PwDs accessing information technology is low and increases at a low speed, which needs to be commensurate with society's growth of current information.

Telecommunications service enterprises have not paid attention to the PwDs due to their minority and the slow capital recovery capacity. Only some enterprises organise information technology training for PwDs because of low market demand and high costs.

Most PwDs and their families encounter difficult economic circumstances, so PwDs lack the means and tools to support them to access.

3. Recommendations

Firstly, raising awareness of cadres and civil servants, families, schools, society and PwDs themselves to fully realise the rights and ensure the right to access information technology. Specifically:

For cadres and civil servants, they must participate in training on human rights, the rights of PwDs in general, and the right to access information technology in particular, in order to be fully aware, thereby creating favourable conditions in policy implementation, training support, and necessary equipment for PwDs to access information technology rights.

Families, schools and PwDs are critical in eliminating biased stereotypes about PwDs. Families and schools understand PwDs, the rights of PwDs in general, and the right to access information technology to offer the best support for PwDs. Families are responsible for ensuring equal treatment with members with disabilities at home. Moreover, at school, the teachers must ensure equal education for students with disabilities. Therefore, it is necessary to conduct propaganda and dissemination activities on the legal provisions of PwDs. These activities must be carried out on a large scale throughout the country, focusing on mountainous, remote and extremely difficult areas.

For the whole society, it is necessary to reinforce information and communication work through television, radio, newspapers, magazines, the Internet, social media networks and other forms of communication about PwDs. Thereby creating a social viral effect to respect and acknowledge the equality of PwDs as other persons without impairment in society. In order to create the most favourable conditions for PwDs to have access to their rights in general and the right to access information technology in particular.

Secondly, continue to internalise international treaties by requiring the National Assembly to amend, supplement and issue new legal documents related to ensuring the rights of PwDs in areas such as access to information and technology, education, employment, and social security, aiming at forming a legal mechanism to ensure the rights of PwDs in general.

Thirdly, the Ministry of Information and Communications should design a list of technical standards to support PwDs to access and use information technology products and services in a mandatory manner to ensure their rights to access information technology more effectively in order to meet the orientations and goals of the “Program to assist PwDs in the period of 2021-2030”.

Fourthly, continue to improve policies on education, vocational training, and job creation related to the field of information technology, such as the model of linkage between training institutions and enterprises in vocational training and job creation in the field of information technology for PwDs...., which is associated with the roles of the Ministry of Education and Training, the Ministry of Labor, War Invalids and Social Affairs, the Ministry of Information and Communications.

Fifthly, enlarge resources to ensure that PwDs have effective access to information technology, such as:

For the State, financial and human resources must be arranged for the formulation and implementation of high-cost programs, plans and schemes in difficult-to-reach areas, remote areas and for PwDs who are poor and ethnic minorities so that they can exercise their right to access information technology more conveniently, easily and fully.

Businesses should provide products and services (technology to assist PwDs to access information technology; software to support training for people with intellectual disabilities) at a reasonable cost.

Sixthly, perfecting issues such as the concept of PwDs, the rights of PwDs, prohibited acts and legal sanctions for acts that obstruct or restrict PwDs from accessing activities on education, vocational training, job creation and use of information technology products through amending and

supplementing the provisions of the Law on PwDs, the Law on Education, the Law on Employment, the Law on Information Technology information, and relevant guiding legal documents.

Seventhly, bolster international cooperation in information technology for PwDs, to adopt appropriate policies and access modern information technology products and services worldwide to create favourable conditions for PwDs to exercise this right more effectively.

4. Conclusion

Despite the benefits of information technology to increase accessibility for PwDs, it also poses some disadvantages compared to persons without impairment. Accessibility to information technology of PwDs is considered the “digital gap”. Ensuring the right to access information technology of PwDs is considered a necessary basic human right in the context of the current fourth industrial revolution in Vietnam, in accordance with the spirit of Clause 3, Article 62 of the 2013 Constitution: “*The State creates conditions for everyone to participate in and enjoy benefits from scientific and technological activities*”.

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Looking into the amended law on intellectual property with the lens of the Marrakesh Treaty

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Abstract:

Access to knowledge is a human right. It is a prerequisite for achieving full human potential and inclusive development. However, due to a lack of published works in accessible formats, the right to knowledge is often highly restricted or even denied for millions of people with so-called 'print disabilities' who have difficulty reading printed works due to visual impairments, physical, learning, or cognitive disabilities.

To end the book famine and accelerate the CRPD implementation and the Marrakesh Treaty to Facilitate Access to Published Works for Persons with print disabilities. The Marrakesh Treaty (MT) was concluded in June 2013. The MT is considered a key contribution to the success of the UNCRPD, as well as the Incheon Strategy to "Make the Rights Real" for PwDs in Asia and the Pacific.

While Vietnam ratified the CRPD in 2014, the country still needs to become a Contracting Party to the MT. On June 16 2022, Vietnam's National Assembly passed the Amended Law on Intellectual Property 2022, which expands some provisions on copyright exceptions to facilitate information access for persons with print disabilities. This amendment is a significant pre-condition for Vietnam's accession to the MT shortly. From the perspective of the Marrakesh Treaty, this article aims to analyse the level of compliance of the recently Amended Law on Intellectual property with the Marrakesh Treaty and provide legal and practical implications for its future revisions and implementation.

Keywords: Marrakesh Treaty; print disabilities; Law on Intellectual Property; copyright exceptions; compliance.

1. Introduction

1.1. The situation of the "book famine" and its connection with development issues in Vietnam

Access to knowledge is a human right. It is a prerequisite for achieving full human potential and inclusive development, as it opens the door for education, employment, improved health, social and political participation, and access to justice. However, due to a lack of published works in accessible formats, the right to knowledge is often highly restricted or even denied for millions of people with so-called 'print disabilities,' who have difficulty in reading printed works due to visual impairments, physical, learning, or cognitive disabilities.

It is estimated that only 1 – 7% of published books worldwide are made into formats accessible for persons with print disabilities [1], such as Braille, large print, or audio. This percentage is even smaller in low-income countries where data and needs of PwDs are hardly known. Braille formats remain unaffordable for many students with visual impairments. One report found that more than 50 per cent of students with visual impairments do not have the necessary books to study [2]. For works distributed electronically, technological protection measures are often applied that intercept functions of text-to-speech applications. Moreover, while publishers are not interested in and willing to publish their works in accessible formats for a relatively small and low-income market of people with print disabilities, the national copyright law may impede entities authorised to produce accessible versions of published works for the community with print disabilities. In other words, these entities cannot convert or distribute accessible formats to beneficiaries without asking for permission from copyright holders, which is discouraging, cumbersome, and sometimes impossible. Even in countries with limitations and exceptions that allow entities to create and distribute copies in accessible formats, a small fraction of existing works are produced in accessible formats due to high production costs. In

the United States, for example, the National Federation of the Blind estimates that no more than five per cent of published works are available to the blind and print-disabled [3]. Even where a work exists in a certain accessible format, that format does not meet the needs of a particular person with a print disability. For example, the Braille version is not readable by persons with dyslexia. These factors contribute to perpetuating the 'book famine' suffered by persons with print disabilities for a long, which goes against the spirit of and the obligations arising from the United Nations CRPD [4], particularly concerning access to information (Article 9), freedom of expression (Article 21), the right to education (Article 24), and the right to participate in cultural life (Article 30(1)(a)).

Persons with print disabilities are the most impacted by the "book famine". They are, as broadly defined in the Marrakesh Treaty (MT) adopted by the World Intellectual Property Organization (WIPO) in 2013 [4], blind, visually impaired, persons with physical disabilities who cannot hold the book or turn pages or cannot focus or move their eyes to read printed books conventionally, or perceptually disabled which causes reading difficulties, such as dyslexia. This group is variably adjusted and specified in national laws, including the Deaf, who consider the printed text as their second language to sign language, or the elderly, who may prefer listening to audiobooks to reading books with their deteriorated vision. Non-communicable diseases and ageing progress are increasing the risk and prevalence of disabilities, including print disabilities. For instance, according to the World Health Organization (WHO), the prevalence of diabetes, one of the causes of blindness, has alarmingly soared to nearly twice over the last 10 years in Vietnam [6]. More noticeably, the population of the elderly (60 years of age and older) is anticipated to increase by more than four times from 7.5 million in 2009 to 31 million in 2059 [7]. As such, this population is growing, but their reading needs must be researched and addressed.

Improved access to published works in accessible formats will increasingly become a critical development issue in Vietnam. Firstly, as mentioned above, the rapidly ageing population and the rising ratio of non-communicable diseases will increase the number of persons who are blind, partially sighted, or otherwise print-disabled in the coming decades. In this information technology era, if their dire need for information cannot be met with accessible formats, they are most likely left behind in social development. Secondly, as a State Party to the CRPD, Vietnam is committed and obliged to create a disability-inclusive social environment. Improving information and knowledge accessibility for PwDs is essential for disability-inclusive societies and fulfilling the basic rights spelt out in the CRPD. Thirdly, improved access to knowledge could reduce a high poverty rate (19.4%) among the 74,000 members of the Vietnam Blind Association (VBA), almost four times the national poverty rate of 5.8%.

1.2. The Marrakesh Treaty: the Firstly copyright treaty from the human rights approach

To end the "book famine" coped by persons with print disabilities and accelerate CRPD implementation, the MT to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (the Marrakesh Treaty) was concluded in June 2013 and came into force on September 30 2016, three months after 20 states had ratified the Treaty [8]. It is the second international treaty specifically addressing the rights of PwDs, after the CRPD. The MT will be a key contribution to the success of the CRPD, as well as the Incheon Strategy to "Make the Rights Real" for PwDs in Asia and the Pacific [9]. The MT strongly resonates with the principle of "leaving no one behind" and the focus on "tackling exclusion and inequality", which have been advocated by the UN Secretary-General for the post-2015 development era. As of August 18 2022, the Marrakesh Treaty has 89 parties, covering more than 110 countries and territories, including the US, the EU, Japan, Korea, Singapore, Indonesia, Malaysia, Thailand, and the Philippines. Once

ratified, member states have the freedom to decide how to internalise the Marrakesh Treaty in their national legal systems.

The MT can accelerate progress on implementing Vietnam's laws and policies, including Law on PwDs, the National Action Plan for Implementing the 2030 Sustainable Development Agenda, and the country's Five-Year Socio-Economic Development Plan 2021-2025, where social integration of PwDs is a priority.

1.3. Vietnam's Intellectual Property Laws and its roadmap to the Marrakesh Treaty

According to the latest national survey on PwDs (published in 2018), 7.06% of the population aged 2 years and above (around 6.2 million Vietnamese people) live with some form of disability. Among this population, visual disabilities were among the most prevalent types, accounting for 14% [10]. This figure does not include persons with other types of print disabilities, who are still omitted in the national data. Due to the serious scarcity of information in accessible formats, this population might have lower literacy, education and employment rates than the general population.

While Vietnam is a State Party to the CRPD which it ratified in 2014, the country has not yet become a Contracting Party to the Marrakesh Treaty. According to the Legal Reviews conducted by the United Nations Development Programme (UNDP) and the World Blind Union in 2018, Vietnam's Intellectual Property law (IPL) 2005, amended in 2009 and 2019, did provide a specific exception for “transcription” of works into Braille, this language will need to be broadened to apply to any accessible format. Additionally, this law should be amended to include a clear importation right for authorised entities and an exportation provision to facilitate the cross-border exchange of accessible format works. The provision on anti-circumvention of technological measures should also be revised in order not to impair the rights of beneficiary persons to accessible format works, particularly when the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), a large regional free trade agreement which came into effects in Vietnam in January 2019, requires Vietnam to change its laws concerning technological protection measures [11].

The journey to the Marrakesh Treaty accession has been accelerated in Vietnam since 2018 by UNDP, in partnership with the National Council on Disability and VBA, marked by the country's Firstly-ever national consultation on the Marrakesh Treaty. UNDP also published, in both standard and accessible formats, several knowledge products, including a legal review of Vietnam's IPL in light of the Marrakesh Treaty, with specific recommendations for legal reforms. In August 2019, UNDP and VBA successfully co-hosted a briefing on the Marrakesh Treaty with various government agencies, including the Ministry of Foreign Affairs. In October, UNDP and VBA also organised an international workshop on the Marrakesh Treaty in which key stakeholders from government agencies, organisations of /for PwDs, libraries, schools for the blind, and publishers developed an advocacy roadmap for Vietnam's accession to the Marrakesh Treaty. UNDP also collaborated with the Ha Noi Bar Association to conduct the Firstly capacity-building workshop for intellectual property lawyers and legal professionals supporting PwDs, further advancing the whole-of-society approach to disability rights. Furthermore, in 2020, UNDP contributed to Vietnam's accession proposal dossier with a study on the compatibility of the Marrakesh Treaty with other intellectual property treaties that Vietnam has been joining, and its feasibility in Vietnam and assessment of socio-economic, political and cultural impacts of the MT in Vietnam. The report showed that the MT is entirely compatible with other international intellectual property agreements and has positive impacts not only on its beneficiaries but on Vietnam's whole society and its sustainable development.

Another milestone which has widened Vietnam's itinerary to the Marrakesh Treaty is its amendment to the IPL passed by the National Assembly on June 16 2022. In the context of the emotional

development of science and technology and the speedy globalisation, this amendment is pivotal to meet the development needs of Vietnam, catch up with other countries, and be aligned with international commitments and practices. Among the revised provisions, Article 25A, dedicated to copyright exceptions for PwDs, has diversified the accessible formats and beneficiaries and allowed more exceptions for beneficiaries and authorised entities to convert and share published works in accessible formats without asking for permission from copyright holders. These revisions better comply with the MT and facilitate Vietnam's accession to the MT shortly.

2. Analysis of the alignment of the amended Law on Intellectual Property 2022 and the Marrakesh Treaty

2.1. Concepts related to copyright exceptions for PwDs

2.1.1. Copyrighted works covered by the Marrakesh Treaty and the Law on Intellectual Property

Firstly and foremost, works defined in the MT cover “literary and artistic works” defined in Article 2(1) of the Berne Convention. It is extremely broad, including “every production in the literary, scientific and artistic domain,” except for audiovisual works. Specific copyrighted works protected under the MT include: “books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works,” and “illustrations, maps, plans, sketches”. Not only the “literary and artistic works” as defined in Article 2(1) of the Berne Convention [12] are covered by the MT, but also works appear in any media, which means they may be published or unpublished in the forms of text, notation and/or related illustrations.

In Vietnam, works are defined in the IPL 2005 as innovative products in literature, art and science expressed in any medium or form. It coincides with the definition in the MT

2.1.2. Features of an accessible format

An accessible format copy, as defined in Article 2(b) of the MT, shall meet the following criteria:

- A copy of a work in an alternative manner or form;
- It gives a beneficiary person access to the work, including permitting them to read as feasibly and comfortably as a person without visual impairment or other print disability;
- It is used exclusively by beneficiary persons; and
- It must respect the integrity of the original work, considering the changes needed to make the work accessible in the alternative format and the accessibility needs of the beneficiary persons.

In short, an accessible format copy is an accessible version of the works used exclusively by persons with visual impairments or otherwise print disabled with necessary changes in consideration of beneficiaries' accessibility needs and with respect for the integrity of the works. This definition appears to be more comprehensive than the corresponding definition in Article 25A (1) of Vietnam's IPL 2022, in which, “An accessible format copy is a copy of a work presented in an alternative format or a format for PwDs; which is used for personal purposes by PwDs and may be subject to appropriate technical adjustments necessary to enable PwDs to access the work”. Although this definition is much more advanced than that in the IPL 2005, which restricts to only “Braille and other languages”, the following concern remains with regards to the user-centred approach of this definition: The definition in the MT emphasises the beneficiaries' feasible and comfortable access to the works in whichever formats, persons may also use even them without print disabilities such as e-books or audiobooks. Nevertheless, the accessibility of the alternative format is not stressed in the definition in the IPL 2022; it lays focus, instead, on the restriction to the formats “for PwDs” and “for personal use”. This restriction may impair beneficiaries' equal enjoyment of the same formats as persons without print disabilities, as enshrined in the MT. In addition, ensuring “the integrity of the works” mentioned in

the MT shows the balance between community interest and copyright protection, which is absent in the definition of the IPL.

2.1.3. Beneficiaries of the Marrakesh Treaty and of Article 25A of the Law on Intellectual Property

The MT defines its beneficiaries, persons with print disabilities, in Article 3 as those who:

- a) Are blind;
 - b) Have a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability, and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or [13]
 - c) Are otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would normally be acceptable for reading;
- regardless of any other disabilities.

Vietnam's IPL 2022 uses a broader term, PwDs, to define the group that benefited from copyright exceptions allowed in Article 25A. They include people with visual impairments, PwDs who cannot read printed documents and other PwDs who cannot access works to read conventionally. This group is noticeably larger than that in the IPL 2005, which confines to only persons with visual impairments.

The MT and the IPL include persons with visual impairments in their beneficiary categories. However, the beneficiaries of the IPL, on the one hand, seem larger than those of the MT, not only covering persons who cannot read printed documents, but also those who "cannot access works to read conventionally". On the other hand, this definition appears to be vaguer than that of the MT because apart from persons with visual impairments, other categories need to be clarified in sub-law documents, which is important to specify who can benefit from copyright exceptions and prevent any possible rights abuse. In either the MT or the IPL, provided that a person falling in only one category presented above, s/he is eligible to benefit from copyright exceptions, regardless of any other types of disabilities s/he may have.

2.1.4. Authorised entities

Authorised entities, as defined in Article 2(c) of the MT, are those "authorised or recognised by the government to provide education, instructional training, adaptive reading, or information access to beneficiary persons on a non-profit basis. It includes a government institution or non-profit organisation that provides the same services to beneficiary persons as one of its primary activities or institutional obligations [14]". These authorised entities, which are "Organisations which meet criteria in Government's regulations" in verbatim in Article 25A, have not been defined in the IPL but will be in its guiding documents in the future.

2.2. Copyright exceptions allowed in the Marrakesh Treaty and the Law on Intellectual Property for PwDs

This section analyses the level of compliance of copyright exceptions for PwDs allowed in Article 25A of the IPL with the MT and its advancement compared to the IPL 2005. Each exception will be looked into from the aspects of rights holders, target beneficiaries, and its scope. Overall, the MT, under certain conditions, provides the following limitations and exceptions:

- the making of accessible format copies;
- the domestic distribution of accessible format copies;
- the export of accessible format copies (including by digital transmission); and
- the import of accessible format copies (including by digital download).

2.2.1. The making of accessible format copies

is significant because even where an accessible format is available commercially, that accessible format may meet the needs of certain types of print disabilities but not others. Additionally, a work may be available on one particular electronic reader but may not be interoperable between readers. If there were a commercial availability requirement, it could make it harder to use the exceptions that allow the creation and distribution of accessible formats, given that searches for a commercially available copy could consume time and resources.

The MT permits an authorised entity, the beneficiary persons or someone acting on their behalf, including a primary caretaker or caregiver, to make an accessible format copy. Authorised entities are also allowed to obtain an accessible format copy from another authorised entity and supply the copy to a beneficiary by any means, including non-commercial lending or electronic communication. This activity could be implemented when all of the following conditions are met:

- the authorised entity wishing to undertake said activity has lawful access to that work or a copy of that work;
- the work is converted to an accessible format copy, which may include any means needed to navigate information in the accessible format but does not introduce changes other than those needed to make the work accessible to the beneficiary person;
- such accessible format copies are supplied exclusively to be used by beneficiary persons; and
- the activity is undertaken on a non-profit basis.

Aligned with the MT, the IPL 2022 also allows PwDs, their caregivers or caretakers, and authorised entities to make accessible copies of works provided that they have lawful access to that work or a copy of that work and create the accessible copy on a non-profit basis. More advanced than the IPL 2005, the accessible format copies in the IPL 2022 are not only limited to Braille. However, one category of the rights holder in the MT, which is missing in the IPL, is “someone acting on behalf of persons with print disabilities”. These are not necessarily their primary caregivers or caretakers but might be their friends, personal assistants, or volunteers who might be in their network but do not belong to any organisations.

2.2.2. Domestic distribution of accessible format copies

This exception gives contracting parties great flexibility in their national legislation. In the amended IPL 2022, only authorised entities are entitled to distribute accessible format copies to Vietnamese PwDs. This exception was not allowed in the IPL 2005, in which the works are only allowed to be converted into Braille without distribution rights. This exception may significantly help increase the number of accessible copies and prevent high costs and duplication of production works, which wastes resources.

2.2.3. Export of accessible format copies

The Marrakesh Treaty requires a provision to allow authorised entities to export accessible format copies to a beneficiary person or another authorised entity. This Marrakesh Treaty does not require that export be limited to cases with no commercially available accessible format.

Due to the high cost of producing accessible format copies and the relatively low demand for many individual titles, the ability to share accessible copies across borders would benefit persons with print disabilities in both developed and developing countries and increase the number of accessible works. For cross-border distribution to occur, it must be lawful for an accessible format copy to be exported from the source country, and it must be lawful for that copy to be imported into the target country, which persons with print disabilities will enjoy.

This exception is stipulated for the first time in Vietnam in the amended IPL 2022, which marks a commendable advancement in copyright regulations. Authorised entities are entitled to export accessible copies to corresponding authorised entities according to international treaties in which Vietnam holds a membership. Only in the case of distributing accessible copies to foreign PwDs, this right of authorised entities is limited to when it does not know or has no grounds to know if accessible copies will be used by groups other than PwDs before their distribution or transmission. This restriction may entail more caution of authorised entities when sharing accessible copies with PwDs in other countries

2.2.4. Import of accessible format copies

Article 6 of the MT requires a provision to allow authorised entities or beneficiary persons to import accessible format copies. This provision will allow those sharing a common language to benefit from accessible format copies in other countries.

Not until the amended IPL 2022 is the exception of exporting accessible copies stipulated in Vietnam's IPL. In Article 25A (5), not only PwDs (as provided in the MT) but also their caregivers and caretakers or organisations that meet the requirements set forth by the government have the right to import an accessible format copy of the works from the respective organisation in accordance with international treaties to which the Socialist Republic of Vietnam is a contracting party for the benefit of PwDs.

2.2.5. Relationship with technological protection measures

The MT requires an exception to anti-circumvention provisions. Article 7 provides that “Contracting Parties shall take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this Treaty”. This exception must ensure the ability of authorised entities to circumvent a digital lock through other mechanisms, such as requiring the right holder to provide the authorised entity with a key to open the digital lock. The Marrakesh Treaty does not require but gives choices to authorised entities to place a technological protection measure on an accessible format copy.

On the contrary, Articles 28 and 35 of the amended IPL 2022 still prohibit all circumventions of technological protection measures applied by the author or copyright holder on their works. This puts a huge barrier to producing and distributing accessible copies of authorised entities when authors and publishers increasingly apply technological protection measures to their works. In other words, the number of accessible copies cannot be increased to meet the great demands of persons with print disabilities. Their “book famine” cannot be eradicated if copyright holders do not open the door to yield community interest.

All copyright exceptions and limitations are provided for the ultimate benefit of persons with visual impairments or otherwise print disabled, provided that copyrights are not infringed [1]. The level of compliance of all copyright exceptions and limitations provided in the amended IPL 2022 with the MT discussed in this section are summarised in the following table:

	Convert into accessible formats		Domestically distribute accessible formats	
	The MT	The amended IPL 2022	The MT	The amended IPL 2022
Persons with print disabilities	Yes	Yes	Unidentified	No
Caregivers or caretakers of PwDs	Yes	Yes	Unidentified	No
Authorised entities	Yes	Yes	Unidentified	Yes
Conditions	(i) The authorised entity Has lawful access to that work or a copy of that work; (ii)the work is converted to an accessible format copy, which may include any means needed to navigate information in the accessible format but does not introduce changes other than those needed to make the work accessible to the beneficiary person; (iii)such accessible format copies are supplied exclusively to be used by beneficiary persons; and (iv) the activity is undertaken on a non-profit basis.	The authorised entities: (i)have lawful access to that work or a copy of that work; and (ii)Create the accessible copy on a non-profit basis.		

	Export accessible formats		Import accessible formats		Circumvent technological protection measures	
	The MT	The amended IPL 2022	The MT	The amended IPL 2022	The MT	The amended IPL 2022
Persons with print disabilities	No	No	Yes	Yes	No	No

Caregivers or caretakers of PwDs	No	No	No	Yes	No	No
Authorised entities	Yes	Yes	Yes	Yes	Yes	No
Conditions	(i) Lawful for an accessible format copy to be exported from the source country; and (ii) Lawful for that copy to be imported into the target country, which persons with print disabilities will enjoy it	When distributing to foreign PwDs, the authorised entity does not know or has no grounds to know if other groups will use accessible copies than PwDs before their distribution or transmission.				

3. Conclusions and recommendations

This article analyses the level of compliance of the recently passed IPL 2022 with the MT regarding some definitions and copyright exceptions allowed to protect the rights to work access by persons with print disabilities. It also acknowledges the remarkable efforts of Vietnam's Government in making its IPL better aligned with the MT and other international commitments in diversifying beneficiary categories, accessible formats and copyright exceptions and limitations, which may accelerate its accession to the MT shortly. The article also identifies misalignments in this new IPL with the MT, which needs to be addressed by more detailed sub-law guidelines or in another revision of the IPL. These analyses may contribute to the sub-law formulation to guide the IPL implementation and better protect the rights of PwDs to information access.

From the findings of misalignments between the MT and Vietnam's IPL 2022 above, the following recommendations are proposed:

3.1. Recommendations for the formulation of sub-law documents

- The Copyright Office should work with the National Council on Disabilities to specify who cannot read printed documents and who cannot read in a conventional way to identify the beneficiaries of copyright exceptions allowed in Article 25A of the IPL. These categories might not exist in Vietnam's current categories of disabilities.
- The government should issue the criteria of authorised entities to facilitate their operation and services for persons with print disabilities.
- A list includes, but is not limited to, certain accessible formats, not only special formats which can only be used by persons with print disabilities but also accessible formats which give equal access to both persons with and without print disabilities, should be developed to guide authorised entities in their production and distribution of accessible formats to beneficiaries.
- Procedures for implementing each exception, especially those that involve digital transmission and download, should be specified to facilitate the law implementation.

- Sanction mechanisms should be implemented to ensure the correct implementation of the copyright exceptions, protecting the rights of both copyright holders and PwDs.

3.2. Recommendations for the revisions of the Law on Intellectual Property to be more Marrakesh Treaty-compliant

- The IPL should expand its category of supporters who may make accessible format copies for PwDs to anyone acting on their behalf, not limited to their caretakers or caregivers.
- The circumvention of technological measures by authorised entities should be included as a copyright exception to remove this hindrance in converting works into accessible copies to meet the great reading demands of persons with print disabilities.

3.3. Recommendations to reinforce the implementation of Article 25A of the Law on Intellectual Property

- Awareness of duty bearers, organisations of PwDs, PwDs, their caregivers and caretakers, authorised entities, publishers, authors, and the community should be raised about rights to access works of PwDs and copyright exceptions and limitations provided in Vietnam's IPL and the MT. Beneficiaries of these copyright exceptions should also be sensitised about correctly exercising their rights.
- A coordination mechanism and a network of libraries and authorised entities which provide accessible format copies should be established to facilitate the creation and sharing of accessible copies and save human and financial resources in the production and distribution of accessible copies.
- Experience workshops on exchange with other MT members should be organised to learn from their good practices in protecting and promoting the rights to information access of persons with print disabilities.

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Ensuring the Right to Stand for Election of persons with disabilities in Japan: Practical Experience for Vietnam

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Abstract:

The right to participate in political and public life is a well-established principle of international human rights law and is further delineated in a series of international and regional human rights instruments. This article analyses experiences from Japan on improving the participation of PwDs in elected offices and then compares it with Vietnam, thereby offering recommendations on improving the political participation of PwDs in Vietnam.

Keywords: Human rights, PwDs, elections, political participation, National Assembly.

1. Japan's legislation and government policy to ensure the political rights of PwDs

International framework on the political rights of PwDs

The right to participation is the right to participate in *political and public life*, i.e. in this article, the right to stand for election to elected bodies. The active participation of all citizens in political processes is a cornerstone of democracy. The right to equal participation in politics is enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, declaring the right of every person to equal participation in public affairs, including the right to vote and to be elected, and the right to access [1]. Japan signed the United Nations Convention on the Rights of PwDs (CRPD) in September 2007 and ratified it on January 20 2014, which created more equal opportunities for PwDs in Japan to access their political rights fully.

Article 29 of the CRPD specifies that states should ensure the rights of PwDs to “stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technology where appropriate”. The article also notes that states should actively promote an environment in which PwDs “can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs,” including in “the activities and administration of political parties”. Other CRPD articles also influence the implementation of Article 29, notably Article 6, which acknowledges that women and girls with disabilities are subject to multiple discrimination and that States “shall take all appropriate measures to ensure the full development, advancement. The issues of women with disabilities will also be addressed in the discourses of measures to promote the implementation of the right to political participation of PwDs”.

Japanese legal provisions on the right to participate in elections of PwDs

According to the Japanese government's announcement (2015) PwDs annual report, based on the 2011 census), about 6 per cent of Japan's population, or 7.88 million persons, live with some form of disability which: 3.94 million have physical disabilities, 740,000 have intellectual disabilities, and 3.2 million have psychiatric disabilities [2]. There is a discrepancy between the census data published by Japan (6%) and the World Health Organization (WHO)'s estimation of 15 per cent of the world's population having a disability [3], where the gap is likely due to the Japanese legal definition of 'disability'. According to Article 1 of the PwDss' Fundamental Law of 1993, Japan defines a person with disabilities as someone “whose daily life or life in society is substantially limited over the long term due to a physical disability, mental retardation, or mental disability” [4]. This definition, therefore, does not include 'hidden' or other disabilities, like persons with dyslexia, diabetes, traumatic brain injuries, and people living with HIV and AIDS. The definitions only focus on the main types of

disability. Consequently, many PwDs are not counted; as a result, the proportion of PwDs published by Japan is lower than international.

Regarding the representation rate of PwDs in the legislature, there is 1.2 per cent (i.e., 3 out of 245) of politicians currently serving in the Upper House have disabilities, which is almost 5 per cent lower than the overall disability rate in the adult population, suggesting that PwDs are underrepresented in the halls of power.

According to Article 10 of the Law on Organization of the National Assembly of Japan [5], Japanese citizens can participate in the election according to the following criteria:

Table 1: Eligibility to run for election in Japan [6]

Political position	Age	Participation cost
Members of the Lower House	25 years old and above	Parties/independent candidates ¥3 million for a single-seat constituency (equivalent to VND 527,365,00), refunded in full if gains 10% or more of the total valid votes cast in the constituency (Lower House) or 12.5% or more of the total valid votes divided by the number of the seats for the constituency (Upper House). ¥6 million for proportional representation, refunded in full if half or more of its candidates win seats. This requirement means that a majority of candidates will not have their deposits returned. To secure a win, run in both the plurality and the single member votes, candidates and party pay ¥9 million (approximately \$82,500) in election deposits.
Members of the Upper House	30 years of age and above	* This requirement means that the majority of candidates will not receive their deposit back. In order to win, some candidates must run by both majority vote and single member vote, and candidates and parties must pay a total of 9 million yen (\$ 82,500) in cash for the election deposit [7].
Members of prefectural and municipal assemblies	Having suffrage in the election of prefectural and municipal assemblies and 25 years old and above	From ¥150,000 to ¥3 million (from VND 26,368,000 to VND 527,365,00) for gubernatorial, mayoral, and council elections.

Article 11 of the Election Law defines cases which are not eligible to stand for election: *a person who has been sentenced to imprisonment or a heavier punishment and has not completed the execution of the sentence or has not yet been executed (excluding those whose sentence is being suspended).*

Therefore, if Japanese candidates with disabilities (a) meet the requirements prescribed in Article 10, (b) do not fall into the exclusion categories mentioned in Article 11, (c) place the required deposit

and (d) are voted as an individual candidate in a constituency or as a proportional representation candidate represented for a recognised political party, they can become a Member of the National Diet.

2. Japan National Diet (Parliament)

The political framework in Japan is a bicameral parliamentary constitutional monarchy with a dominant party, in which the Emperor is the head of state, the Prime Minister is the head of Government and the Cabinet, which directs the executive branch. Legislative power is vested in the National Diet (Parliament), which consists of the House of Representatives (Lower House) and the House of Councilors (Upper House) [8].

Table 2: Powers of the National Diet [9]

Description	Powers of the Lower House	Powers of the Upper House
Members	465 Members (minimum age 25) elected for a four-year term – 289 chosen from single-seat constituencies and 176 by proportional representation.	245 Members (minimum age 30) elected for a six-year term – 147 elected Firstly past in 47 plural-seat prefectural constituencies and 98 by proportional representation.
Session	<p>The Ordinary session is called once a year: started in January, for 150 days (possible extension).</p> <p>Extraordinary sessions called by the Cabinet, on request from one quarter or more of the total number of members of either House.</p> <p>A special session is called after a general election following the dissolution of the House of Representatives.</p>	
Powers	<p>Enactment of laws: If the Upper House rejects a bill or refuses to act within 60 days, the Lower House can make it law by repassing with a majority of two-thirds of the members present.</p> <p>Decisions regarding the budget and other matters related to national and international treaties: submitted Firstly to the Lower House; if cannot agree, the position of the Lower House prevails after 30 days.</p> <p>Designation of the Prime Minister: The vote of the Lower House takes precedence.</p> <p>Initiation of amendments to the Constitution: Approved in both Houses</p>	

In Article 41 of the Constitution, the Diet is the “highest organ of State power” and is the “sole law-making organ of the State” [10]. Certain privileges and protection are given to National Diet Members so they can perform their duties. National Diet Members receive a mandate from the people with whom resides sovereign power, and the Diet Members bear the responsibility of deliberating

government matters as representatives of the people. Except in cases prescribed by law, Members cannot be apprehended when the Diet is in session, and they cannot be held responsible outside of the House for speeches, discussions, or votes made in the House. Under Article 49 of Japan's Constitution, Members will receive an appropriate annual payment from the national treasury. The average income earned by Japanese lawmakers in 2020 was ¥24.14 million (equivalent to 4,188,217,580VND) [11], which is 5.4 times the average income of Japanese workers in 2020 of ¥4.45 million [12]. Each lawmaker is entitled to employ three secretaries with taxpayer funds, free high-speed railway tickets, and four round-trip aeroplane tickets a month to enable them to travel back and forth to their home districts.

3. Political opportunities and barriers to PwDs entering the National Diet

3.1. Opportunities for candidates with disabilities entering the National Diet

The Firstly opportunity to mention is the general trend in many countries worldwide. Since adopting the CRPD, the representation of politicians with disabilities in many countries has increased. In Uganda, the Constitution requires that a certain percentage of seats in parliament be awarded to representatives with disabilities, where some 47,000 representatives are sitting on directly elected bodies, which is easily the largest group of politicians with disabilities anywhere in the world [13]. In the United States, an estimated 10.3 per cent (nearly 3,800) of elected officials serving in federal, state, and local government have disabilities. Younger PwDs, Native Americans with disabilities, and veterans with disabilities of recent wars are particularly well-represented in politics [14]. In Australia, out of the 23 individuals with a disability elected to a combination of state and federal parliaments, only three have been women, exemplifying the persistence of intersectional vulnerabilities in society and politics [15]. **Croatia is** the Member State of the European Union with the most reported members of parliament with disabilities, with a total of seven [16]. In Asia, 10 countries, including Cambodia, India, Indonesia, Malaysia, South Korea, Sri Lanka, Thailand, Türkiye, Iran, and Japan, are reported to have politicians with disabilities [17]. This new trend also brings about positive changes in Japanese politics. Japan will be the Asian country in 2022 with the highest number of parliamentarians with severe disabilities, currently standing at three [18]. Japan ratified the International CRPD in 2014 and has been amending and supplementing legal policies to promote the implementation of this Convention.

The second opportunity is the initiative of some political parties in Japan when actively linking with candidates with disabilities in the National Diet elections. In the 2019 election, a new political party, Reiwa Shinsengumi, brought the two Firstly politicians with disabilities to the Upper House. They are Mr. Yasuhiko Funago, born in 1957 and has had Amyotrophic lateral sclerosis since 2000 [19], and Ms. Eiko Kimura, born in 1957 with cerebral palsy [20]. Since these politicians entered the Upper House, their victory and positive changes have been seen as major progress for the representation and visibility of PwDs in Japan [21]. After only two years, the Reiwa Shinsengumi party gained three new seats in the Lower House in the 2021 election and three additional seats in the Upper House in the 2022 election, where one seat is occupied by Mr. Daisuke Tenbata, who was born in 1981 and had severe disabilities [22]. Yasuhiko Funago, Eiko Kimura, and Daisuke Tenbata were elected as the priority proportional representation candidates for the Reiwa Shinsengumi party under a 'special quota' system that allows specific candidates to receive precedence. Their success was underscored by the fact that they garnered sizeable support for their performance in the Upper House, particularly within a community that often feels marginalised. Furthermore, the National Diet building has installed ramps, elevators, and wheelchair-accessible toilets and made other reasonable accommodations.

The third chance is the success in advocating many policies that benefit PwDs and marginalised groups of Yasuhiko Funago and Eiko Kimura during the past 3 years, which enhanced the electorate's confidence. This increased the possibility of having more members of National Diets with disabilities. These two Senators have regularly questioned members of the government on barrier-free transportation and buildings, information accessibility, fighting for movement freedom to leave their homes or facilities and live independently, changes in a legal loophole that makes it hard for 11,500 people with severe disabilities relying on public care to work, as the state only pays for careers if the person is not employed or in school – which has often meant that PwDs cannot afford to work because the cost of private care would exceed their salaries. Their requests increased the wheelchair space on the bullet trains from two seats to six, the sign language interpreters for broadcasting the Diet on the internet and subtitles for television, adding phonetics for Chinese characters (Kanji). Moreover, the government apologised for padding its disability hiring data after regularly failing to meet quotas for hiring PwDs [23], [24].

In Japanese history, before Yasuhiko Funago and Eiko Kimura, the National Diet had four politicians with visual disabilities: Mr. Masatoshi Takagi (Lower House, 1890–1929) [25], Mr. Kichisaburō Nomura (Upper House, 1954 –1966), Mr. Toshikazu Hori (Upper House, 1989–1995 and 1998–2004), and Mr. Taku Yamasaki (Lower House, 1972–2003 and 2005–2009). The Diet also had two members with mobility disabilities: Mr. Mamoru Shigemitsu (Lower House, 1952–1956), Mr. Eita Yahshiro (Lower and Upper House, 1977–2005). Thereby, there were a total of nine politicians with declared/known disabilities in the National Diet within 130 years. While this may not be a large number, it is notable as Japanese people have little or no experience interacting with PwDs due to a culture where PwDs and people without impairment are often separated.

Three politicians with disabilities as senators in one term is an encouraging achievement. This gaining was partly due to innovation in the regulation of the electoral system, with a certain percentage of seats allotted to political parties in proportion to the majority vote; the commitment of certain political parties to enhance the opportunities for candidates with disabilities by enabling them to appear on a proportionally selected list of delegates, using specific quota; providing personal assistant services to Senators during their campaign and working and ensuring accessibility at campaign destinations and locations. This means that the material conditions and mental support for candidates with disabilities have created favourable conditions for them to participate in the candidacy process and work at the elected bodies [26].

3.2. Challenges for PwDs to become members of the National Diet

The Firstly challenge is requiring campaign candidates to deposit large sums of money. This is a barrier, especially for candidates joining small political parties with limited financial resources. The employment rate of PwDs (15 to 64 years old) in Japan is 33.5 per cent, while the rate is 77.9 per cent for persons without impairment [27]. In addition to the lower rate, the average salary of employees with disabilities ranges from 13,000 to 254,000 JPY, while a normal worker in Japan earns an income of 264,000 JPY on average [28]. In such economic circumstances, most PwDs interested in running for elected office are at high risk of being disqualified from the Firstly application round because they need to meet the deposit fee requirements. Regulations on deposit fees to be elected should be adjusted to be more reasonable. Otherwise, joining the National Diet is still a political arena that challenges most Japanese citizens, including PwDs, who can only stand and applaud from afar. Money deposit requirements are also contrary to Article 44 of the Japanese Constitution, which prohibits discrimination against the status of legislators based on wealth and income [29].

The second hindrance is the stigma and discrimination against disability in Japanese society. Like other PwDs, politicians with disabilities often face stigma and questions about their job ability. In 2020, a tweet declared the presence in parliament of politicians with disabilities as “a nuisance” that would impede speedy deliberations, drawing 49,000 likes and 23,000 retweets [30]. This reveals that a part of the Japanese electorate still has concerns about the ability of politicians with disabilities or feels uncomfortable when getting used to different ways of communicating with these politicians.

In the past elections, three politicians who have severe disabilities were elected to the House of Councillors by virtue of a proportional representation of the political parties. It will still be a challenge for candidates with disabilities to join the National Diet as independent candidates or as representatives of political parties taking part in in-person elections.

Advancing equal participation in elected bodies is essential to strengthening democracy, promoting social inclusion and economic development, and protecting the fundamental human rights of all.

4. Lessons learnt: Practical experience for Vietnam

In March and April 2021, the United Nations Development Program conducted a ‘Rapid Assessment on the Willingness of PwDs to Stand for Election to the National Assembly of Vietnam or People's Councils at All Levels’ to understand the wishes and aspirations of PwDs to become representatives in Vietnamese legislative bodies, as well as their ability and potential to participate in politics shortly. 98.2 per cent of respondents believed there should be members of the National Assembly or People's Council who are PwDs. The reasons given for this position varied: 52.3% said their representatives would speak on their behalf to protect the rights of PwDs; 26.6% hoped their representatives would stand for equality and equity for PwDs; 10.1% considered this representation as proof of PwDs' capacity, and 2.8% wanted to ensure the representation of diverse groups in the community in the elected bodies. 1.8% of respondents do not favour the inclusion of PwDs as members of the National Assembly or People's Councils, as they believe PwDs Firstly have to deal with their challenges due to their health needs and other areas, such as restricted mobility and other accessibility needs, inadequate knowledge and education, limited social skills, before they are able to participate in politics. The results also revealed that 71.2% of respondents wanted to become delegates in the National Assembly and People's Council, and 62.0% were ready for self-nomination [31]. Furthermore, 44% (49/111) PwDs were ready to self-nominate, of which 53.1% identified as male, 44.9% as female, and 2.0% as another gender. They came from 6 ethnic groups, though 87.8% are Kinh people. 93.9% are aged between 24-60. 77.6% have mobility disabilities, 10.2% with hearing and speech impairments and 8.2% with visual impairments. 59.2% hold a university degree or higher, and 81.6% have a job (62.5% of whom work in the private sector).

This survey showed that, like Japan, PwDs in Vietnam are willing to become members of the National Assembly and are capable of bringing their unique experiences and perspectives into the decision-making process.

**Reasons PwDs should not become members
of National Assembly/ People's Councils**

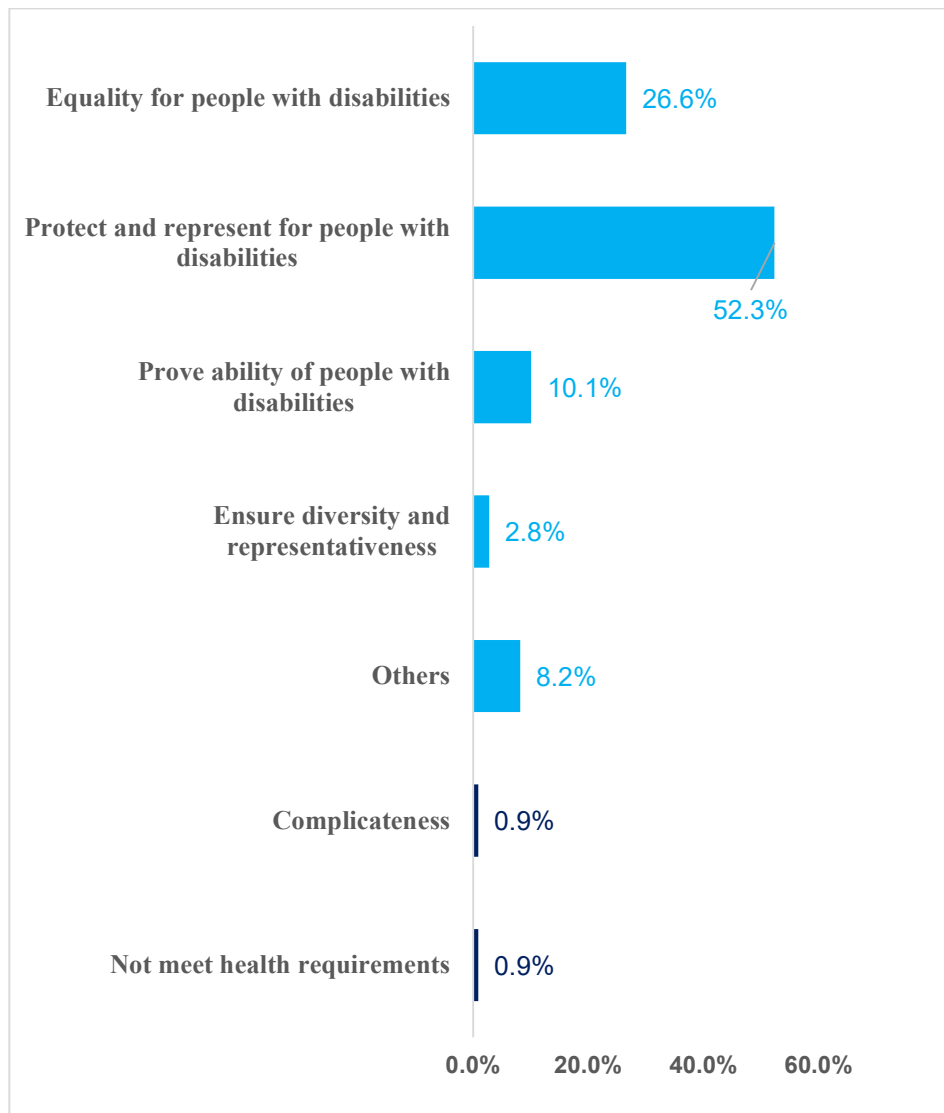


Figure 1. Reasons for respondents' opinion

After analysing Japanese law on ensuring the political rights of PwDs and reality, we can draw some lessons for Vietnam:

Firstly, Vietnam should consider amending and supplementing several provisions in the Law on Election of Deputies to the National Assembly and People's Councils at all levels in the direction of clearly stipulating the voting regime according to the proportion of representative groups in the community, including PwDs; ensure that campaigning and voter contact venues are accessible for PwDs. According to Resolution No. 1185 of the National Assembly Standing Committee, socio-political organisations will have a certain percentage of candidates representing these organisations, including Vietnam Fatherland Front, Trade Union, Doan Thanh Youth Union, Women's Union, Farmers' Union, Veteran's Association, Religious representatives, ethnic minorities. However, we have yet to specify a percentage of the proposed representation of PwDs. An outstanding advancement of the Law on Organization of the National Diet in Japan that can be applied to Vietnam is the supporting laws and policies such as the proportional voting system and the commitment of political groups to attract candidates with disabilities by including them in the proportional list of candidates, using specific quotas, providing financial support during the campaign, and ensuring accessible venues for PwDs. PwDs work and contact voters during the election campaign, supporting both their material and spiritual conditions to facilitate them to participate in elected bodies [32].

Secondly, education and awareness campaigns about the role of PwDs in the National Assembly and People's Councils are essential to promote the representation of the PwDs community in legislature agencies at all levels. If the perception of the community, especially those belonging to disadvantaged groups, is changed, the families of PwDs and the community will respect and support them to participate in politics. As a result, the role of PwDs as a legislator will be promoted. Yasuhiko Funago and Eiko Kimura received great support from volunteers, individuals who financially supported them to have enough deposit during the election process, and the voters who voted for the political party they represent. Moreover, their perseverance in fighting for the rights of the weak while working in the House of Representatives despite the many challenges they face.

Thirdly, it is recommended that organisations of PwDs mobilise socio-political organisations to nominate candidates who are PwDs who meet the appropriate criteria to become their official representatives in residential areas when running for the National Assembly and People's Council term XVI in the year 2026. Yasuhiko Funago and Eiko Kimura's victory was attributed to a partnership with the Reiwa Shinsengumi Party. This political party's goal is to promote the rights of PwDs, pursue policies against austerity and nuclear weapons, and enhance the welfare of disadvantaged community groups. This goal helped Reiwa Shinsengumi win more than 4% of the vote in the July 2019 House of Councillors election, i.e. win two seats in the House of Councillors for Yasuhiko Funago and Eiko Kimura as the two deputy leaders of the party [33].

Conclusion

The Constitution and the Law on Election of National Assembly deputies and People's Councils at all levels of Vietnam have explicit provisions on ensuring the right to vote and stand for election to the elected bodies of all population, including PwDs. One of the best Japanese practices that we can immediately apply in Vietnam is to encourage organisations of PwDs to coordinate with socio-political organisations to nominate candidates who are PwDs who meet the appropriate criteria to become official representatives to be elected to the National Assembly and the 16th People's Council in 2026. To do this, the state needs to promulgate policies to create more favourable conditions for organisations of PwDs to fulfil their obligations and responsibilities in formulating policies, implementing and monitoring the implementation and reporting of economic, cultural, political and social activities at the local and central agencies.

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A human rights-based approach to the right to informed consent of persons with disabilities under Victorian Legislation – Lessons for Vietnam

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Abstract: The UN CRPD establishes the universal fundamental rights that underlie the advancement of rights of individuals with disabilities worldwide. People with mental illness may be subject to CRPD. General Comment No 1, released by the CRPD Committee ('the Committee'), requires practitioners to obtain informed consent before treatment, including treatment relating to mental illness. While Australian legislation imposes a duty to attain patients' informed consent on practitioners, informed consent of mentally ill individuals to medical treatment is not regulated as a prerequisite for treatment in Victorian jurisdiction. This paper will take an approach based on human rights in the CRPD to evaluate the right to informed consent of mentally ill people before treatment in the context of Victorian legislation. Thereby making recommendations for Vietnamese law to protect people with mental illness.

Keywords: CRPD; Victorian jurisdiction; Australian law; human rights; PwDs; mental illness; informed consent

1. Introduction

Informed consent stems from medical-legal consequences in western countries where medical facilities for medical treatment are more modern. Nowadays, this concept has influenced all over the world [1]. Informed consent to medical treatment is one of the challenging medical-legal concerns in contemporary society. The controversy has focused on the question of whether practitioners can render medical treatment without the receiver's informed consent [2]. In particular, in the context where adults with mental disabilities may be seen as those who are legally incapable of consenting to treatment by the law, legal regulations are taken into account to provide a criterion that permits the treatment of the individuals against their will [3]. Hence, in the context of human rights violations relating to individuals with mental illness as an unsolved global crisis, it is necessary to bring 'informed consent' into question whether the human rights of those with mental illness in medical treatment are likely to be violated or not.

The UN CRPD establishes the universal fundamental rights that underlie the advancement of rights of individuals with disabilities worldwide. Similar to Vietnam, Australia also ratified the CRPD, which has impacted the growth of mental healthcare in Australia. As a result, policy discussions and mental legislation reform have been introduced on the basis of the rights set out by CRPD. Pursuant to General Comment No 1 released by the CRPD Committee ('the Committee'), practitioners have imposed a duty to obtain informed consent before taking place treatment, including treatment relating to mental illness [4]. In other words, medical treatment can only be performed if informed consent from mentally ill individuals is given. However, informed consent has not been declared a prerequisite for medical treatment for individuals with mental illness in Australia, including Victoria [2]. Therefore, research will examine the right to informed consent of mentally ill individuals to medical treatment in Victorian mental health law on the basis of a human rights-based approach in which the CRPD will be used as a benchmark.

Considering the matter, the research will also explore the doctrine of informed consent to medical treatment. Further, the CRPD and the interpretations of the CRPD will be analysed to determine the right to informed consent of mentally ill individuals at an international level, which will be crucial

ground for assessing whether Victorian legislation is consistent with the international standards to protect human rights of individuals with mental illness concerning informed consent.

2. Literature review

2.1. The doctrine of informed consent to medical treatment

Courts and Government regulatory agencies approached the doctrine of informed consent to impose medical treatment [5]. Udapadie S Liyanage stressed that the general doctrine of consent to treatment must be a condition for medical treatment to avoid negligence. The consent is valid if a legally competent person gives consent freely [1]. According to The Consumers Health Forum of Australia's paper, in the practical aspect, it is necessary to note that this concept mentions the medical process regarding receiving treatment options by users, the associated information on risks and benefits, and supporting decision-making from health service providers [6]. From the view of the law, the paper suggested that informed consent is an agreement confirming patients' rights to consent to or refuse treatment [6]. UN Principles also declared that the right to informed consent contains the right to refuse treatment [7]. Similarly, Tom L Beauchamp affirmed that the principle of informed consent is able to be approached in two directions, including individual autonomous authorisation of medical intervention and regulatory rules of consent [5]. With respect to autonomous authorisation, the author pointed out that a person gives informed consent from self-determining choice only when they substantially understand and intentionally authorise a health professional in health care [5]. Based on Beauchamp and Childress's viewpoints, Alasdair R. Maclean argued that while the doctrine of informed consent that refers to a distinct legal doctrine is useful, it should be only used in a restrictive way of disclosure that focuses mainly on the patient's right rather than the health carer's duty [8]. Additionally, WHO stressed that since the concept of informed consent is the foundation of treatment for mental illness, it should be enshrined in mental health law [9]. However, the author also identified exceptional circumstances where treatment is needed for the patient's interest or an individual could not consent. In these contexts, it is essential to lay down human rights-based procedures to warrant the human rights of people treated compulsorily and protect against harm and the misuse of the practitioners [9]. In arguing for the right to informed consent of those with mental health problems, Fatemeh Kokabisaghi et al. indicated that informed consent is a human right that plays a significant role in receiving medical treatment. Besides, the authors also suggested that medical treatment may only begin after a patient's obvious consent, and the consent may only be given after receiving sufficient information [10].

2.2. The examination of CRPD's interpretation concerning the right to informed consent of individuals with mental illness

In an attempt to safeguard human rights, the CRPD presented a strong argument against involuntary treatment, which is performed without the informed consent of mentally ill individuals on the basis of mental illness. In General Comment No 1, the Committee addressed the debate over whether practitioners could perform health interventions without the patient's consent and clarified the right to informed consent [4]. In light of the General Comment, McSherry and Waddington stated that in connection to international human rights standards in the CRPD, the Committee emphasised that informed consent must be given by individuals who will undergo medical treatment, regardless of their ability [2]. In addition, substitute decision-making certainly is not compatible with the CRPD requirements, and instead, supported decision-making is permissible in cases where persons with mental illness probably need it. Therefore, it is worth noting that compulsory treatment cannot be imposed based on mental disability [11]. However, the interpretation of the Committee relating to substitute decision-making was assessed as unrealistic in Joseph Dute's research [12]. Dute argued

that the Committee failed to take account of the cases where people are incapable of deciding being considerably supported, giving rise to the challenge of protecting those who need healthcare. In addition, it is notable that substitute decision-making can contribute to choosing a suitable option for medical treatment [12]. Similarly, Melvyn C Freeman et al. suggested that informed consent is impossible. If a person is denied medical treatment because they are found incapable of consent, human rights will be violated under the CRPD [13].

In a link to Article 25, the CRPD stated in Article 12 that the legal capacity of individuals with disabilities is similar to others. They are offered suitable measures to support exercising legal capacity if they wish the support [14]. The Committee declared that eliminating substitute decision-making regimes is vital to ensure full legal capacity [4]. In other words, Tina Minkowitz pointed out that instead of shifting the right to make decisions to another person, Article 12 provides a supported decision-making model to people who face difficulties making decisions [15]. In addition, the author argued that the CRPD protects mentally ill individuals from the treatment being given without informed consent under Article 17 [16]. Similarly, Waddington and McSherry also pointed out that providing enforced treatment to those who experienced mental disability violates their integrity, according to Article 17 [17]. In connection to compulsory treatment, other researchers noted that pursuant to Article 12, the supported decision-making model aims to alter compulsory treatment provisions in mental health laws, and the model requires that the patients must be those who make treatment decisions, abolishing the practitioners and Tribunals' power to make decisions [18]. Chris Maylea and Asher Hirsch also agreed that it is obvious that compulsory treatment given based on individuals' disabilities is discriminatory, leading to the breach of human rights according to the CRPD [19].

2.3. The assessment of the right to informed consent to medical treatment of individuals with mental illness in Victorian law on the ground of human rights frameworks

In Victoria's context, the term 'mental illness' is used and defined in relation to thought, memory or perception [20]. Whereas the CRPD used the term 'disabilities' without specific definitions. Instead, the CRPD provides a wide-ranging description of 'PwDs', including people suffering from long-term mental, sensory or intellectual impairments [14]. It is noted that providing no definition will avoid risks of unintentional exclusion, which highlights the inclusion without limitation. In a similar perspective, Bernadette McSherry affirmed that the CRPD protects the right of those who experience mental impairments because the Preamble of the CRPD clarified that disability is the evolving concept of health. It is the outcome of the link between persons with disabilities and social obstacles [21]. Therefore, the term 'PwDs' used in the CRPD also includes mentally ill individuals.

In 2013, the Committee made recommendations, accordingly, Australia should abolish all laws that permit practitioners to perform medical interventions towards individuals with mental disabilities without their informed consent or impose compulsory treatment on the individuals by Community Treatment Orders [22]. In relation to informed consent, Chris Maylea and Asher Hirsch asserted that compulsory treatment without informed consent which is operating under Victorian Mental Health Act 2014 ("the Act"), is inconsistent with the CRPD [19]. Maylea and Hirsch highlighted that allowing compulsory treatment which is taken place on the ground of mental illness without considering their capacity to give informed consent as provided in Victorian law is intrinsically discriminatory, reflecting an automatic assumption that mentally ill individuals are assessed as lacking capacity if proposed medical treatment is refused by them [19]. Furthermore, the authors emphasised that in the circumstances where even an individual is assessed as having that capacity, they still are likely to be treated without their consent based on Treatment Orders if the condition of a 'less restrictive way' set out in s 71(3) is satisfied [19]. Hence, the authors affirmed that the Act

also removes the right of those persons to refuse medical treatment. In light of the UCPR, a study suggested that Victorian law has the right steps in the process of promoting the human rights of mentally ill individuals, including promoting voluntary treatment, reducing the duration of compulsory treatment, and providing the least restrictive measures, which falls in line with human rights standards at an international level [23]. In contrast, Sascha Callaghan and Christopher James Ryan argued that based on the requirements of CRPD, Australian mental health legislation would need to make revisions regarding the criteria for compulsory treatment [18]. According to the researchers' opinion, by regulating that compulsory treatment can be taken place only if those who have mental illness are capable of giving informed consent, but they withhold [20], Victorian legislation places strict protection of competent patients' treatment refusals and general limitations for involuntary treatment which requires the psychiatrist to have regard to factors [18]. However, the authors indicated a factual scenario that while the Act establishes the presumption of capacity to consent of patients to or refuse treatment, promotes human rights, participation in decision-making as well as a preference for voluntary treatment, the degree of protection of a patient's ability to refuse provided by these measures entirely depends on clinician's interpretation relating to the factor of 'reasonable in the circumstances' in the practical context [18]. The authors highlighted that by continuing to permit substitute decision-making that overrides the right to refuse or give informed consent by mentally ill persons, Victoria clearly breaches the international obligation to safeguard equal treatment [18]. The authors concluded that most Australian jurisdictions had not fully recognised the requirements of the CRPD, including Victorian law. Additionally, Bernadette McSherry and Lisa Waddington suggested that the gap between the requirements of the CRPD and the protection offered by Australian law involving informed consent of individuals with mental illness is quite large [2]. The authors made a point that there are obstacles so that human rights proposed in the CRPD are accepted by Australian Courts, which was demonstrated through existing case law relating to those with mental illness [2]. It is stressed that compulsory treatment of individuals with mental illness is regarded as a justifiable human rights violation under the Charter of Rights and Responsibilities (Vic) ('the Charter'), resulting from the need for medical treatment and social necessity. The authors also argued that the case of *Rogers v Whitaker* (1992) presented that informed consent is not recognised as a prerequisite for compulsory treatment since Australian mental health law traditionally permits substitute decision-making rather than enabling supported decision-making as suggested by the Committee [2]. In addition, McSherry and Waddington commented that Australian legislation pays attention to mental capacity rather than legal capacity. Therefore, it is argued that Australia has offered weak protection to those who experience mental illness in connection with informed consent to medical treatment due to the presumption that those persons are incompetent to give consent to treatment and thus the warning of material risks in the proposed treatment is viewed as unnecessary [2].

3. Discussion

In order to evaluate the Victorian legislation's compliance with the CRPD in relation to informed consent, it is necessary to consider cases heard in Victoria. In the *Firstly* case Re-Review 09-085 [2009] VMHRB 1 [24], it is noted that a man was compulsorily treated under Victoria's Mental Health Act 1986, and he was subjected to forced medications frequently, which had severe and debilitating side effects. Due to the Depo Provera drug, he suffered from severe spine-related osteoporosis. Therefore, his counsel stated that using Depo Provera violates s 10(b) of the Charter. Nevertheless, the Mental Health Review Board stated that he must alleviate his mental illness with Depo Provera. The Board ordered that under s 7(2) of the Charter concerning limiting rights, it is reasonably justified to take place such treatment. In connection with the facts, it indicates that while

involuntary treatment may be necessary under Victorian law, although the CRPD reinforces the importance of informed consent [14], involuntary treatment can constitute cruel, inhuman and degrading treatment which is banned under domestic and international human rights standards. Based on the outcome caused by the process of the involuntary treatment, the involuntary treatment violated several human rights protected by the CRPD, including Articles 12, 15, 17 and 25. In particular, under Article 15, the CRPD prohibits “cruel, inhuman or degrading treatment”. This decision was criticised because the Board prioritised reluctant treatment rather than the individual's autonomy [25].

In another case, KVP [2014] VMHT 31 [26], a woman was experiencing severe depression with psychotic symptoms. Her treating team submitted that she needs to be treated acutely to avoid a high risk of deterioration. However, the woman said her family members could help her at home. She wanted treatment from general practitioners rather than psychiatrists, a less restrictive option. The Tribunal stated that if she had been treated as a voluntary patient and cared for by a general practitioner, her symptoms might not have been efficiently managed. In this case, it is important to note that both her preferences and decisions were overridden by the Tribunal's assessment of 'less restrictive' treatment. As a result, the right to refuse or give informed consent to medical treatment was extinguished by the Tribunal, which is not in line with the CRPD that states that professionals must obtain informed consent before giving any treatment [4] as well as requires the respect for physical and mental integrity [14]. Furthermore, under the Victorian mental health Act, in circumstances where psychiatrists or Tribunals feel that treatment criteria set out in section 5 are satisfied, they can make orders for involuntary treatment without informed consent, and the process is a part of substitute decision-making regimes that may be viewed as inconsistent with the CRPD. However, substitute decision-making regimes are seen as reasonable boundaries of the human rights of mentally ill individuals by Australian Courts, and this case is a salient example [2].

In the context of Vietnam, there are some situations where social safety is endangered by the ineffectiveness of legally regulating the management of people with mental illness. Although the law on PwDs 2010 is considered necessary legal protection for PwDs at the national level, the rights of PwDs to medical treatment fail to be explicitly regulated by Vietnamese laws [27]. According to the Vietnamese Criminal Procedure Code, the conditions for applying the compulsory medical treatment measure shall be in the case where a person who commits acts dangerous to society while suffering from a mental illness or another disease that causes loss of cognitive ability or the ability to control their behaviour is not subject to criminal responsibility [28] [29], which means the compulsory medical treatment only is applied from the stage of investigation on the basis of the procedural authorities' decisions, that is after the subjects have committed the crime. Meanwhile, the Vietnamese law on health examination and treatment regulate informed consent in the cases of surgery or surgical intervention [30]. Thus, the absence of regulations on informed consent as well as the lack of legal provisions related to the required cases of compulsory medical treatment applied to mentally ill people, could result in both limiting them from exercising their right to informed consent as a human right and causing damage to social order and safety from giving much freedom more than necessary to them who suffer difficulties in controlling behaviours and thoughts.

4. Conclusion

Even though the Act is one of several mental health statutes in Australia referring to informed consent, informed consent remains able to be overridden by substitute decision-making. Hence, Victorian legislation may be inconsistent with the human rights established by the CRPD. In circumstances where compulsory treatment is regarded as a reasonable human rights violation, and

informed consent is not always a prerequisite in mental health law, as in Victorian law, it is difficult to safeguard the human rights of mentally ill persons who are vulnerable in society.

Although repealing the Act as required by the Committee [22] is likely to be a possible resolution to bring the Act into compliance with the CRPD, the demand for workable alternatives to compulsory treatment is a problematic question. In order to deal with the challenge of informed consent relating to the human rights of mentally ill persons, including the balance between the health-related right and the right to informed consent for those individuals, it is necessary to take into account the possibility of removing the 'mental illness' factor from the treatment criteria that is the rationale for deciding whether compulsory treatment is required. Instead of the reference to mental illness, mental capacity can be needed to take into account. In addition, in the cases where mental capacity is weakened, considering individual preferences presented via the advance statement may contribute to maintaining the person's legal capacity. Although the connection between mental illness and compulsory treatment on the basis of the inability to make decisions is not permissible under the Committee [4], this recommendation may provide a viable resolution to limit the application of involuntary treatment and protect the right to informed consent of mentally ill individuals. Victorian practice should be a typical experience for Vietnam in balancing the rights of mentally ill persons to compulsory medical treatment and risks to the safety of society when having a glance at Vietnam practice.

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Guarantee the rights to health care for persons with disabilities under the current law of Vietnam

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Summary:

To ensure that PwDs have equal protection and health care like others, Vietnamese law embraces specific provisions to ensure the right to health care for PwDs in the legal system. It takes various measures to implement in practice. This article studies the provisions of Vietnamese law on ensuring the right to health care for PwDs and analyses the current state of law and practice to ensure the right to health care for PwDs in Vietnam. From there, several proposals and recommendations are made to improve the law and implementation of the law to improve further the right to health care for PwDs in the coming time.

Keywords: rights of PwDs; the right to health care; the right to health care for PwDs

1. Introduction

PwDs often face obstacles and difficulties in exercising their citizenship rights and obligations and integrating into the community. Therefore, they always need support from family, community, society and the state in terms of health care to help them stay healthy, enhance their self-care capacity, participate in social activities and remove barriers due to disabilities.

The law on health care for PwDs is built on basic principles such as diversification, socialisation and reasonable prioritisation of health care activities for PwDs to ensure the participation of many sectors and classes in society in providing health care in the community for PwDs. The good implementation of the law on health care for PwDs will contribute to better ensuring the rights of PwDs.

2. Regulations of Vietnamese law on the right to health care of PwDs

The right to health care is one of the basic human rights, which includes PwDs. PwDs with physical and mental deficiencies need more attention and care for their health. As a member of the International Covenant on Civil and Political Rights 1966, the International Covenant on Economic, Social and Cultural Rights 1966, as well as the International CRPD 2007, the state Vietnam is always aware of its responsibility for ensuring and enforcing human rights and the rights of PwDs, including the right to health care. The 2013 Constitution stipulates: “*Everyone has the right to health protection and care, equality in the use of medical services, and the obligation to comply with regulations on disease prevention, medical examination and treatment*” (Article 38). “*The State and society invest in the development of the cause of protection and health care of the People*” (Article 58). The right to health care of PwDs is affirmed in Article 4 - Law on PwDs 2010. At the same time, the Law on PwDs also dedicates Chapter III. Health care to prescribe healthcare-related issues for PwDs such as primary health care, medical examination, treatment, rehabilitation and issuance of health insurance cards. Regulations on healthcare for PwDs are manifested in the following contents:

Firstly, regulations on initial health care:

Primary health care is essential care given to individuals and families, with reasonable prices and attracting the participation of a large number of people to help each individual and family have the best health. Primary health care is one of the areas in the functioning of the health system in each country. It is considered the key to achieving health goals for members of society, especially those with high care needs, including PwDs.

Accordingly, in Article 21 of the Law on PwDs, primary health care at the place of residence is under the responsibility of commune-level medical facilities, carrying out the following activities: propaganda and education on general knowledge about health care, disability prevention measures;

making records to monitor and manage the health of PwDs; medical examination and treatment activities are carried out appropriately within the professional scope.

According to the provisions of the Law on PwDs, initial health care for PwDs includes the following contents: Health education and implementation of preventive measures: prevention activities are carried out in a variety of ways: prevention is based on the type of disability, the actual ability of the locality, family circumstances, and the needs of PwDs.

Secondly, regulations on medical examination and treatment:

Under the provisions of the International CRPD, Member States recognise that PwDs have the right to the highest standard of health achieved without discrimination on the basis of disability (Article 25) [1]. Concretising the spirit of the Convention, the Law on PwDs stipulates in Article 22: That PwDs who are sick or ill may receive medical examination and treatment at appropriate medical examination and treatment establishments. When PwDs go for medical examination and treatment, the state will ensure that they receive a medical examination and treatment, use appropriate medical services, and are paid for by the health insurance fund. PwDs with mental illness in a state of agitation, depression, suicidal ideation, behaviour or danger to others will be supported with living expenses, travel expenses, and treatment expenses during the compulsory treatment at medical examination and treatment establishments. The state encourages organisations and individuals to support medical examination and treatment for PwDs.

PwDs are vulnerable and suffer many disadvantages in life, but PwDs who are children, pregnant women, the elderly, people with meritorious services to the revolution, and people with severe and especially severe disabilities suffer even more difficulties and disadvantages. Therefore, in addition to the right to medical examination and treatment, the above group of PwDs also enjoy priority rights in medical examination and treatment in order to support and assist them in health care through such forms as an exemption and reduction of hospital fees; subsistence support; travel expenses; treatment costs. Specifically, Article 23 of the Law on PwDs stipulates that the medical examination and treatment establishments should: “1. Take appropriate medical examination and treatment measures for PwDs; 2. Prioritise medical examination and treatment for persons with severe and profound disabilities, children with disabilities, elderly with disabilities, and pregnant women with disabilities in accordance with the law on medical examination and treatment”. Clause 4, Article 3, Clause 1, Article 54 of the Law on Medical Examination and Treatment 2009 also specifies that priority is given to medical examination and treatment in case of emergency, children under 6 years old, severe PwDs, people aged full 80 years or older, people with meritorious services to the revolution, pregnant women. In addition, the right of priority for medical examination and treatment is also prescribed in several other legal documents, specifically: Article 12 of the Law on the Elderly 2009.

To ensure the right to health care, the state must provide health insurance for PwDs. Clause 2, Article 22 of the Law on PwDs states: “PwDs are eligible for health insurance in accordance with the law on health insurance”. If they participate in other types of insurance, they will also be paid benefits according to regulations or agreements. PwDs participating in health insurance when engaging in medical examination and treatment in accordance with the provisions of Articles 26, 27 and 28 of the Law on Health Insurance shall be paid by the health insurance fund at the rates of 100%, 95% and 80% depending on the subjects; In case of self-examination and treatment at the wrong level, requiring inpatient treatment, 40% of inpatient treatment costs (main level), 60% (provincial level), and 70% (district level) will be paid. For persons with severe and profound disabilities, according to Point c, Clause 1, Article 9 of Decree No. 136/2013/ND-CP stipulating social assistance policies for social protection beneficiaries on the issue of health insurance cards, persons with severe and

profound disabilities are subject to social protection. The state grants them health insurance cards. Procedures for issuing health insurance cards are based on Point b, Clause 2, Article 4 of Circular 41/2014/TTLT-BYT-BTC.

Thirdly, regulations on rehabilitation:

In the context of health care for PwDs, the content of rehabilitation orthopaedics plays a critical role because PwDs receive rehabilitation orthopaedics to help them function independently and are less dependent on others. The content of orthopaedics and rehabilitation for PwDs is to use medical and sociological measures to reduce the impact of disability and to allow PwDs to integrate and re-integrate into society, have equal opportunity to participate in activities in the family and society and lead a normal life to the maximum compared to their circumstances. Under the International CRPD, States must commit to taking appropriate and effective measures, including peer support, to assist PwDs in achieving and maintaining maximum independence, vocational learning, social, intellectual, physical, and full participation and integration in all areas of life [2]. Rehabilitation is about recovering reduced or lost functions for a person with a disability or helping them cope with their disability at home or in the community. Rehabilitation not only helps PwDs adapt to the living environment but also affects the environment and society, creating a unified block for the integration process of PwDs.

Thus, according to the modern point of view, rehabilitation is not only medical but needs to expand to many other fields and must be highly socialised. Rehabilitation for PwDs from a modern perspective involves not only the participation of health workers but also the participation of society, such as authorities, mass organisations, families and PwDs themselves. With this view, rehabilitation for PwDs includes rehabilitation through orthopaedic rehabilitation facilities and community-based rehabilitation [3].

According to Articles 24 and 25 of the Law on PwDs 2010, PwDs rehabilitation includes rehabilitation through orthopaedic facilities, rehabilitation and community-based rehabilitation. The implementation of orthopaedics and rehabilitation for PwDs is mainly carried out at state-owned orthopaedic and rehabilitation establishments, which are established, managed and guaranteed by the state from the budget for the regimes of PwDs. By stipulating a variety of types and forms and expanding the scope of activities of orthopaedic and rehabilitation establishments, the law not only ensures constitutional rights but also demonstrates the deep responsibility of the state and social community in providing health care for the less fortunate in society as well as ensuring social security purposes.

In addition to carrying out rehabilitation at state facilities, PwDs are also receiving rehabilitation at community health facilities. Community-based rehabilitation is based on the integration of health services into social services. Community-based rehabilitation is a measure that takes place with people with a disability. It transfers knowledge about disability, resilience skills and positive attitudes to PwDs, their families and the community, creating equal opportunities and community integration for PwDs.

3. The state of implementing the law to ensure the right to health care for PwDs

Health care for PwDs shows humanity, sympathy and deep sharing among people in the community, in each country and worldwide. Health care for PwDs aims to create conditions for PwDs to have the opportunity to participate in other social activities, fully exercise their citizenship rights and obligations, and contribute to the country's construction and development.

Vietnamese law has regulated this issue in its legal system to ensure that PwDs have equal protection and health care as other people. The number of PwDs receiving health care is increasing annually.

Firstly, about primary health care in recent years, the propagation and education of knowledge and skills on health care for PwDs have been carried out regularly and widely through propaganda, education and dissemination of knowledge on health care by various forms and measures such as: organising classes, providing information through the local media system or integrating it into other local socio-cultural activities, community counselling through organisations of youth, women, social workers, counselling in the families of PwDs to raise the knowledge and understanding of PwDs about self-protection and health promotion for themselves, family, friends and community. From there, it will help PwDs to eliminate lifestyles, habits and customs that harm health gradually.

Health education includes disseminating knowledge to improve nutritional conditions and proper eating, supply of clean water and sanitation, maternal and child health care, and preventive action.

Implement preventive measures: prevention based on the type of disability, prevention based on the actual ability of the locality and family circumstances, and prevention based on the needs of PwDs.

The law stipulates the primary healthcare responsibilities of commune-level health facilities, and our state is paying more attention to the investment in the quantity and quality of these facilities. On the basis of the implementation of disability prevention, on October 25, 2017, the Sixthly Conference of the 12th Central Committee of the Communist Party of Vietnam issued Resolution No. 21-NQ/TU on population work in the new situation, setting goals by 2030, 70% of pregnant women are screened for at least 4 types of congenital diseases, and 90% of newborns are screened for at least 5 of the most common congenital diseases. The antenatal screening rate has increased from 20% (2016) to 54.43% (2019). Particularly in Hanoi, according to the head of the Hanoi Population and Family Planning Sub-Department, Ta Quang Huy, the rate of prenatal screening in 2019 in the whole city reached 80% [4].

Secondly, many PwDs have access to appropriate medical services for medical examination and treatment activities. PwDs who are ill are entitled to medical examination and treatment at medical examination and treatment establishments where they reside. If the disease or illness worsens, PwDs are referred to higher-level health care for continued monitoring, care and treatment according to the Law on Medical Examination and Treatment provisions and the Law on Health Insurance. In this case, medical expenses will be covered by health insurance.

Statistics from the Vietnam National Committee on Disabilities show that the country has about 6.2 million PwDs, accounting for 7.06% of the population aged 2 years and older, of which 58% are female, 28.3% are children, nearly 29% are persons with severe and profound disabilities. In 2020, more than 39,000 PwDs were granted health insurance cards, and 207,000 patients received free medical examinations and medicine [5].

Thirdly, on rehabilitation, the Prime Minister issued Decision No. 1109/QĐ-TTg, dated August 5, 2012, approving the project to support PwDs for 2012 - 2020. Up to now, some achievements in healthcare for PwDs have been achieved: There are 50 provinces/cities nationwide that have issued a plan to develop rehabilitation work; 36 provinces and cities have conducted disability screening, identifying the rehabilitation needs of PwDs, of which 16 provinces have been supplemented with the Ministry of Health's budget to carry out activities; 29/63 provinces and cities have implemented an information system, and over 500,000 PwDs have recorded software monitoring records. The community-based rehabilitation program for PwDs has been executed in 50 provinces and cities with 337 districts and 4,604 communes and wards. Through the program, 170 thousand PwDs have received health care. 23.2% of PwDs enjoyed rehabilitation in the community, making an important contribution to PwDs' health care [6].

There are 63 rehabilitation hospitals and rehabilitation centres nationwide, including 1 rehabilitation hospital at the central level and 62 rehabilitation hospitals and rehabilitation centres at the provincial and city levels; 100% of central and provincial general hospitals have rehabilitation departments (80 rehabilitation departments). 90% of the faculty of traditional medicine - rehabilitation is at the district level; about 25% of communes have rehabilitation services in communes.

Further implementing the achievements of Decision No. 1109/QĐ-TTg, on May 8, 2020, the Government continues to approve the program to assist PwDs in 2021 - 2030. In the field of health care, the decision refers to the necessity to promote and coordinate associations and mass organisations to strengthen support activities and create favourable conditions for PwDs to access health care policies, advance scientific research in the fields of prevention, early detection and intervention, psychotherapy, and rehabilitation for PwDs.

Over time, the complicated development of the Covid-19 pandemic, the outbreak and the rapid spread of Covid-19 have affected all aspects of life, and PwDs' health care has been impacted significantly. PwDs have a higher risk of infection than the general population when they come into contact with people infected with Covid-19. Faced with this problem, the Medical Examination and Treatment Administration (Ministry of Health) issued Official Letter No. 466/KCB-PHCN&GD dated May 10, 2021, on fostering the prevention of the Covid-19 epidemic for PwDs, regularly updated information on Covid-19 prevention and control on the website of the Ministry of Health and website: kcb.vn for timely implementation.

Social protection centres and facilities have launched many practical activities to ensure the care of PwDs during the epidemic and simultaneously limit the risk of disease transmission. Priority is given to tightening security and closely monitoring the number of people entering and leaving the Centers, and all activities are almost “no one in and out without authorisation” and simultaneously, appropriate plans to ensure the medical examination and treatment and protection for these vulnerable subjects during the epidemic season. Commune and ward-level health stations are responsible for implementing forms of propaganda, education and dissemination of general knowledge on health care, disability prevention and reduction; guiding PwDs in methods of disease prevention, self-care and rehabilitation in accordance with the scope of expertise for PwDs [7].

Apart from taking care of the health of PwDs during the epidemic season, we have also initially initiated some mental health care activities for PwDs such as: organising TRE and meditation classes, yoga singing meditation (songs bring positive energy), dork dancing, which builds capacity to practice happy living skills for PwDs from social organisations [8].

However, despite the achievements so far, we still encounter many barriers and limitations in healthcare regulations for PwDs:

Firstly, the Law on Health Insurance in 2008, amended and supplemented in 2014, contains provisions to ensure the right to health insurance of PwDs. However, PwDs still need help with using their health insurance cards for medical examination and treatment due to complicated procedures, such as the registration requirements for the place of the initial registration of medical examination and treatment. These complicated administrative procedures are obstacles for PwDs in accessing health care services.

Besides, the processes related to issuing disability certificates are also very challenging, with ample procedures that hinder exercising the right to health care and issuing free health insurance cards for PwDs.

Currently, according to the Law on PwDs and Circular 26/TT-BLĐTBXH dated 12/11/2012 and 01/2019/TT-BLĐTBXH of the Ministry of Labor, War Invalids and Social Affairs, at the

commune level, there are 2 councils: *the Council for determining the degree of disability and for approving social allowances* in corresponding to two tasks. These two councils coexist with the same members, so wasting human resources, time, and budget and causing difficulties for PwDs, prolonging time affects their lives and the status of the minds of PwDs.

In addition, the regulations on the list of medical examinations and treatments covered by health insurance are unsuitable for insured persons who are PwDs, preventing PwDs from accessing basic and essential assistive devices. For example, only 21.74% of PwDs aged 18 overuse assistive devices. In addition, Article 25 of the current Law on PwDs encompasses more broad provisions on rehabilitation than the concept defined in the CRPD. It is required to issue specific guidelines on the content and scope of the rehabilitation.

Secondly, in the process of implementing regulations on health care, PwDs still face many difficulties in accessing health care services because of inadequate infrastructure leading to PwDs not being able to access the clinics, a lack of a team of specialised doctors to treat PwDs, inaccessibility of PwDs to the transport system when participating in medical examination and treatment at health facilities, especially commune-level medical examination and treatment facilities: for example, PwDs have to use a wheelchair, but the medical facility does not have an elevator system or separate path for PwDs. Primary health care and rehabilitation activities for PwDs in the community and at home are still limited. Only 2.3% of PwDs receive rehabilitation services for PwDs [9], while rehabilitation is one of the effective measures to improve their status.

There is a system of establishments responsible for rehabilitation. However, commune health stations only do primary health care and health management for PwDs. Rehabilitation mainly relies on developing a team of village health workers and rehabilitation collaborators who guide training and rehabilitation for PwDs in the community. Nevertheless, the workforce of grassroots health workers to carry out this rehabilitation is also weak, so PwDs in many places, especially remote and isolated areas, have not yet benefited from this policy. Community-based rehabilitation models have been formed and implemented. However, in reality, there are still shortages and weaknesses. The team of collaborators to implement the program must undertake multiple tasks with low funding allowance. Therefore, community-based rehabilitation activities have not been highly effective.

At the same time, the capacity and skills of health workers and other staff with expertise in PwDs health in the community are limited and uneven across regions. This team needs not only healthcare knowledge but also a lot of specialised knowledge and skills in working with vulnerable people and handling disability-related health issues, but also knowledge and skills in the social field (knowledge about the environment, migration, life skills, how to use sign language with deaf groups, how to help victims of violence, victims of human trafficking). There are still many cases of discrimination and stigmatisation by health workers against PwDs.

Regarding the role of associations in health care for PwDs: The voices or suggestions of associations in protecting the rights of PwDs in general and the right to health care of PwDs have yet to be respected and absorbed.

Thirdly, PwDs have to cope with limited financial resources, so PwDs are not able to access medical facilities to take care of their health. Many PwDs live in families with economic hardship, so access to health services, especially high-quality medical services, is beyond their financial ability. Meanwhile, the use of health insurance cards still needs to be improved. Several rehabilitation techniques are being implemented at medical facilities that the health insurance fund has not covered. Most assistive devices for children with disabilities are not paid for by health insurance. That shows

the unavailability and cheapness of health care services for PwDs, especially for new forms of disability, such as autism, the cost of health care for them is very high.

Sources of funding for infrastructure investment in health care for PwDs are still constrained, which makes it hard to ensure the right to health care of PwDs; The inspection and supervision of activities to ensure health care for PwDs has yet to be carried out regularly and seriously.

Emergency medical services in disadvantaged areas and places affected by natural disasters and catastrophes have yet to be available, and limited facilities and systems of support services are major barriers for people in the affected areas. Especially in this case, healthcare services have yet to be valued and invested in appropriately. For example, during the recent covid-19 pandemic, we have also taken many measures to ensure health care for PwDs still however, according to the results of the quick Assessment of the impact of Covid-19 on PwDs by UNDP, 70% of PwDs said that they find it challenging in accessing health care such as medical examination, medicine, assistive devices and rehabilitation services, 22% responded that they suffer increasing the risk to health because of the Covid-19 pandemic due to inherent diseases. About 28% of respondents claimed difficulty accessing masks, hand sanitiser, clean water, soap and food [10]. This also poses the requirement to have ready-made plans for health care for PwDs in an unusual context.

4. Some solutions to ensure the right to health care for PwDs

- Solutions on the organisation of implementation:

In the past, Vietnam has achieved some achievements in ensuring the right to health care for PwDs. However, in order to improve the efficiency of healthcare activities for PwDs, in the coming time, we need synchronously implement some of the following solutions:

+ *Firstly*, it is necessary to enhance the responsibility of the State, society, families, agencies, organisations and enterprises in exercising the right to health care for PwDs. In addition to promulgating specific policies, the state should develop a process of inspection, examination and close supervision of the law's implementation on PwDs to overcome shortcomings and ensure that PwDs receive health care and community integration.

+ *Secondly*, intensify activities to raise awareness, dissemination and education on PwDs and laws and policies on PwDs for the community, society and even PwDs to acknowledge their rights, including the right to health care and exercise protect their own rights.

+ *Thirdly*, improve the quality of the grassroots health network and invest in equipment for commune health stations to be able to meet the health care needs of PwDs in the locality.

+ *Fourthly*, take measures to raise awareness, knowledge and skills for health care staff about PwDs by measures such as:

Continue to train and retrain health care staff for PwDs, and improve training quality by sending staff from other specialised departments to attend training programs on health care programs for PwDs.

At the same time, research and propose policies to attract human resources for officials, employees, health workers, and doctors, especially doctors with appropriate qualifications in examining, treating, nursing and rehabilitating functions for PwDs.

+ *Fifthly*, promote disease prevention in order to minimise the causes of disability. Which rehabilitation is the most meaningful for PwDs, which can help PwDs reduce their disability level?

It is essential to raise awareness about health care for PwDs, pay attention to and replicate the models of community-based rehabilitation and mental health care for PwDs, and develop a system of providing rehabilitation services for PwDs.

Currently, disability early detection and early intervention activities in Vietnam are not developed. Therefore, the primary health care system should pay attention to disability prevention, especially for families with many children with disabilities. Perform services for early detection of defects in prenatal and neonatal infants; propaganda, consultation and provision of services on reproductive health care;

+ *Sixthly*, computerise the operation of medical facilities to manage health monitoring records for PwDs in particular and everyone who comes for medical examination and treatment in general; synchronise and connect information between health care facilities so that the process of supporting PwDs in health care is more informative and convenient.

- Regarding legal solutions:

Decision No. 1190/QĐ-TTg dated August 5, 2020, approving the program to support PwDs from 2021 to 2030, refers to the right to health care and health care for PwDs with a focus on improving the system of legal policies on disability assessment, rehabilitation and health insurance policies for PwDs;

Therefore, in the future, in order to ensure that PwDs receive the best health care, we need to develop and supplement legal provisions on health care for PwDs as follows:

+ *Firstly*, research and propose to promulgate public-private cooperation documents in medical examination, treatment and rehabilitation at medical examination and treatment facilities for PwDs.

In particular, it is recommended to renew the service delivery mechanism of health care facilities for PwDs and create a legal corridor to increase resources to support medical examination and treatment for PwDs, such as encouraging private and semi-public establishments to reduce or exempt medical examination and treatment costs for PwDs.

+ *Secondly*, revising the provisions on the right to health care of PwDs in the Vietnamese law is essential to ensure that they are consistent with the CRPD to which Vietnam has acceded. Legal documents on health care for PwDs are currently scattered in many documents. Therefore, it is necessary to have a specific, detailed and fully incorporated legal document on health care policies for PwDs to ensure and improve the effectiveness of implementation in health care for PwDs.

+ *Thirdly*, it is necessary to revise the mechanism for identifying defects

As discussed, currently, the Law on PwDs and Circular No. 01/2019/TT-BLĐTBXH dated January 2, 2019, of the Ministry of Labor, War Invalids and Social Affairs provide that at the commune level, there are 2 councils corresponding to the same two tasks that coexist with the same composition, causing waste and high possibility of negative acts, so it is necessary to replace or add more members with medical knowledge, especially in disability expertise, in order to enhance the accuracy in the process of determining disability levels for PwDs [11]. Moreover, there is the emergence of many new types of disabilities, are intellectual disabilities. These defects are difficult to identify and classify because they are not included in the list of defects of the Circular guiding the degree of disability. No machine can determine the degree of disability, making these people not entitled to policies for PwDs. Therefore, it is suggested to review the legal regulations to amend and supplement more specific guidance on regulations related to determining disability levels.

+ *Fourthly*, it should add autism spectrum disorder to the list of disability types in the Law on Disabilities.

Currently, autism spectrum disorder is a disability that has not been classified as a disability under Article 3 of the Law on PwDs, so it is difficult to develop insurance policies to support this group of

people. Therefore, in the coming time, it is necessary to add autism to the disability form in the Law on Disabilities.

+ *Thursday*, it should have preferential policies for medical staff who care for the health of PwDs. Reviewing, proposing and completing policies for officials and employees working in health care facilities for PwDs to ensure the performance of nursing, orthopaedic, rehabilitation and other tasks related to PwDs.

Sixthly, it is necessary to prioritise budget allocation to effectively implement legal policies and programs and projects on health care for PwDs. Article 24 of the Law on PwDs stipulates: “The State ensures the investment in the construction of the material and technical foundations for public orthopaedic and functional rehabilitation establishments”. However, this regulation should ensure access to rehabilitation facilities, gender-sensitive rehabilitation and health care services. Furthermore, many assistive devices for PwDs are not covered by health insurance, such as walking sticks and prosthetics. This induces financial barriers to their access to necessary assistive devices. Therefore, it is necessary to supplement the list of drugs and medical supplies within the scope of benefit when PwDs perform health care activities at medical facilities.

+ *Seventhly*, there should be legal regulations to expand healthcare facilities for PwDs. Currently, there are cases of PwDs who are not cared for or neglected by their families. Therefore, in the coming time, it is necessary to expand the coverage of eligible organisations and individuals that can perform health care in particular and care for PwDs in general.

It should create a legal corridor to socialise health care activities for PwDs by developing organisations of/for PwDs, including social organisations, non-profits, legal organisations of PwDs and for PwDs, a collection of individuals who voluntarily participate in protecting and assisting PwDs to exercise their rights and obligations under the law.

+ *Eighth*, complete regulations and *health* insurance policies for PwDs

The extent of health insurance card coverage for PwDs is still limited. According to national statistics, more than 3 million PwDs still have to buy health insurance by themselves and co-pay for medical examination and treatment services. In addition, many services on assistive devices in mobility are indispensable for PwDs but do not have a source of payment support. As mentioned above, many categories need to be included in the list of health insurance benefits, causing difficulties in health care for PwDs because of financial pressure. Therefore, in the coming time, it is necessary to review these lists and the reality of state budget sources so that they can be added to the supported list of health insurance, contributing to ensuring the right to health care for PwDs.

Thus, over the past time, the Party and State have paid attention to creating conditions to improve the lives of PwDs and support them to overcome difficulties caused by their disabilities. However, the provisions of the law on health care regimes for PwDs in particular and social security policies for PwDs in general still need to improve in application and practice. Therefore, in the coming time, we need to take many measures so that the regulations on the right to health care of PwDs can be highly effective in practice.

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The rights to access justice of persons with disabilities under foreign law – the case of Vietnam

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Abstract: The article focuses on analysing the concept of the right to access justice for PwDs in international law, thereby assessing the right to access justice for PwDs in Vietnam and proposing some solutions to improve the current regulations on ensuring the enforcement of this right of PwDs.

Keywords: PwDs, right to access justice, foreign law, Vietnam.

1. Introduction

Fairness in the application of the law plays a key role in the enforcement and protection of justice. Fairness and transparency without discrimination between people during applying and implementation of the law will create an equal and civilised society. In particular, the right to access justice is considered one of the basic rights of citizens, ensuring that everyone can participate in making and enforcing the law and that no one is treated unfairly. However, this right for PwDs faces many limitations due to the vulnerability of this group of people, so ensuring the implementation of this right could be more effective, and sometimes there is a distinction between PwDs and others in terms of access to justice.

2. The right of PwDs to access justice under international law

2.1. The right of PwDs to access justice under the International CRPD

The United Nations CRPD (CRPD) was enacted on December 13, 2006, to promote, protect and ensure the equal and full enjoyment of all fundamental human rights and freedoms and to promote respect for their inherent dignity. In this convention, the right of PwDs to access justice (Access to justice) is provided for in Article 13 as follows: “*States Parties shall ensure effective access to justice for PwDs on an equal basis with others, including through the provision of procedural and age-appropriate 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*”. According to this rule, when participating in the International CRPD, the Member States must commit to complying with the prescribed contents, including provisions on the right to access justice. Specifically, PwDs will be treated equally as other border populations, have access to legal services in the process of participating in legal proceedings, whether directly or indirectly, regardless of stages, from the investigation stage to the adjudication stage, and proceedings will be adjusted to suit the situation of PwDs. To ensure effective access to judicial services for PwDs, the convention provides for the promotion of appropriate training for persons working in the judicial sector, i.e. police and correctional officers, to equip them with sufficient expertise and skills to maximise access to justice for PwDs. When participating in the International CRPD, the signatory members must abide by the prescribed contents, including the right to access justice provisions. In principle, everyone, including PwDs, is equal before and under the law and is entitled without any discrimination to the equal protection and equal benefit of the law (Article 5 of CRPD); PwDs have the right to recognition everywhere as persons before the law, to legal capacity on an equal basis with others in all aspects of life (Article 12 CRPD). PwDs shall enjoy the same rights as others without discrimination, including the right to access justice.

To ensure the effective enforcement of the right to access justice for PwDs, the Office of the United Nations High Commissioner for Human Rights (OHCHR) researched and drafted international

principles and guidelines on access to justice for PwDs in August 2019 with 10 basic principles. These principles are considered the foundation for realising the right of PwDs to access justice in practice [1]. They are also the basis for PwDs to perceive their legitimate rights properly.

2.2. The right to access justice of PwDs in China

In China's periodic report to the United Nations Committee on the Rights of PwDs on its compliance with the CRPD, implementing the convention's principles on the right to access justice in this country has achieved remarkable results. In 2017, the Ministry of Justice issued a guideline document on strengthening public legal services for PwDs with the goal that the legal service network covers all PwDs. A series of measures to improve access to justice for PwDs have been proposed and applied in practice [2]. Specifically:

Firstly, form a legal system to protect the rights of PwDs. Accordingly, the Chinese legislature has focused on including PwDs in the law-making process to ensure equal access to the law for PwDs as everyone else. In addition, focus on building a legal framework to protect the rights of PwDs through legal documents such as the Law of the People's Republic of China on the Protection of PwDs, the Regulation on Education and Training of PwDs, on the basis of compliance with the principles and contents of the United Nations CRPD.

Secondly, improve the convenience of complaints and access to legal services for PwDs in line with the law by establishing and comprehensively developing an online system to receive information. Specifically, a national unified online complaint system and a national unified service hotline, "12385", will be established throughout China, where PwDs can reflect different needs. This is considered one of the ways to enable PwDs to freely express/reflect requests within the permissible framework to promptly safeguard their rights that are at risk or have been infringed.

Thirdly, reduce the cost of accessing justice protection for PwDs. Accordingly, in criminal, civil and administrative proceedings where PwDs suffer financial hardship, they can access free legal aid services from lawyers or other experts when the statutory requirements are met. For PwDs and organisations of PwDs that do not have a regular source of income, the payment of litigation costs may be deferred, reduced or waived. If PwDs are not adequately compensated by litigation, appropriate relief funds may be obtained. The above cost-related approaches to justice have shown practicality in enhancing the rights of PwDs because of their vulnerability in society, the cost support will help PwDs access justice more easily, and the cost cannot hinder the process of enjoying their rights.

Fourthly, provide legal aid to PwDs. Chinese law stipulates that citizens, including PwDs, can apply for legal aid when certain conditions are met. Suppose a person with disabilities is the defendant who is blind, mute or deaf in a criminal case that has not yet been entrusted with any defence counsel. In that case, the legal aid agency will provide legal aid without considering their financial situation when the court appoints a defence counsel for the defendant. This measure has achieved many results, such as in 2018, 54,000 PwDs across the country received free legal aid and more than 200,000 PwDs received free legal advice. In addition, to facilitate PwDs to access support and counselling services, legal aid agencies at all levels have established more than 2,600 support points for PwDs. These measures have promptly assisted PwDs in solving their legal problems when their capacity is limited.

Fifthly, legal staff are trained to understand sign language, and at the same time, sign language interpreters will also be trained to understand the law. In order to create the best conditions for PwDs (deaf) to express exactly what they want to say, it is very important to have a language interpreter. Specifically, in cases where lawyers and legal staff cannot understand sign language, sign language training programs will be established to improve their ability to communicate with deaf people. These

legal training programs will also be opened to sign language interpreters to help them gain legal knowledge and provide legal assistance to PwDs.

3. Comparing with the right to access justice of PwDs in Vietnam

According to statistics, in Vietnam, there are about 8 million PwDs, accounting for 7.8% of the population aged 5 years and older, of which persons with profound and severe disabilities account for about 28.9%, about 58% of PwDs are women, 28.3% of PwDs are children, and 1.5 million people have been granted disability certificates [3]. It can be seen that PwDs constitute a major proportion of the group of objects in society and are vulnerable people who encounter difficulties in daily life activities. Therefore, protecting this group is always the central policy of the Party and State, especially the right to access justice of PwDs. Currently, Vietnamese law encompasses provisions that recognise the right to access justice, such as the right to access legal information and the right to legal aid [4]. Specifically:

Firstly, the right to access legal information has been acknowledged in the Law on PwDs 2010, but vaguely. Accordingly, PwDs have the right to access information technology (Point d, Clause 1, Article 4), the state will have the policy to help PwDs access information technology (Clause 3, Article 5), the state encourages agencies, organisations, and enterprises and individuals operating in information technology to apply and develop information technology reserved for PwDs., 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 PwDs 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. (Clauses 1, 3, Article 43). The Law on PwDs has made adjustments related to the right to access information and communication technology of PwDs. It sets out the obligations and responsibilities of state agencies in supporting PwDs. However, this approach only refers to the right to access information and communication technology without mentioning the right to access information because these two terms are different. Information and communication technology is just a tool to convey information, and information is the content that the audience wants to obtain. This unwittingly leads to the fact that the right to access information of PwDs has yet to be specifically adjusted, entailing superficial access to legal information.

Secondly, the right to access justice of PwDs in the judicial aspect comprises: (i) The right to access the judicial apparatus; (ii) The right to be facilitated during the proceedings; (iii) The right to a public and fair trial; [5] ...

Firstly, the right to access the judicial apparatus. Judicial agencies include Courts, Procuracy, Investigating Agencies, Criminal, Civil, Economic, and Labor Judgment Enforcement Agencies. PwDs have the right to access these agencies by complaints and denunciations about illegal acts of agencies, organisations and individuals when there are grounds that no judicial agency is allowed to refuse. The 2013 Constitution also affirms this in Article 30, according to which, *Everyone has the right to lodge complaints or denunciations about illegal acts of agencies, organisations or individuals with competent agencies, organisations or persons; and Competent agencies, organisations or persons shall receive and resolve complaints and denunciations.* This is a constitutional right, so the judicial authorities are responsible for ensuring this right for citizens, especially PwDs. However, limited mobility capacity poses a barrier for PwDs when exercising this right at judicial agencies.

Secondly, the right to be facilitated during the proceedings. This right is demonstrated in two sets of laws, the Civil Procedure Code 2015 (CPC) and the Criminal Procedure Code 2015 (CPC).

Specifically, in Article 20 of the Civil Procedure Code, *if participants in a civil procedure are persons with hearing, speech or vision disabilities, they have the right to use languages, signs and letters used exclusively for PwDs; in this case, interpreters are required.* It is understood that, in the process of participating in legal proceedings, PwDs will have the right to have someone who knows their language, signs, and letters to interpret and re-transmit information to agencies and individuals to ensure the correctness and consistency in understanding and also maximise the rights of PwDs. Clause 1, Article 263 of the Criminal Procedure Code stipulates that: *If a defendant, crime victim, litigant or witness testifier does not speak Vietnamese or suffers from mutism or deafness, an interpreter shall explicate presentations, questions and answers in court, the Trial panel's rulings and relevant matters for them to perceive.* Despite the fact that the criminal proceedings vary in terms of severity, in nature, all are stricter than civil cases. Thus, procedural guarantees for PwDs are always upheld. However, in reality, sign language may vary from region to region. Suppose deaf people attend court hearings in another province. In that case, they will have to use sign language and interpreters of the sign language of that locality, thereby causing certain difficulties in communicating PwDs during the proceedings. In addition, our country has over 2.83% of children with disabilities aged 2-17, of which deaf children account for 0.22% of the total population, equivalent to about 211,000 children [5]. This data proves that having a separate set of letters is necessary according to the standards for PwDs.

Thirdly, concerning the right to legal aid, a recognised and regulated right of PwDs. Accordingly, the 2017 Law on Legal aid provides that people with financial hardship are one of the subjects to be provided with free legal services from the state. This regulation is consistent with Resolution No. 84/2014/QH13, dated November 28, 2014, of the National Assembly on ratification of the United Nations CRPD. The applied legal policies implement the right to access justice ameliorate for PwDs [3]. Specifically:

Firstly, in terms of the organisation and the person providing legal aid. Currently, localities across the country have focused on establishing and organising legal aid centres for PwDs. These organisations can be law-practising organisations and legal consulting organisations that sign legal aid contracts with the Department of Justice; Law-practicing organisations and legal consulting organisations that register to participate in legal aid. Despite the achieved results, the number of legal aid centres still needs to be bigger and commensurate with the assistance needs of PwDs. According to the household survey results, 7.06% of the population aged 2 years and over are PwDs, and the disability rate in rural areas is nearly 1.5 times higher than in urban areas; The regions with the highest disability rates are the North Central Coast and Central Coast, the lowest are the Southeast and Central Highlands [6]. However, the number of legal aid centres for PwDs differs among the localities. Many provinces still need to establish legal aid centres. According to statistics, 06 legal aid centres are directly under the central association's authority, concentrated in two big cities, Hanoi and Ho Chi Minh. Among other provinces and cities, only 50 localities have established legal aid centres, and one thing in common is that the central headquarters are mainly located in the city centre [7]. It can be obvious that the number of PwDs accounts for a large proportion, but the establishment of legal counselling centres in localities still needs to be improved. Because of this limitation, the right to access justice of PwDs is constrained in scope and quality.

Secondly, in terms of communication about the right to legal aid. This is the ground for PwDs, agencies, organisations and communities to know about the right to legal aid of PwDs. Communication activities about this right are best demonstrated in the installation and development of the legal aid website www.trogiupphaply.gov.vn. This information page has become an effective channel to update information about legal aid organisations and activities nationwide continuously, the list and addresses of Legal Aid Centers and Legal Aid staff so that PwDs know and choose when

they need support. However, in reality, this communication method is ineffective because it only covers some of the difficult localities where access to electronic information is not synchronised, and many PwDs need to possess information technology to access it. Therefore, another method of communication was carried out, namely organising seminars on PwDs, and distributing thousands of legal leaflets to people and PwDs, including content on rights to legal help. This method fixes the limitation of the electronic information channel. However, it is costly to quickly print a large number of leaflets which PwDs sometimes need to pay attention to if the content could be more attractive. The fact shows that according to the Legal Aid Department statistics, from 2012 to 2019, only 0.33% of the whole country, or about 26,262 out of 8 million PwDs in difficult circumstances, received free legal assistance from the Department of Legal Aid [8]. This number is relatively moderate compared to those needing legal aid. From that, the effectiveness of communication about this right is not very high.

Thirdly, improve the capacity to provide legal aid for PwDs. Accordingly, every year, the Ministry of Justice and localities regularly organise training courses on legal aid skills for PwDs. From 2012 to 2019, there were about 10 training courses on skills in providing legal aid for PwDs held at the central level. On this basis, some localities have retrained or actively invited lecturers to provide specialised training in legal aid skills for PwDs for local legal aid workers. However, objectively, the number of training courses is small, and the organisation in localities sometimes needs to be more superficial. It does not guarantee the quality and goal of capacity building for legal aid for PwDs.

4. Some proposals to improve the right of PwDs to access justice in Vietnam

From the above analysis, a number of proposals have been made to improve and upgrade the right to access justice of PwDs in Vietnam based on the United Nations CRPD and Chinese law, specifically:

Firstly, in general, the legal framework on the rights of PwDs in general and the right to access justice of PwDs, in particular in Vietnam should comply with the provisions and principles of the United Nations CRPD to which Vietnam is a member. This compliance will lay the foundations for promulgating regulations on the right to access justice of PwDs and for respect and enhancement of the dignity and legitimate rights of PwDs when living in society, especially equality and non-discrimination terms of access to legal knowledge, transparency and fairness. This is also the direction of Chinese law, where the provisions on the right to access justice for PwDs are based on and comply with the convention's principles.

Secondly, complement the concept of the right to access justice of PwDs in terms of terminology. Legal documents, such as the 2013 Constitution, the 2015 Civil Procedure Code, the 2015 Criminal Procedure Code, and the 2010 Law on PwDs, do not embrace any official concept of this right. As mentioned earlier, the right to access justice of PwDs has been recognised in various documents with many contents. However, there is no related concept in terms of terminology, so this can be considered a major shortcoming. Therefore, the author proposes to supplement the concept of the right to access justice for PwDs in the specialised law, the Law on PwDs 2010. Accordingly, there are two ways to define this term, (i) Define in the overview direction, then will be concretised in the provisions; or (ii) Define in the direction that lists the subgroups of rights included in the access to justice of PwDs. It is advisable to follow option (i) to ensure conceptual compatibility and avoid omitting rights when using the enumeration method. This proposal derives from the research of author Tran Mong Binh with the following content: *The right to access justice of PwDs is the right to be protected by the law and to enjoy benefits from the law equally through the legal system and fair trial by the competent state agencies to protect the legitimate rights and interests of people who are*

defective in one or more body parts or have impaired function manifested in the form of disability that makes working, living and studying difficult [5].

Thirdly, regarding the right to access legal information, Law on PwDs 2010 must explicitly stipulate the right to access information, specifically information related to the law, culture, education, and sports, in addition to the right to access information and communication technology. Law on PwDs 2010 should add the right to access legal information for PwDs unambiguously in addition to other rights such as equal participation in social activities, living independently and integrating into the community; being exempted or reducing the number of contributions for social activities, at point d, clause 1, Article 4, as follows: the right to health care, rehabilitation, cultural education, vocational training, employment, legal aid, access to public works, information media, information technology with various information contents such as economy, society, law; cultural, sports, tourism and other services appropriate to the type and degree of disability.

Fourthly, for the right to legal aid.

(i) Referring to the Chinese legal policy, it can be seen that building a direct call centre is essential in addition to the online information site. It will solve the time problem when PwDs are in an emergency and need to be resolved immediately.

(ii) Developing and supplementing legal aid organisations in many locations, not just concentrated in one administrative unit of 63 provinces/cities, is necessary. In this regard, we should refer to China's policy of building legal aid centres because this country has a large number of centres that effectively ensure the right to access justice for PwDs.

(iii) It should focus on providing legal aid to PwDs and PwDs in financial difficulties and ensuring that legal aid is completely free. Reduce the amount of paid legal aid and increase the free legal aid for PwDs.

(iv) Regarding propaganda, apart from the two main propaganda channels, which are online information pages and legal documents, it is possible to develop an application exclusively for PwDs, which summarises policies on PwDs and becomes one of the effective information channels. In Clause 1, Article 43 of this Law, the state encourages agencies, organisations, enterprises and individuals operating in information technology to apply and develop information technology for PwDs. This rule shows that the state has paved the way for developing an application for PwDs, and there should be a legal framework to regulate it. In the author's opinion, the Law on Persons with Disability 2010 still covers those applications to ensure consistency in the connotation of the right to access justice. The law will govern the technical requirements and information security of the application on Information Security.

(v) Improve the capacity to provide legal aid for PwDs by organising high-quality training sessions rather than “awards just for show”, which downgrades the quality and effectiveness of the training program.

5. Conclusion

Ensuring the right to access justice is not only meant to guarantee the basic rights of citizens in general but also has an important role for PwDs. However, applying legal policies on this right could be more effective and superficial. Therefore, in addition to the adjustment of the current law on ensuring the right to access justice for PwDs, it is necessary to intensify mass communication to PwDs, improve the quality of legal aid and minimise free support costs for this group of people to protect to the highest degree the exercise of the rights of PwDs.

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The right to access judicial service of persons with disabilities in Vietnam today

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Abstract: The article explains the prevailing regulations to ensure the right to access justice for PwDs in Vietnam on the ground of internalizing the CRPD. Thereby, the author points out the inadequacies of the rules and enforcement and makes recommendations to comprehend the content of this right.

Keywords: rights of PwDs, access to justice, judicial services.

Introduction

During participating in socio-economic activities, PwDs face various barriers. In addition to mental and physical hindrances, they also suffer institutional impediments, such as inadequate legal regulations discouraging the participation of PwDs. In particular, the right to access judicial services at the Court, considered an effective method to ensure human rights and settle disputes, is a pivotal content that must be clarified. Article 13 of the CRPD also emphasizes that access to legal services by PwDs must be guaranteed, i.e. “The States Parties to this Convention ensure effective access to justice”.

1. The concept of the right to access judicial services of PwDs

According to the CRPD of December 13, 2006, of the United Nations General Assembly, PwDs 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 Convention again recognizes and affirms that human rights are universal and should ensure the full enjoyment of these rights by PwDs without discrimination [1].

According to the Law on PwDs 2010, a person with a disability is “*a person with a defect in one or more body parts or a functional impairment manifested in the form of a disability that causes difficulties in working, living or studying*”. This law also officially uses the concept of “person with disabilities” in place of “person disabilities” under the previous Ordinance on PwDs 1998 (Article 1): “*PwDs by definition of this Ordinance, irrespective of the causes of the disability, are defective of one or many parts of the body or functions which are shown in different forms of disability, and which reduce the capability of activity and causes many difficulties to work, life and studies*”. The author agrees with the view on the concept of PwDs according to the current Law on PwDs, because the concept of “person with disabilities” is consistent with the world’s predisposition on the issue of disabilities based on the social approach model. There are about 6.2 million PwDs, accounting for 7.06% of the population aged 2 years and over, of which nearly 29% are persons with severe and profound disabilities [14]. Numerous figures and reports indicate that this is the largest minority group and one of the most vulnerable ones.

There is no specific concept of the right to access judicial services. Firstly of all, according to the separation of powers model [13], *justice* is understood as one of the three rights of state power, implying the preservation, protection of the law, and handling of law violations. From the point of view of the Vietnamese state, the judiciary refers to organizing the preservation and protection of the law, such as handling violations of the law and settling disputes. *Justice* is also a general term referring to the investigating, procuring, and adjudicating agencies or the name of the agency performing administrative and judicial tasks. According to the author, “justice” has historical and social significance. Therefore, judicial and administrative activities or the names of state agencies

associated with the term “justice” do not accurately reflect the connotation of this term. *For example*, the Ministry of Justice and Department of Justice have names associated with “justice” but perform the main function of state management. Regarding the term “services, according to the Vietnamese Dictionary, “*service is work that directly serves certain needs of the masses, is organized and paid for*” [12]. On the basis of the interpretation of the term “judicial” and “service”, “judicial service”, in the opinion of the author, refers to the totality of activities to meet the needs of dispute settlement, handling of acts of violation of the law by individuals, agencies and organizations; and shall be carried out by competent agencies or persons in accordance with the law.

Thus, the right to access judicial services of PwDs from the author's viewpoint is understood in a broad or narrow sense. In a broad sense, the right to access judicial services of PwDs is the right to request or be asked to participate in a dispute to protect their legitimate interests at competent authorities in the state apparatus, including administrative agencies dealing with and handling according to administrative procedures and judicial agencies dealing with and handling according to proceedings procedures. In the narrow sense and within the research scope of this article, *the right to access judicial services of PwDs only embraces the right to access a court to request or participate in settling disputes according to judicial procedures to protect their legitimate interests.*

On that basis, the right to access the legal services of PwDs has some characteristics as follows:

Firstly, everyone’s right to access to justice (being similar for both PwDs and persons without impairment) is based on the constitutional principle [2]: everyone is equal before the law, and no one should be discriminated against in political, civil, economic, cultural and social life.

Secondly, the right to access judicial services mentioned here is anchored with PwDs, especially people with the following types of disabilities [3]: (a) Mobility disabilities; (b) Hearing and speaking disabilities; (c) Visual disabilities; (d) Mental and neurological disabilities; (d) Intellectual disability; (e) Other disabilities. These types of disabilities are not a reason to limit the legal capacity of PwDs.

Thirdly, the right to access judicial services of PwDs is limited to the Court, an independent proceeding-conducting agency and independent dispute resolution agency, but not a dispute-settling mechanism according to administrative procedures.

Fourthly, the right to access judicial services of PwDs is expressed through legal provisions, mainly in the Criminal Procedure Code, the Civil Procedure Code, and the Administrative Procedure Law, with general provisions or specific regulations to ensure the right to access legal services for PwDs.

2. Regulations to ensure the right to access judicial services for PwDs

Article 13 of the CRPD provides that access to judicial services for PwDs must be effective equally with others in all legal processes.

Vietnamese law encompasses many provisions aimed at assuring the rights of PwDs, in line with the provisions of the CRPD in providing for the right to access judicial services, specifically:

Firstly, the provisions in the Criminal Procedure Code, the Civil Procedure Code, and the Administrative Procedure Law all provide rules to ensure the principle that everyone is equal before the law [4] [5] [6], regardless of ethnicity, gender, creed, religion, social class, cultural level, occupation, or social status. In the proceedings, all individuals are equal in rights and obligations, equal in submitting and evaluating evidence and making requests to clarify the objective truth of the case. Thus, the principles in the proceedings ensure that PwDs are equal to other subjects participating.

Secondly, PwDs participating in the legal proceedings are guaranteed their right to a timely, fair and public trial by the Court. The trial may be closed only in cases prescribed by the law, such as special

cases where it is necessary to keep state secrets, fine customs and traditions of the nation, protect people under the age of 18, or keep private life secret at legitimate requests of the litigants but must publicly pronounce judgments [4]; In special cases where it is necessary to keep state secrets, preserve the nation's fine customs and traditions, protect minors, or keep professional secrets, business secrets, personal secrets, family secrets of the parties at their legitimate request [5] [6]. Therefore, the Court must also ensure the same adjudication principle for PwDs as for Persons without impairment and other cases.

Thirdly, the right to legal aid for PwDs: Clause 2, Article 59 of the 2013 Constitution stipulates: “The State shall create equal opportunities for citizens to enjoy social welfare, develop the social security system, and adopt policies to support elderly people, *PwDs*, poor people, and other disadvantaged people”. To implement this provision, the Law on Legal Aid 2017 has determined that PwDs facing financial difficulties are eligible for legal aid under Clause 7, Article 7 of this Law. In addition, the Law on Legal Dissemination and Education 2012 contains separate provisions on law dissemination and education for PwDs in Article 20 of this Law.

Fourthly, the procedural law comprises provisions on measures to support the process of participating in proceedings for PwDs, such as using speech and writing in case the participants are persons with hearing, speech or vision disabilities. Accordingly, they have the right to use languages, signs and letters used exclusively for PwDs; this case requires a person who knows languages, symbols and words for PwDs to interpret [5] [6]; regulations on supporting in preparing petitions for PwDs in civil proceedings: people with visual impairments, people who are unable to file lawsuits by themselves, and people who are unable to sign or stamp their signatures, can ask other to draft petition under the witness of a person with full civil litigation act capacity. The witness must sign the petition for certification [5]. In administrative proceedings, illiterate persons who have a vision disability or are unable to make lawsuit petitions by themselves or to give their signatures or press their fingerprints on petitions may ask others to make lawsuit petitions to the witness of individuals with the full administrative procedure act capacity who shall give signatures on such petitions [6]. This is a new and additional regulation compared to previous procedural documents dealing with cases where people with hand and foot disabilities cannot sign their signatures or press their fingerprint on petitions.

3. Some inadequacies and orientations to improve the right to access judicial services of PwDs in Vietnam today

The current legal regulations and practical implementation show that regulations on the right to access judicial services of PwDs in Vietnam tend to expand, in line with international standards, and meet the requirements of the integration context. However, there are still certain shortcomings, specifically:

Firstly, regulations on legal aid for PwDs. Currently, the Law on Legal aid only allows PwDs with financial difficulties to be eligible for legal aid. According to the guidance in Decree No. 144/2017/ND-CP, people with financial hardship are *people of near-poor households or who receive monthly social allowances as prescribed by law* [10]. Pursuant to Article 5 of Decree 20/2021/ND-CP stipulating social assistance policies for social protection beneficiaries, only *persons with severe disabilities and persons with profound disabilities*, according to the provisions of the law on PwDs, are entitled to monthly social allowances. This provision has further enhanced barriers for PwDs when they require access to judicial services and have to satisfy and prove the condition of “financial hardship”. Therefore, according to the author, the right to legal aid should be extended to PwDs in general facing financial difficulties by adding regulations to Decree No. 144/2017/ND-CP stipulating details of a number of articles of the Law on Legal Aid 2017 as follows: “ *A person experiencing*

financial difficulties is a person belonging to a near-poor household or a person receiving monthly social allowances as prescribed by law, or as certified by the commune-level local government about the person's financial difficulty”.

Secondly, the Criminal Procedure Code currently does not stipulate the support and interpretation in case PwDs participate in legal proceedings. Therefore, it is necessary to supplement these regulations to ensure the enforcement of equal rights before the law of PwDs with persons without impairment and other subjects.

Thirdly, albeit the Civil Procedure Code and the current Law on Administrative Procedures consist of provisions on measures to support the participation in proceedings for people with hearing, speaking and vision disabilities who have the right to use language, symbols, and letters used exclusively for them; and at the same time, stipulate that interpreters are those who know their language, signs and letters. However, in the case of a person with a disability in a complex form, such as a hearing or speech disability (reduced or lost function of hearing, speech, or both hearing and speech), the ability to convey language by gestures, images, and photos is extremely limited. This object's store of communication symbols still needs to be improved, just stopping at 32,000 [15]. Therefore, according to the author, to ensure the interests and objectivity in the transmission and exchange of information of PwDs in some of these cases, the interpretation requires 02 or more people.

Fourthly, it is necessary to supplement and have specific guidance in legal documents on proceedings to determine the behavioural capacity of PwDs in the forms of mental disability, intellectual disability and other disabilities. According to the guidance in Clauses 4, 5, 6 of Article 2 of Decree No. 28/2012/ND-CP guiding the Law on PwDs: “4. *Mental impairment means a disorder of senses, memory, feeling, thought and act control manifested abnormal speech or acts*; 5. *Intellectual impairment means partial or total loss of perception and mind manifested in the slowness or inability to think, analyze objects, phenomena or solve problems*; 6. *Other impairments mean a partial or total loss of bodily functions causing difficulties in work and daily-life activities and learning not being specified in Clauses 1, 2, 3, 4 and 5 of this Article*”. If, in the case of people with mobility; hearing and speaking disabilities; visual disabilities, their behavioural capacity when participating in legal proceedings is still fully recognized (only providing support measures such as making lawsuit petitions and sign language interpreters), for other types of disabilities, e.g. mental disability and intellectual disability, their behavioural capacity need to be determined by the Court based on the assessment results. Accordingly, in cases where PwDs lose their act capacity, they must have a legal representative; In cases where people have difficulties in cognition and behaviour control, a guardian is required to act as their representative to participate in the proceedings to ensure their legitimate rights and interests.

Finally, to ensure the right to access judicial services of PwDs, there should be provisions on courtroom standards to ensure accessibility to all types of disabilities. In addition, the Court must ensure adequate communication on the procedures and results of the proceedings [16] in accordance with different types of disabilities.

Conclusion

Ensuring the right to access judicial services of PwDs is important and meaningful content for exercising equal rights in the social and legal life of PwDs in the context of global integration and sustainable development. Ensuring and enforcing this right requires not only a legal framework but also further raising awareness and responsibilities of the state, families and individuals to reduce and

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Realizing the rights of the persons with disabilities in climate change in Vietnam

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Abstract: Vulnerable people, in general, and PwDs, in particular, are easily affected by climate change. The article sheds light on the rights of vulnerable groups, especially PwDs, in the context of climate change in Vietnam, thereby proposing solutions to ensure the enforcement of these rights in practice.

Keywords: climate change, PwDs, sustainable development

1. Introduction

In recent decades, climate changes have caused impacts on natural and human systems on all continents and across the oceans [1]. Environmental protection and response to climate change are becoming more urgent tasks than ever for countries worldwide. Accordingly, awareness and assurance of human rights in the context of climate change in general and the rights of vulnerable groups, especially PwDs in particular, play an important role in ensuring equity, climate justice, and effectively implementing policies and laws on climate change response in Vietnam.

2. PwDs - people vulnerable to climate change

The phrase “vulnerable groups” appears increasingly common in international legal documents. The term refers to “*groups or communities of people with a lower political, social or economic status, thereby placing them at higher risk of human rights vulnerability, and therefore, they need special attention and protection compared to other groups and communities*” [2]. The vulnerable persons are recognized by international human rights law in various ways, including women, children, PwDs, stateless people, minorities (ethnic, racial, religious), migrant workers, war victims, the elderly, etc. Along with the constant changes in society, wars, diseases, and climate change..., this group of people is expanding. The rights of vulnerable groups constitute an important part of international human rights law. Accordingly, ensuring the rights of vulnerable minorities is, Firstly of all, ensuring their basic rights, such as the right to life, personal freedom and safety, the right to reside [3], etc.

In the context of climate change, the rights of vulnerable people are identified as the focus of climate policies, ensuring human rights. The World Bank once stated that “*climate change impacts the poorest and most vulnerable and poses a major threat to good development outcomes*” [4]. The 5th Impact Assessment Report of the Intergovernmental Panel on Climate Change (IPCC's Fifthly Assessment Report 2014 – AR5) also states: “*Vulnerability is propensity or predisposition to be adversely affected. It results from interacting cultural, social, environmental, and political factors.*” Climate change poses disproportionate risks to people and ecosystems. Accordingly, those who are socially, economically, culturally, politically, institutionally disadvantaged or socially marginalized are particularly vulnerable to climate change [5], such as the rural and urban poor and remote groups and communities with limited adaptive capacity... [6]. Adverse impacts of climate change “*have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or the operation of socio-economic systems or on human health and welfare*” [7], thus, further limiting the capacity to adapt and respond to climate change; preventing and mitigating disaster risks of PwDs [8].

Vietnam is considered one of 10 countries in the world which will be most severely impacted by climate change, of which the Mekong River Delta is one of the three largest deltas that will be heavily

affected by sea level rise [9]. The frequency of storms, flash floods and floods is constantly increasing. Many families lost their homes to floods and storms, and children lost their health early in life due to exposure to air pollution from coal-fired power emissions and other emissions. The poorest, most marginalized and most vulnerable are inevitably susceptible to climate hazards and forced to live in poverty. In particular, PwDs are often vulnerable and at risk of emergencies and climate change due to limited or no access to early warning information sources, evacuation and response plans, and adaptive capacity, including sustainable livelihood schemes, vocational training, employment opportunities, etc. Disaster prevention and mitigation programs, as well as long-term recovery and reconstruction efforts, have not paid due attention to the needs of PwDs. Women with disabilities are particularly vulnerable as their needs are not yet considered in all disaster risk management phases. This can partly be explained due to the heavy influence of the ideology of “valuing *men above women*”. Proper attention is absent to women and children in all climate change adaptation and response activities in Vietnam. Accordingly, the poor, elderly women with disabilities and girls with disabilities are among the most disadvantaged groups.

3. Content to ensure human rights in the context of climate change

In the context of climate change, ensuring human rights is inextricably linked with the foundation of human rights to the environment. One of the rights belonging to the third group of rights (the right to enjoy peace, the right to development and the right to live in a healthy environment) was recorded in the 80s. The Human Development Report 2000 also affirmed that “*poverty eradication is a major human rights challenge in the XXI century. An adequate standard of living, care, decent education, employment and protection against natural disasters is a development goal and a human right*”.

The 2013 Constitution has recognized that “*Everyone has the right to live in a healthy environment and has an obligation to protect the environment*”. Accordingly, “*The State shall adopt environmental protection policies; on environmental protection; manage and use natural resources in an efficient and sustainable manner; conserve nature and biodiversity; and take the initiative in preventing and controlling natural disasters and responding to climate change; The State shall encourage all activities for environmental protection and the development and use of new energy and renewable energy; Organizations and individuals that cause environmental pollution, natural resource exhaustion or biodiversity depletion shall be strictly punished and shall rectify and compensate for damage*”. On that basis, Article 5 of the Law on Environmental Protection 2020 has noted that “*The State shall facilitate the agencies, organizations, residential communities, households and individuals to participate in performance, inspection and supervision of environmental protection activities*”. “*Ensure the interests of organizations, communities, households and individuals that contribute to environmental protection activities*”. These regulations were later concretized in the Law on Environmental Protection 2014 and the Law on Environmental Protection 2020 (effective January 1, 2022), Law on Access to Information 2016 and the National Strategy and Plan on Climate Change Adaptation and other relevant documents.

Thus, “the right to live in a healthy environment” is a natural human right that should be guaranteed in the context of climate change. This is one of the important rights because it is directly related to the quality of life, along with other criteria to assess the quality of life, such as income per capita and the social security system. From a legal perspective, the human right to live in a healthy environment is the assurance that people can live with the quality of the surrounding environment up to acceptable standards [10].

However, in the current new approach, ensuring people's “right to live in a healthy environment” is extended to ensuring “environmental rights” with the understanding that *any statement about human*

rights is associated with environmental conditions in a particular environmental condition. Environmental rights comprise substantive and procedural rights as tools used to achieve substantive rights [11].

The substantive rights encompass: (i) The right to freedom from pollution, environmental degradation and activities that adversely affect the environment, threaten life, health, livelihood, well-being or sustainable development within, across or outside national boundaries; (ii) The right to protection and preservation of the air, soil, water, sea-ice, flora and fauna, and the essential processes and areas necessary to maintain biological diversity and ecosystems, (iii) The right to the attainable standard of health free from environmental (iv) The right to safe and healthy food and water adequate to their well-being, (v) The right to a safe and healthy working environment, (vi) The right to adequate housing, land tenure and living conditions in a secure, healthy and ecologically sound environment, (vii) The right not to be evicted from their homes or land for the purpose of, or as a consequence of, decisions or actions affecting the environment, except in emergencies or due to a compelling purpose benefiting society as a whole, (viii) The right to participate effectively in decisions and to negotiate concerning their eviction and the right, if evicted, to timely and adequate restitution, compensation and/or appropriate and sufficient accommodation or land, (ix) Right to timely assistance in the event of natural or technological or other human-caused catastrophes, (x) Right to benefit equitably from the conservation and sustainable use of nature and natural resources, (xi) Right of indigenous peoples to control their lands, territories and natural resources and to maintain their traditional way of life. This includes the right to security in enjoying their means of subsistence.

Procedural rights prescribe proper steps for the exercise of fundamental rights [12]. Procedural rights include: (i) the right to access information related to the environment, (ii) the right to participate and express opinions on environmental issues and (iii) the right to access justice.

4. Ensuring the rights of PwDs in the context of climate change and some suggestions for improving policies and laws

Vietnam is one of the Firstly countries in the Asia-Pacific region to develop and implement a long-term plan for PwDs under the initiative of the Economic and Social Commission for Asia and the Pacific of the United Nations (UNESCAP) and to ratify the International CRPD in November 2014. Vietnam's laws on PwDs have also been comprehended with the promulgation of the Law on PwDs 2010, and many documents under the Law are Decrees and Circulars detailing and guiding the implementation of the Law on PwDs; provisions in other relevant Law documents such as Law on Legal Aid 2006, Labor Code, Law on Education, Law on Vocational Training, Law on Protection, Care and Education of Children, Law on Information Technology. The project “Helping PwDs in the period 2012 – 2020” has been approved by the government with the goal: “90% of PwDs will receive legal aid when they need it in the period 2012 - 2015, and 100% of PwDs are entitled to legal aid when they need it in the 2016-2020 period”.

Thus, approaching the content of human rights in the context of climate change mentioned above and the provisions of law related to the rights of PwDs; on the basis of ensuring the principle of “equality” and “non-discrimination” for PwDs, the rights of PwDs in the context of climate change in addition to ensuring all substantive and procedural rights in the content of “environmental rights”, should focus on 3 groups of rights: (i) Right to assistance related to natural or artificial disasters; (ii) Right to access to information related to the environment and (iii) Right to justice. These groups of rights are determined on the basis of limited characteristics of PwDs, defined according to Clause 1, Article 2 of the Law on PwDs 2010. PwDs is “a person who is impaired in one or more body parts or suffers

functional decline manifested in the form of disability causing difficulties in working, living and studying”.

Accordingly, to ensure the rights of PwDs in the context of climate change, some orientations need to be considered, specifically as follows:

Firstly, raising awareness about the rights of PwDs in the context of climate change is one of the central issues of human rights. This content is intended to ensure that the principle of “*Environmental protection is harmoniously linked with social security, children's rights, gender equality, ensuring everyone’s right to live in a healthy environment*” is recognized in the Law on Environmental Protection 2020 and the principle of “*non-discrimination*” in the law in general. The awareness-raising needs should be performed synchronously and uniformly in the political system and the State agencies from the central to local levels, helping to incorporate issues related to PwDs in strategies and plans to respond to climate change and socio-economic development goals according to the principles recognized in the Law on Environmental Protection 2020. “*Environmental protection is a condition, foundation, central and prerequisite factor for sustainable socio-economic development. Environmental protection activities must be anchored with economic development and resource management and be considered and evaluated during the implementation of development activities*”. Accordingly, formulating policies and laws on responding to climate change should be integrated into socio-economic development goals, including the rights of PwDs. During the law-making process on PwDs, it is necessary to follow a human rights-based approach [13]: (i) research and widely disseminate this approach as well as the knowledge of human rights in Vietnam among civil servants and public employees, especially those directly involved in the legislative process; (ii) renovate the process of making laws and ordinances, actively promote the participation of representatives of PwDs in the process of law and ordinance making.

In addition to raising awareness of the political system and state agencies, it is essential to increase awareness of PwDs' legitimate rights and interests of PwDs that are recognized by law. Because only when PwDs themselves are aware of their role can they change their old ways of thinking, allowing them to actively participate in activities empowered by the state and raise opinions on climate-related issues related to climate. Thus, state agencies need to synchronously and effectively the work of propaganda and education through a team of full-time staff knowledgeable about PwDs, gender and climate change; foster the role of social organizations in coordination to ensure the effectiveness of this activity.

Secondly, with a new approach to ensuring human rights in the context of climate change, which is to ensure “environmental rights”, with a broader connotation of “human rights to live in a healthy environment”, the state should incorporate social security policies with environmental issues; ensure that PwDs have better living conditions, clean food, clean water, safe accommodation, especially in planning relocation and resettlement policies for areas affected by climate change impacts. In addition, ensuring livelihoods and food security for PwDs should also be focused on under the impacts of climate change in Vietnam today.

Thirdly, on the basis of the perception that “the right to access environmental information” is a vital right of the population, especially PwDs, in the context of a gradually improving legal framework such as the Law on Environmental Protection 2020, the Law on Access to information 2016, Decree 13/2018/ND-CP dated January 23, 2018, of the Government detailing a number of articles of the Law on Access to Information, in the upcoming time, the state needs to execute these provisions of the law in practice effectively. Because the more guaranteed right to access environmental information will lay the foundation for PwDs to protect themselves and proactively adapt to climate change.

5. Conclusion

In the context of climate change, the protection and promotion of the rights of PwDs have always been a consistent and top priority of ASEAN, as recognized in the ASEAN Vision 2025 and the ASEAN Master Plan 2025 on the mainstreaming of the rights of PwDs. Therefore, the assurance of the rights of PwDs in the context of climate change is indispensable to ensure international cooperation in climate change.

“Ensuring human rights” is also identified as one of the key principles of the law on environmental protection and response to climate change. On the basis of the approach that “human rights to live in a healthy environment” are evolved to “environmental rights” and ensuring equity, climate justice, and livelihood security, the synchronous performance of solutions to enforce the rights of PwDs is a crucial and necessary requirement. Identifying the right objects and understanding the characteristics of the affected objects will contribute to helping competent State agencies to develop policies and laws more effectively and efficiently.

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The right of access to information and communication technology of persons with disabilities in some countries in the world and experience for Vietnam

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Summary:

The article provides an overview of the rights of PwDs in accessing information and communication technology; the rights of PwDs in accessing information and communication technology in accordance with international law and the law of a number of countries around the world, thereby making comments and suggestions for Vietnam in supporting PwDs to access information and communication technology conveniently and efficiently.

Keywords:

information and communication technology; PwDs; the right to access technology, information and communication

Introduction

Technology, information and communication are effective tools to support people in modern life, meeting the needs of people's research and development. Especially in the current social context, when the Covid-19 epidemic is exploding worldwide, all human activities need the support of information technology. The group of PwDs is no exception. They are a disadvantaged group in society, facing many difficulties in all social and daily activities, accessing educational culture, and especially in accessing information and communication technology. To promote, protect and ensure the equal and full enjoyment of all fundamental human rights and freedoms and promote respect for their inherent dignity, international and national law have also issued many regulations and policies on the rights of PwDs. Within the scope of this article, the author will focus on clarifying the rights of PwDs to access technology, information and communication in some countries around the world and thereby making some recommendations aimed at improving the effectiveness of protection of the rights of PwDs in terms of access to technology, information and communication.

1. Overview of the rights of PwDs to access technology, information and communication

1.1. The concept of PwDs

PwDs are considered one of the largest minorities in the world and also one of the most vulnerable (alongside other vulnerable groups such as women, children, the elderly, and ethnic minorities) because their disability causes them to suffer disadvantages in all aspects of social life. There are also different perceptions of PwDs in international and national laws. Paragraph 1, Article 1 of the ILO Convention No. 159 on the vocational rehabilitation and employment of PwDs 1983 states: “*person disabilities means an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognised physical or mental impairment*”.

Article 1 of the United Nations International CRPD 2006 defines the concept of a person with a disability as follows: “*PwDs 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 Americans with Disabilities Act of 1990 (revised 2008) states that: *The term “disability” means, with respect to an individual who has a physical or mental impairment that substantially limits one or more major life activities of such individual, has a record of such an impairment or being regarded*

as having such an impairment. Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. At the same time, this disability concept does not apply to temporary impairments having an actual or expected duration of 6 months or less. Compared with the United States Law on PwDs 1990, this definition has not changed, the 2008 revised law only clarifies some terms, such as “main activities of living” and the understanding of “an impairment”.

According to Article 2 of the Japanese Law on PwDs of 2004: *“Person with disabilities means individuals whose daily physical, mental or spiritual disabilities significantly and continuously limit life or social life”*.

In India, the law on the Rights of PwDs 2018 replaces the Law on PwDs 1995. Section 2, Part 1 states: *“PwDs include those who have long-term physical, mental, or intellectual impairments when interacting with different barriers that may impede their full and effective participation in society on an equal basis with others”*.

Previously, in Vietnam, a person with a defect in one or several body parts was subject to the regulation of the Ordinance on PwDs 1998. In Article 1 of the Ordinance on PwDs, it was noted: *“PwDs under the provisions of this Ordinance, regardless of the source of disability, is a person who has a defect in one or more body parts or functions manifested in different forms, which impairs his ability to function, causing difficulties in working, living and studying”*. After Vietnam joined the International CRPD, the Law on PwDs 2010 was born, officially using the term PwDs instead of the former, according to which *“Person with disabilities means a person who is defective in one or more body parts or has a functional impairment, which is manifested in the form of a disability, causing difficulties in working, living and studying”*. Changing the way to call “PwDs” to “PwDs” has shown a new perception, showing the humanity that upholds the spirit of “down but not out” of these subjects as well as in line with the term used in the world (*disability*) [11].

Thus, from the concepts mentioned above, it can be concluded that the concept of a person with disabilities is as follows: ***“Person with a disability is a person who is defective in one or more body parts or has a functional impairment that leads to significant and lasting limitations in the participation of PwDs in social activities on an equal basis with others”***.

1.2. The right of PwDs to access technology, information and communication

❖ Rights of PwDs

The rights of PwDs are all fundamental human rights and freedoms and privileges over others enshrined in international and national law [12].

Many international instruments and national laws regulate the rights of PwDs. The rights of PwDs have the following characteristics:

- *The rights of PwDs are inalienable*: Human rights of PwDs are natural, inherent rights associated with human existence. The right to life, the right to equality before the law, the right to freedom of personal safety, the right to be free from exploitation, violence and abuse, the right to independent living, the right to freedom of expression, the right to respect for life privacy, the right to education, the right to health care, the right to work and have a job, the right to participate in cultural activities, entertainment, recreation, sports. These are fundamental and inviolable rights for all human beings, including PwDs.

- *Universal rights of PwDs*: Human rights apply equally to everyone, including PwDs. Everyone is treated equally, without discrimination for any reason, such as race, colour, sex, or religion.

❖ **The right of PwDs to access technology, information and communication**

The right to access technology, information and communication is the right of PwDs to access and use technology, information and communication products and services easily, conveniently and equally with other border populations.

The 2006 International CRPD (UNCRPD) recognises the fundamental rights of PwDs, including the right to access technology, information and communication. This right is mentioned in Article 9 of the Convention. Accordingly, in order to enable PwDs to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure PwDs' 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. In addition, Article 21 of the Convention also stipulates the freedom of expression, opinion, and access to information. Accordingly, States Parties shall take all appropriate measures to ensure that PwDs can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice.

In addition to the UN CRPD, the right of PwDs to access technology, information and communication is also reflected in the Marrakesh Treaty. The treaty has contributed to increasing access to information and documents for PwDs. After extensive negotiations at the World Intellectual Property Organization, the international community adopted the Marrakesh Treaty to facilitate access to published works for the blind, visually impaired or other readability-disabled in June 2013, which entered into force in September 2016. The Marrakesh Treaty requires the Contracting Parties (countries that have ratified or acceded to it) to apply copyright exceptions, allowing the creation and distribution of accessible copies of works, including cross-border exchanges. The main benefits of the treaty are expressed through provisions under certain specific conditions, limitations and exceptions that allow [8]: (1) making easily accessible copies; (2) distribution of easily accessible copies within the country; (3) exporting accessible copies (including digital transmission); and (4) import accessible copies (including digital downloads). The lack of accessible documents is a huge obstacle for the blind and those who cannot read print in general in grasping information, expanding their understanding, and integrating into the community [19]. Therefore, introducing the Marrakesh Treaty has played an important role in enhancing and supporting PwDs, especially the blind, in accessing information.

Thus, under the influence of international law, the right to access information and communication technology is recognised as a fundamental right of PwDs. International law has paid special attention to PwDs – the disadvantaged group in society, so they are able to access tools and fields on an equal basis with others. In different countries, the regulations on the rights of PwDs to access technology, information, and communication vary and will be presented in more detail in section 2 below. However, it can be seen that the law on the rights of PwDs in accessing technology, information and communication includes some basic contents as follows:

- Legal provisions on the rights of PwDs, including the right to access technology, information and communication. This is a group of basic regulations and the State's recognition of the rights of PwDs. On the basis of these provisions on rights, the new law develops and promulgates groups of related and complementary provisions.

- Legal regulations on parties' responsibilities in assisting PwDs to access technology, information and communication. To ensure that PwDs can exercise their rights easily and effectively,

legislators have promulgated many regulations related to the obligations and responsibilities of other subjects in society. Special attention is paid to three main groups: state agencies supporting PwDs, mass media agencies and organisations, businesses and individuals operating in technology and communication. In tandem with the obligations, the above subjects are also provided with the rights with various supports and preferential policies to promote this group's more active participation in exercising the rights of PwDs.

- Regulations on standards and functions to assist PwDs in accessing and using information and communication products and services. These standards are promulgated to uniformly apply within the country and territory uniformly, thereby creating convenience in training PwDs to use these products and services. At the same time, having a clear standard system is also the basis for state management agencies to evaluate and license in case of necessity to release communication, technology and information products and services.

2. Laws of some countries around the world on the rights of PwDs in accessing technology, information and communication

On the ground of the three main groups of the content of the law on the rights of PwDs in accessing technology, information and communication, as mentioned above, the subsequent part will present specific legal provisions of some countries/territories, including the European Union (EU), Japan and Malaysia. Japan and the EU are both developed countries and groups of countries. Thus, human rights in general and the rights of PwDs, in particular, are upheld and respected; Malaysia has many similarities with Vietnam regarding law and socio-economic situation. Thus, learning about the rights of PwDs in accessing technology, information and communication in these countries will bring many valuable lessons to Vietnam.

2.1. Legal provisions on the right to access technology, information and communication of PwDs

The EU member states are all parties to UNCRPD and the Marrakesh Agreement, and therefore all recognise the right of PwDs to access technology, information and communication. The EU and each member state recognise the binding value of the above provisions without codifying them into a specific document within the union or country. The EU only ensures the implementation of UNCRPD's obligations, which is to issue groups of regulations on the parties' responsibilities, standards, and functions to support PwDs by issuing separate legal documents. This content will be discussed in more detail in sections 2.2 and 2.3 below.

In contrast, although Japan has been officially a member of UNCRPD since January 20, 2014, it still promulgates its own regulations to recognise the rights of PwDs. Since 2004, Japan has enacted the Basic Law on Disabilities. The law establishes the fundamental principles of the right of all PwDs to be treated with respect for their dignity. It creates opportunities for PwDs to participate in various fields of society, economy, and culture and access information technology and other areas. The Disability Basic Law also stipulates the development of a “Basic Plan for PwDs” and binds the Government to submit an annual report on the Diet and establish Disability Day.

Like Japan, Malaysia officially became a member of UNCRPD on July 19, 2010, and also issued many documents regulating the rights of PwDs in accessing technology, information and communication. The PwDs Act 2008 is the main and most effective tool to protect the legitimate rights and interests of PwDs in this country. In addition to the PwDs Act 2008, Article 8 of the Federal Constitution of Malaysia also protects the accessibility of PwDs to many areas of social life, including access to technology, information and communication. This provision prohibits all discrimination in terms of access to public facilities, amenities, services and buildings, access to public transport, access to education, access to employment, access to cultural life and access to recreational, recreational and sports activities.

2.2. Legal regulations on the responsibilities of parties for assisting PwDs to access technology, information and communication

In the EU, each Member State has established a focal point responsible for ensuring the implementation of the UNCRPD under Articles 33.1 and 33.2. These agencies are mainly the Ministry of Labor and Social Affairs; and focus on promoting and ensuring the uniform application of UNCRPD and legal documents within the union and their countries on the right to access technology, information and communication of PwDs. This will be the main body coordinating research on policies and laws that benefit PwDs through helpful review and international law research. At the same time, many different organisations under the Governments and non-governmental organisations have also been advocating for the realisation of the right to access technology, information and communication for PwDs in the EU. A typical example is the European Disability Forum (EDF). EDF lobbies for uniform and effective enforcement of legislation in Europe; which concentrates on such areas as communication products and services, technology; media access; electronic communications,... [17].

Apart from promulgating Laws and policies, Japan also established many organisations to ensure the rights of PwDs, such as the Special Committee on Standardization for the elderly and PwDs under the Japan Industrial Standards Committee (JISC) that establishes a set of standards for PwDs, including standards for accessing information technology; The Standardization Inquiry Committee of the Information Technology Research and Standardization Center (INSTAC). INSTAC conducted the study “Barrier-Free Access to Information” in September 2000, according to which PwDs will have access to information without any barriers.

In Malaysia, since the 1990s, the Malaysian Government has had effective policies to support PwDs, such as The National Welfare Policy 1990 aims to set a culture of care as well as mutual assistance, create equal opportunities, stabilise and ensure people's lives; The 2003 National Social Policy focuses on the equal rights of PwDs in many areas of social life. Appropriate policies and legislation are critical to breaking down barriers to PwDs' access to technology, information and communication, regardless of disability. Undoubtedly, technology, information and communication will bring many advantages to PwDs. They can participate in social activities, have jobs and enjoy a better educational environment. Several studies in Malaysia have stated that the government initiative in policy, law and regulation is a good intervention to address the digital divide issues among PwDs. [14].

In addition, the Malaysian Government has also launched the National Strategic Programs on PwDs in 5-year stages to introduce specific policies and measures to support PwDs in many areas of life. There are many regulations to encourage businesses to develop in providing services and products that are friendly to PwDs.

2.3. Regulations on standards and functions to assist PwDs in accessing and using information and communication products and services

Currently, over 100 million PwDs live in the European Union, including 99 million according to the 2016 EU - SILC survey and an estimated 1 million people who live separately in residential facilities and therefore were not counted in the survey. With such a large number of PwDs, ensuring their basic rights is of great concern to the European Union. As a group of active participants in the UNCRPD, the EU also forms a strong legal framework to protect the rights of PwDs in the region, including the right to access technology, information and communication. The EU regulates the issue of access to technology, information and communication of PwDs in a number of legal documents such as the European Accessibility Act 2016, the Act on Accessibility Requirements For products and services in 2019, the Public Sector Agencies Websites and Mobile Applications Accessibility Act 2016. This

legislation stipulates features and standard systems for information technology and communication products and services serving PwDs.

EU Access Act 2016: The Act makes a rule that requires manufacturers and distributors of certain Information and Communication Technology products to take into account accessibility to the device and certify compliance with a potentially far-reaching impact on access to information and communication technology in Europe.

Act on Accessibility Requirements For products and services in 2019: According to the European Commission, the demand for accessible products and services by the public is relatively high, and the number of PwDs is forecasted to increase significantly. An environment where products and services are more accessible will enable social inclusion and enable PwDs to live independently. Thus, this act would promote full and effective equal participation by improving access to common products and services that address the specific needs of PwDs.

The act also provides incentives for parties to conduct or promote research and development and to promote the availability and use of new technologies, including information and communication technologies, mobility aids, assistive devices and technologies appropriate for PwDs, with priority given to affordable technologies.

Accessibility of Websites and Mobile Applications of Public Sector Bodies 2016: This Act is intended to concretise Member State laws and regulations relating to the accessibility of websites and mobile applications of state agencies, thereby approving mobile websites and applications easily accessible to users, especially to PwDs.

By successively ratifying and signing the United Nations CRPD, the majority of the Member States and the Union have committed to take appropriate measures to ensure that PwDs have equal access to information and communication technologies and systems on an equal basis with others and develop, issue and monitor the implementation of standards and minimal guidance on accessibility to facilities and services that are open or made available to the public, and to promote PwDs to access new communication technologies and systems, including the Internet.

An announcement by the European Commission on November 15 2010, titled “European PwDs Strategy 2010-2020: An Innovating Commitment to a Barrier-Free Europe” [3] was rooted in the United Nations Convention and aimed to eradicate barriers that prevent PwDs from participating in society on an equal basis. The notice outlines actions to be taken in several priority areas, including access to information and communication technology and systems. Its goal is to ensure accessibility to goods, services (including public services) and assistive devices for PwDs. In the Digital Agenda for Europe, the European Commission has also emphasised that concerted actions are needed to ensure that new electronic content is fully available to PwDs to provide Europeans with a better quality of life, for example, through easier access to public services and cultural content. In addition, the European Commission has also promulgated the “Strategy on the rights of PwDs 2021-2030”, which will address the diverse challenges faced by PwDs, thereby fostering progress in all areas of the United Nations CRPD, both at the EU and Member State levels.

In Japan, in addition to legal documents specifying quality standards for technology products and services for PwDs, the competent Japanese authorities have also issued a number of manuals for PwDs, such as Guidelines for the elderly and PwDs- Communication equipment and services; Guidelines for the use of telecommunications equipment for PwDs 1998; Guidelines for making web content accessible to PwDs published by the Ministry of Post and Telecommunications and the Ministry of Health and Welfare in 1999; Guidelines on Access to Computer Use by PwDs and the Elderly in 2000 issued by the Ministry of Industry and International Trade; Information and

Communication Policy in Japan in 2002 issued by the Ministry of Public Administration, Internal Affairs, Public Administration and Telecommunications.

Law on Promotion of Research, Development and Distribution of Equipment and Technical Support in 1993: To help the daily and social life of PwDs and the elderly, this law aims to improve industrial technology, thus promoting the development and distribution of various devices.

Law to encourage enterprises to create favourable conditions for PwDs to use telecommunications and broadcasting to improve convenience: This law was enacted to create favourable conditions for people with physical difficulties to use broadcasting and communication services while contributing to balanced development in the age of information.

A guide for the elderly and PwDs - Communication equipment and services (Japanese Industrial Standard, 2003): With the advancement of the information society, people are inclined to use more than one communication device and service. This standard specifies guidelines for improving access to communications equipment and services when primarily used by the elderly and PwDs, whether permanent or temporary. To provide the elderly and persons with permanent or temporary disabilities with greater access to information processing equipment, electronic means of communication, computer, software, Internet and other communication equipment and services. This standard specifies basic planning considerations for developing and designing such devices and services.

Thus, in general, EU legislation on the rights of PwDs to access technology, information and communication is concretised from the provisions of the Convention. EU Member States take appropriate measures to ensure that PwDs have access, on an equal basis with others, to the physical environment, transportation, information and communications, including information and communication technology and systems, and facilities and services that are open or made available to the public, both urban and countryside.

Despite the positive points in policy and legislation, according to research by the European Commission, many regions still have not yet applied EU regulations, and there are differences in the accessibility of buildings, public spaces and certain modes of transportation. Inaccessible information and services might cause isolation for PwDs. Therefore, the European Commission will establish a European resource centre, “AccessibleEU”, by 2022 to build a knowledge base on information and good practices on accessibility between fields. Moreover, following the success of the pilot project of the European Disability Card and the European Parking Card, the European Commission will propose the creation of a European Disability Card to facilitate the mutual recognition of disability in all 27 Member States, thereby acknowledging the equal legal rights and interests of PwDs in the Member States, including the right to access technology, information and communication.

In Japan, this country has built a relatively comprehensive legal framework to ensure the right to access technology, information and communication of PwDs. Japan started standardisation activities for the elderly and PwDs because the country has a rapidly ageing population. Establishing standards will helpfully ensure the rights of PwDs, and abolish all impediments so that PwDs will have as easy access to technology, information and communication as all Japanese people.

As a developing country that is unable to keep up with the EU and Japan in terms of socio-economic development, Malaysia's law comprises basic provisions to secure the rights of PwDs in accessing technology, information and communication. In addition to confirming that all PwDs have the same right to access to technology, information and communication as other ordinary persons, the Malaysian Government also regulates that the Government, agencies and organisations will ensure to create the most favourable conditions for PwDs to have access to technology, information and communication, especially to facilitate their involvement in transactions formally and conveniently.

It is noted that the access to technology, information and communication of PwDs in Malaysia will be provided completely free of charge by the Government and business organisations. This will contribute to eradicating obstacles, helping PwDs have more opportunities and easier access to this field.

Apart from developing a strong legal framework to protect the rights of PwDs, the fitting infrastructure is also critical to guarantee that PwDs can access information, technology, and communication. PwDs face many difficulties and barriers from society, including the absence of infrastructure. Similarly, the Malaysian Government could have provided information and communication technology infrastructure better. Therefore, the Malaysian Government should emphasise providing good services to the people, especially for PwDs. Because most PwDs can contribute to economic achievement if they know how to use technology, information and communication, they will benefit from it. On the other hand, providing good infrastructure is also one of the standards to measure the development of countries and people's lives.

3. Vietnamese law on the right to access information and communication technology of PwDs and some recommendations from the experience of other countries

3.1. Vietnam's Law on the right to access information and communication technology of PwDs

Vietnam is the 118th member to join the National CRPD on October 22 2007, and officially became a member on February 5, 2015. On the basis of the Vietnam National Socialist Congress in 1992, the Vietnamese National Assembly passed Law on PwDs 2010 that provides for the rights and obligations of PwDs; the responsibility of the State, family and society for PwDs. In it, the right to access information and communication technology of PwDs are also promoted. Point a, Clause 1, Article 4, Law on PwDs 2010 specifies that PwDs are guaranteed to be able to exercise their right to access information technology in consonance with their type and extent of disabilities.

In addition to the right to access information and communication technology, our country's law also stipulates the responsibilities of different actors in society in supporting PwDs to access information and communication technology (Article 43 Law on PwDs 2010).

Besides, Circular No. 26/2020/TT- BTTTT dated September 23, 2020 issued by the Ministry of Information and Communication on application of standards and technology assisting PwDs to access and use information and communications products and services has specified specific responsibilities in the application of standards and technology assisting PwDs to access and use information and communications products and services for Enterprises producing and distributing information and communication products and services, including hardware, software and digital information content; State agencies, including ministries, ministerial-level agencies, governmental agencies, People's Committees at all levels and non-business units to design and develop the Website/Web Portal/Public Service Portal; The press agency has a license to operate radio and television; the press agency has an electronic information page/e-newspaper; and Organisations providing public services and public administrative services. Standards to support PwDs to access and use information and communication technologies are prescribed and applied in two forms: mandatory and recommended.

Similar to Malaysia, Vietnam has also developed a basic legal framework regulating the rights of PwDs in accessing technology, information and communication. Vietnam's law on this issue is stipulated in many legal and sub-law documents such as the Law on PwDs 2010, the Law on Legal Dissemination and Education 2012, and the Law on Access to Information 2016. These documents are increasingly comprehensive in accordance with international practices and real life. For example, when it was Firstly promulgated in 2010, the Law on PwDs did not mention the right to access information of PwDs, but only referred to the right to access information and communication technology. This is a major shortcoming because it is information people aim for, the core that PwDs

or any individual or organisation need to access. On the other hand, the absence of the above regulation also represents uncertainty in compliance with the spirit of UNCRPD. However, later, in 2012 and especially in 2018, when the Law on Access to Information 2016 took effect, this content was concretised: “*The State creates favourable conditions for PwDs,... to exercise the right to access information*” (Clause 6, Article 3 of the Law on Access to Information 2016). This is a remarkable effort of the State in absorbing and perfecting the law to ensure the rights of PwDs increasingly. However, Vietnam’s law on the rights of PwDs in general and the rights of PwDs in accessing technology, information and communication still has many “holes”, not really completed and not fully promoted the role and values in life. Therefore, it is necessary and urgent to learn from the experiences of other countries to perfect these legal provisions.

3.2. Recommendations from the experience of some countries

Technology, information and communication play a pivotal role for PwDs in supporting them to conquer the hindrances to integrating into the community. Currently, Vietnam has about 6.2 million PwDs, accounting for 7.06% of the population aged 2 years and over. However, the percentage of households with PwDs that possess communication devices is lower than that of persons without impairment, which is demonstrated in the chart below:

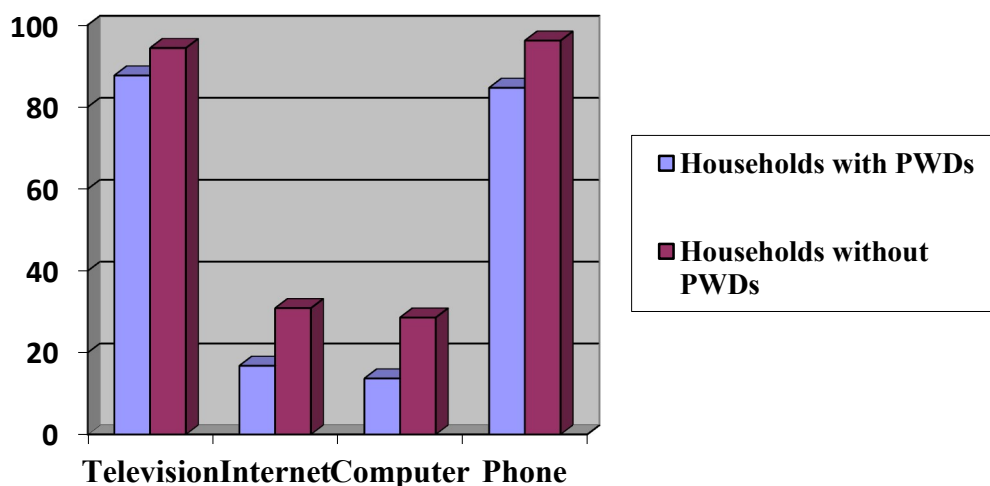


Chart 1. Comparison of ownership rates of technology, information and communication equipment between households with PwDs and households without PwDs

In addition, there is a big difference in the rate of mobile phone usage between PwDs and persons without impairment (38.85% vs 73.09%). This gap is similar when comparing by gender and area (urban vs rural). The Internet usage rates vary among PwDs and between PwDs and persons without impairment. The percentage of PwDs using the Internet was 6.5 times higher than those with disabilities (42.9% vs 6.7% [18]). The above data indicate that, although the State has legal policies to protect the right to access information and communication technology of PwDs, these policies still need to achieve high effectiveness in practice. Therefore, the author makes some suggestions for the State, agencies and businesses to ensure the right to access information and communication technology of PwDs.

Firstly, the State needs to take specific measures to support PwDs

Vietnamese law has relatively fully applied the rules of the CRPD. However, it is admitted that the legal provisions are only encouraging and recommended, with no specific effective policies and measures to support PwDs in accessing technology, information and services.

Therefore, in addition to promulgating legal documents, the State needs to adopt specific policies on the issue of access to information and communication technology of PwDs. With reference to the policy of the European Commission, the establishment of a resource centre to build a knowledge base of information and good practices on accessibility across sectors of PwDs; or establish a National Strategy on PwDs such as Malaysia, which specifies supports for PwDs in phases, especially in the fields of technology, information and communication; establish a set of standards for access to information and communication technology for PwDs like Japan. State support can be manifested in various aspects such as disability-appropriate infrastructure; legal policies to protect the rights of PwDs; contributions of agencies and organisations in supporting PwDs; guiding and training PwDs to access and use technology, information and communication proficiently.

Besides, the State and specialised agencies need to consider and study the participation in international conventions and treaties on the protection of the rights of PwDs, especially in the field of access to technology, information and communication. Currently, 57 signatories, including 83 countries, have acceded to the Treaty of Marrakesh. However, Vietnam is not a party to this treaty, so people who cannot read print in Vietnam still need help accessing the documents.

Secondly, it is necessary to set more mandatory regulations for entities supporting PwDs to access technology, information and communication.

Pursuant to the provisions of Circular No. 26/2020/TT - BTTTT dated September 23, 2020, of the Ministry of Information and Communication on the application of standards and technology assisting PwDs to access and use information and communications products and services, the number of compulsory rules is small, whereas the majority of the rules are recommendable. Thus, access to technology, information and communication for PwDs still needs to be improved.

Malaysian law mandatorily requires that information, technology and communication providers enable PwDs to access information, technology and communication technology in the Disabilities Act 2008. However, mandatory regulations are not in Vietnamese, EU or Japanese laws.

From this situation, (i) The State needs to issue more mandatory regulations for organisations, agencies and businesses in the application of standards and technologies to assist PwDs in accessing and using information and communication technology products and services; (ii) The State, agencies and businesses need to actively research and develop more technologies to help PwDs access technology, information and communication easily and quickly.

Thirdly, the State should introduce sanctions when entities fail to perform or do not fully perform their responsibilities to support PwDs.

Current legal regulations delineate responsibilities for different entities in assisting PwDs to access information and communication technology. However, the law does not have provisions on handling the responsible entities failing to perform their duties improperly or inadequately. This causes difficulties for PwDs in accessing technology, information and communication. This does not only exist in the Vietnamese legal regulations but also the legal documents of Malaysia or the EU. Therefore, competent state agencies need to take some specific measures, such as:

- To promulgate regulations on sanctioning administrative violations against subjects who commit violations or fail to properly and fully fulfil compulsory obligations towards PwDs.

- Implement measures to monitor, examine and handle violations against subjects who commit violations or fail to properly and fully fulfil mandatory obligations towards PwDs.

- Cases that violate the law on PwDs can also be sued in court or prosecuted for investigation if there are signs of crime. For these cases, the State can handle publicly or widely notice in the mass media to educate and change awareness, attitudes, and the sense of responsibility towards PwDs [1].

Fourthly, it is necessary to increase the quantity and improve the quality of television programs serving PwDs

Disability is presented in many forms, so it is difficult to comprehensively help PwDs access information and communication technology. Undeniably, television programs with sign language are an effective form of assisting PwDs to access technology, information and communication. Although there have been news programs with sign language, the number of such programs still needs to be bigger, and the actual effect is not high due to the limited time of broadcasting, the size of the screen or the receptive audience [1]. Currently, only 3 TV channels, VTV1 (broadcast at 6 pm), VTV2 (broadcast at 10 pm) and HTV9, have sign language interpreters, while more than 300 radio and television channels are broadcast daily. These problems constrain the access to information of people with hearing and speech disabilities. Therefore, it is necessary to enhance the quantity and quality of TV/news programs serving PwDs.

Fifthly, the State needs to have specific policies to apply technology, information and communication to build the capacity of PwDs.

Applying information and communication technology is one of the ways to expand educational and employment opportunities for PwDs, especially the visually impaired, helping them to be economically independent and easily integrate into society. They have access to technology, information and communication, and learning and job opportunities.

In March 2017, the Vietnam Association of the Blind and Nippon Telesoft (Tokyo, Japan) implemented the project “Survey to verify the establishment of the Information and Communication Technology Education Center (ICT) to improve capacity for the visually impaired” under the “Program proposed from Japanese enterprises” sponsored by JICA. In order to improve the capabilities of the visually impaired, such as independence and social inclusion, VBA has installed printers and Braille displays manufactured and distributed by Nippon Telesoft at the Training Rehabilitation Centre for the Visually Impaired (TRC); established the Information and Communication Technology (ICT) Training Center in Hanoi (managed by VBA) and a training branch in Hue (managed by the Association of the Blind in Thua Thien-Hue province); developed ICT training curricula, guided training for teachers and provided practical training for about 70 visually impaired students. Thanks to this cooperation, some Vietnamese PwDs have access to technology, information and communication, then be trained and offered job opportunities to eliminate their guilt and become useful to their families and society. Such project models should be further replicated nationwide so that PwDs have more opportunities to contribute to society.

Conclusion

According to inclusive development research, barriers to information and communication are among the four greatest barriers (physical environment, awareness, information and communication, policies and laws) that prevent PwDs from integrating into the community. The enhancement of access to information will help PwDs and the whole community to improve their awareness, thereby changing attitudes and behaviours towards PwDs and ensuring the full participation of PwDs in the community. Most international and national laws have provisions to ensure the rights of PwDs in general and in accessing technology, information and communication in particular. Vietnam is also a country that adheres to international regulations on the rights of PwDs. From the experience of the countries analysed above, Vietnam should adopt some solutions to ensure the rights of PwDs further. Policies, laws and action strategies for PwDs will contribute to removing barriers and providing an equal and easier living environment for PwDs who face many difficulties in society.

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CHAPTER 3:

Ensuring the rights of persons with disabilities in Sustainable Development in the social and educational field

The right to education of children with disabilities – international standards, the law and practice of Vietnam

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Abstract:

Children with disabilities are the most vulnerable group of children. They have equal rights to enjoy fundamental rights and freedoms like all other children, but they have to suffer many disadvantages in life. Many children's legitimate rights and interests are regulated by law, but they are not fully enforced for various reasons, including the right to education. The article analyses in-depth international standards, laws and practices of Vietnam on the right to access education for children with disabilities, draws out results, limitations and proposes solutions to implement the principles, international standards, guidelines, regulations, policies and laws of Vietnam on the right to access education of children with disabilities in Vietnam today.

Keywords: Children, disability, right to access to education.

1. International standards on the right to education of children with disabilities

According to the 1989 International Convention on the Rights of the Child (CRC), a child is defined as every human being below the age of eighteen years unless, under the law applicable to the child, a majority is attained earlier (Article 1, CRC). PwDs, according to the 2007 International CRPD (CRPD), include those with 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.

Children with disabilities have all the same basic rights and freedoms as any other child, but the physical, mental, intellectual or sensory impairments induce barriers to the full and effective participation of children in society, making it difficult to fully realise their rights on an equal basis with other children. Therefore, to overcome these hindrances, the international community has developed common international standards for countries to implement.

International standards on the rights of PwDs in general and the rights of children with disabilities, in particular, are enshrined in many documents issued by the United Nations and many international organisations. Among them are the United Nations International Convention on the Rights of Children in 1989, the United Nations CRPD in 2006, the United Nations Standard Rules on Equalization of Opportunities for PwDs, principles on protecting people with mental illness and improving the quality of mental health care; Salamanca Statement and Framework for Action on Special Needs Education; Declaration on the Full and Equal Participation of PwDs in the Asia-Pacific Region and Action Plan of Asia and the Pacific Decade of Person disabilities (1993 - 2002).

The basic concept of the right to access education for children with disabilities is reflected in the following aspects:

Firstly, equal access to quality and free education

Children with disabilities have the same right to access education as all other children, to enjoy this right without discrimination fully, and to be treated fairly and equally in terms of opportunities.

Clause 2, Article 24 of the United Nations CRPD stipulates: that the State Parties shall ensure that:

(a) PwDs are not excluded from the general education system on the basis of disability, and children with disabilities are not excluded from free and compulsory primary education or secondary education on the basis of disability;

(b) PwDs can access inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live.

Clause 3(c), Article 24 stipulates that 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 maximise academic and social development.

Rule 6 recommends that States recognise the principle of ensuring equal opportunities in primary, secondary and tertiary education for children, youth and PwDs in integrated conditions and circumstances. For a country where education is compulsory, it should be implemented for all girls and boys with disabilities of all types and levels, including the most severe cases (section 4). Moreover, special attention should be paid to the following subjects: (a) Very young children with disabilities; (b) The preschool-age child with disabilities; (c) adults with disabilities, especially women [1] (Section 5).

Secondly, inclusive and child-centred education

The Salamanca Statement and Framework for Action on Special Needs Education [2] emphasises the necessity for a child-centred educational approach to ensure the academic success of all children and education within the regular education system in the inclusive orientation is the most effective means to combat discriminatory attitudes, create welcoming communities, build inclusive societies and achieve education for all.

The guiding principle of the Framework is that schools must accommodate all children regardless of their physical, intellectual, social, emotional, linguistic or any other factors. This applies to children with disabilities, gifted children, street and working children, children in remote areas or from nomadic groups, children from ethnic minorities in terms of linguistic, ethnic or culture, and children belonging to disadvantaged or marginalised groups [3].

The State Parties are obliged to:

- Develop a national action plan on education based on the principle of inclusion, integration and participation;
- Legislation should recognise the principle of equal opportunity for children, youth and adults with disabilities to receive education at primary, secondary and tertiary levels of education to the fullest extent possible in an environment of integration;
- Education policy at all levels, from central to local levels, should stipulate that children with disabilities can attend local schools, that is, the school they would attend without impairment.
- Implementing “inclusive” education for children with disabilities is an integral part of the national plan to achieve education for all. Even in exceptional cases, when children are placed in specialised schools, their education should not be completely segregated. Children should be encouraged to attend half-time in regular schools. Particular attention should be paid to ensuring equality of opportunity for girls and women with disabilities [4];
- Attention should be paid to girls because, in general, girls with disabilities are often more disadvantaged than boys with disabilities [4].

The Action Program of the Decade of Disability in the Asia-Pacific region (1993 - 2002) notes that in education, countries must ensure the integration of children and adults with disabilities into national

formal and non-formal education. There are distinctive targets for girls and women with disabilities who are beneficiaries of national programs and projects on education and literacy;

- Support children and adults with different types of disabilities to integrate into the education system through many measures such as: Developing family and community-based early intervention services for children with disabilities; educating parents and families of children with disabilities [5]

- Countries need to recruit teachers, including teachers with disabilities, who are qualified in Braille and/or sign language to train professionals and staff at all education sector levels.

2. Vietnamese law and practice on the right to access education for children with disabilities

Currently, in Vietnam, there are about 8 million PwDs, accounting for 7.8% of the population, of which there are 2,264,000 children with disabilities, accounting for 28.3% of the total number of PwDs [6]. With the principle that human rights, civil rights in politics, civil, economic, cultural and social are recognised, respected, protected and guaranteed according to the Constitution and the law. The State of Vietnam has made great efforts to improve institutions and strengthen measures to ensure the implementation of the right to access education for children with disabilities.

Firstly of all, in terms of institutions, the 2013 Constitution and many other legal documents promulgated in the past time have internalised the International Convention on the Rights of the Child 1989, the International CRPD. 2006.

- *Ensure the equal right to access quality and free education,* based on the principles of international law that, is equality, non-discrimination and the child's best interests [7]. The Constitution and Vietnamese laws and regulations stipulate that all citizens have equal access to education. Children with disabilities are fully entitled to children's rights and the rights of PwDs as prescribed by law and without any discrimination on the basis of disability. The Law on Universalization of Primary Education in 1991 and the Law on Education in 2019 specify that: primary education is determined to be compulsory from grade 1 to grade 5 for all Vietnamese children from 6 to 14 years old [8], without collecting tuition fees by the State; step by step universalise secondary education; develop higher education and vocational education; implement the policy of scholarships and reasonable tuition fees [9].

For children with disabilities, the State prioritises and creates conditions for learners who are children with disabilities to exercise their learning rights and obligations. Due to a defect in one or more body parts or a functional impairment, the Law on PwDs stipulates that the access to education of children with disabilities differs from that of children without disabilities. Specifically, children with disabilities are allowed to be admitted at an age higher than the prescribed age for general education; prioritised in enrollment; be exempted or reduced from some subjects or educational contents and activities that they cannot participate in due to their limited capacity; be exempted from tuition fees, training costs and other contributions; be considered for scholarships, support means and school supplies [10]. People with hearing and speaking disabilities are taught in sign language, and people with visual impairments are taught in Braille according to the provisions of the Law on PwDs [11].

- *Implement inclusive and child-centred education:* The current legal system of Vietnam stipulates that the learning of children with disabilities can be carried out according to inclusive education methods [12], semi-inclusive education [13] and specialised education [14]. PwDs, parents or guardians of PwDs have the right to choose an educational method suitable to the individual development of the person with a disability. However, special education is applied only when there need more conditions for PwDs to learn inclusively. The policy of educational development for children with disabilities is a priority for inclusive education which is considered an educational method to meet the different needs and abilities of learners, ensure equal learning rights, and

education quality in compatibility with learners' needs, characteristics and abilities; respect the diversity and differences of learners and do not discriminate [15].

Since 2006, the Minister of Education and Training has issued Decision No. 23/2006/QĐ-BGDĐT dated May 22, 2006, regulating inclusive education for the PwDs and PwDs and disabilities with the goal of (1) Helping PwDs enjoy the same educational rights as other learners; (2) Enabling PwDs to learn culture and vocational skills, rehabilitate and develop their abilities to integrate into the community. At the same time, strengthen the contingent of teachers and educational administrators on student-inclusive education by issuing a training program for teachers and administrators; professional training program [16].

Implement policies and laws on the right to education, as of December 2020, Vietnam has established a system of centres to support the development of inclusive education at the provincial and district levels. More than 20 out of 63 provinces and cities have established the centres; there were 107 special education institutions and 12 education centres for children with disabilities. These institutions implement inclusive education at all levels of general education. The number of children with disabilities attending school in Vietnam has increased tenfold over the past two decades. According to the National Survey on PwDs, the rate of children with disabilities attending primary school at the correct age is about 88.7%, and 33.6% in upper secondary school [17].

In order to intensify the teaching staff and comply with the provisions of the law, pedagogical training institutions have paid attention to this work. Currently, 4 pedagogical universities and 3 colleges in the country have established the Faculty of Special Education and opened the codes for training teachers to teach children with disabilities. Annually, these schools train nearly 600 teachers to teach children with disabilities; provide training for 600 - 700 managers and 2,000 - 2,500 teachers of pre-schools, junior high schools and high schools in 63 provinces/cities on inclusive education for students with disabilities so that these people can conduct training and guide other local teachers on inclusive education, further develop a network of teachers to teach children with disabilities throughout the country [18].

In addition to the achieved results, ensuring children's right to education faces limitations, not in line with international regulations; for example, Vietnam only guarantees free primary education. For other education levels, the new law only stipulates that the school considers students with disabilities to reduce or exempt tuition fees and other contributions to the school. Under this provision, PwDs are only eligible for reduction or exemption, not free education.

Many educational institutions do not have sign language interpreters for the deaf, Braille for the blind or accessible facilities for PwDs such as walkways and toilets that wheelchair users can access. The survey and assessment report on support for PwDs 2012 - 2020 show that, out of every 100 schools, only 3 schools have an appropriate design (2.9%), 8 schools have walkways for PwDs (8.1%), and 10 schools have toilet facilities suitable for children with disabilities (9.9%). Only 1 out of 7 primary and secondary teachers are trained to teach students with disabilities (14.1%). The need for supporting materials and equipment is also one of the major barriers for PwDs in inclusive education. Especially in the current context where the textbooks of the general education program are being revised and supplemented, there need to be more learning materials for PwDs. Programs and textbooks for children with disabilities are incomplete. Currently, a framework program for primary school children with visual and hearing impairments has only been developed, while at the lower secondary level, the framework program of the secondary school supplementary system has been applied. However, there is no program specifically for autistic children and mental retardation. There is no unified set of textbooks for all types of disabilities. After finishing primary and secondary school, deaf and hard-

of-hearing students have not been able to attend high school. Materials and textbooks for deaf and hard-of-hearing children are available but not commensurate with their needs. Moreover, publishing and learning materials (such as Braille) costs very high. Thus, this is also one of the challenges in ensuring access to materials and training programs for PwDs.

The inclusive education program requires schools to have individual plans to exempt and reduce some subjects for PwDs, but currently, special education programs are available for primary school students only, not for the high school system. 100% of public educational institutions with students with disabilities' participation lack teaching aids and equipment.

Thus, it is a fact that although there are provisions of the law, the implementation of inclusive education still needs to be improved due to the lack of trained teachers. In schools and specialised classes for children with disabilities, the number of teachers trained in special education departments in pedagogical schools is still too small. Their professional qualifications and skills do not meet the teaching requirements for children with different types of disabilities. Moreover, there is the fact that the regimes and policies for administrators and child-rearing staff in social protection centres and teachers in special schools still need to be more reasonable and appropriate, which is not suitable for different types of raising and teaching children with special circumstances. Salary and allowances are different from the work they are undertaking. Teachers who graduated from Special Education have hardly been able to work at public educational institutions; most work at non-public institutions or intervention centres for children with disabilities.

3. Solutions to ensure the right of children with disabilities to access education in Vietnam

On August 5, 2020, the Prime Minister issued Decision No: 1190/QĐ-TTg approving the program to assist PwDs in the period of 2021 - 2030 with the goal that during the period 2021 - 2025, 80% of children with disabilities at pre-school and general school age have access to education and in the period 2026-2030, 90% of children with disabilities at pre-school and general school age will have access to education. To achieve this goal, the following solutions need to be implemented synchronously:

a) To comprehensively and synchronously assess the status of realising the right to access education of children with disabilities

For children with disabilities to enjoy inclusive education, or if it is impossible to implement it, they have the right to study in special schools. The Firstly step requires the education sector to clarify the types of disabilities. How many of them can adapt to inclusive education? How many of them need to study in special schools? [19]. Then, how many teachers have been trained to be able to undertake inclusive education, how many are required, and how long does it take to train them? From there, develop a human resource training program for teachers to teach children with disabilities. Does the current facility and equipment meet the requirements? If not, what will the new construction plan look like? What are the current curriculum and teaching plans for children with disabilities? Does it respond to requirements? To what extent is the response? When is it expected to respond? Are state funding sources secure? If not, how to mobilise the community and donors?

b) To further improve institutions to ensure access to education for children with disabilities

Research to guarantee access to quality and free education, not just at the primary level. Amending and supplementing the Law on PwDs in 2010 to ensure the principles of accessible education for children with disabilities as a human right in accordance with international human rights standards.

Studying policy documents on education for PwDs, ensuring universalisation of lower secondary education for PwDs and promoting the implementation of preferential policies for teachers and staff participating in educating children with disabilities; having a training plan associated with job assignment for trainees right after graduation; researching and developing standards and criteria for children with disabilities to intervene and supporting education for children with disabilities.

c) Researching, formulating and developing programs, textbooks and learning materials for PwDs in pre-school and general education to meet the diverse needs of PwDs

Because PwDs have many forms of disabilities, each form of disability is divided into different degrees of severity, so it is required to develop appropriate programs and textbooks associated with reality and in sync with the new general education. Based on this requirement, it is advisable to develop educational programs for children with disabilities, especially in pre-school and general education age, to develop their morality and capacity to adapt to inclusive education associated with each type of disability. Expediently compile and publish books on developing specific skills and guiding documents for organising training on inclusive education for teachers of children with disabilities at all levels. For the pre-school level, it is necessary to amend the current program in order to proceed to promulgate a new program in the overall pre-school education program. For the educational program and the compilation of supplementary textbooks for children with disabilities studying in specialised educational institutions to access the 2018 General Education Program.

d) Incorporate the content of inclusive education in teacher training programs for universities and colleges offering pedagogical training

The policy of developing inclusive education for children with disabilities is applied to special education teachers and all teachers in general. Thus, the Ministry of Education and Training should have a guiding document on incorporating inclusive education content in all teacher training programs in all pedagogical universities and colleges. Currently, only 4 pedagogical universities and 3 pedagogical colleges in the country have established special education departments and opened codes for training teachers to teach children with disabilities. In order to achieve the goal of 80% of children with disabilities accessing education by 2026 and 90% by 2030, it is imperative to train human resources for special education. Moreover, the policy of inclusive education development requires pedagogy teachers to have knowledge and skills in educating children with disabilities.

In order to embody the inclusive education concept in teacher training programs for universities and colleges with pedagogical training, it is required that the universities and colleges develop educational programs which form a separate compulsory subject and allocate the necessary credits in accordance with the requirements of those establishments.

e) Develop documents and organise training for teachers, administrators, and educational support staff for PwDs involved in educating PwDs at pre-school and general school age on professional education for PwDs

Pedagogical education and training institutions shall develop educational materials, especially instructional documents for pedagogy teachers; at the same time, organise training courses for teachers, administrators, and support staff for PwDs on the most basic contents of inclusive education.

The development of educational materials must be appropriate to the target audience, such as materials for pre-school, primary school, secondary and high school; materials for managers and staff supporting the education of PwDs of different ages. Embrace basic contents to help learners understand the concept of children and children with disabilities; rights of children with disabilities and classification of children with disabilities; Models of educational experiences for children with disabilities; Inclusive education in the world and Vietnam; methods and practical skills for educating children with disabilities, including 3 modes, i.e. inclusive education, semi-inclusive education and special education; CRPD and Vietnam's regulations, policies and laws on PwDs...

g) Research and develop an effective service system and educational model for PwDs from central to local levels, suitable to the diverse needs of PwDs and people involved in education for PwDs.

Firstly of all, it is necessary to adopt different approaches in developing the educational support service system for PwDs and children with disabilities, which must be based on the ability and educational support needs of learners and their families and especially the ability to meet this assistance need of support service providers, and educational support services for PwDs.

Models of service organisations to support PwDs in general and to support education for PwDs, in particular, must be developed in parallel in public and non-public establishments, not only in big cities but also in localities across the country. State management agencies must develop standards/criteria for establishing and operating establishments regarding facilities, management organisation, personnel, and educational support programs.

The State creates conditions in terms of resources, especially human resources, to provide support services for the education of PwDs because this is always a central issue to ensure the quality of support services, in which attention is paid to train, foster and develop human resources; develop standards for job titles and positions and provide professional training and retraining according to the requirements of the job position; conditions for ensuring the quality of training and retraining institutions (especially in terms of training and retraining programs; training qualifications and experience of staff; facilities, means and equipment).

h) Review, update and manage data on the special educational needs of PwDs in the management software of the education support system for PwDs.

Develop database and management software for the education of PwDs and the rationale for planning a system of specialised facilities for PwDs and centres to support the development of inclusive education; Vocational training and development of specific skills for people with different types and degrees of disabilities; Model of early intervention, early detection, semi-inclusive education, inclusive education, special education, education of PwDs at home and in the community, distance education.

Conclusion

The right to access education is a basic right of everyone. However, children with disabilities are the most vulnerable group, so without special policies, it is very difficult for children with disabilities to access education. Stemming from the vulnerable nature of children with disabilities in accessing education, international standards on children's rights and rights of children with disabilities have been developed with the basic contents of ensuring the rights and equality and ensuring the principles of inclusive education of children with disabilities.

As one of the signatories of international treaties on children's rights and the rights of PwDs, Vietnam has made great efforts in perfecting the mechanism and enforcing it to ensure equal opportunities for all children with disabilities to access education, striving that by 2026, 80% and by 2030, 90% of children with disabilities will have access to education. To achieve this goal, it is necessary to conduct synchronous solutions in perfecting the institution, training human resources, developing and perfecting documents, textbooks and manuals and especially timely incorporation of the inclusive education content in teacher training programs for universities and colleges with pedagogical training throughout the country.

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Impact of assurance of the rights to access justice on assurance of the rights to employment and vocational education of persons with disabilities: a case of Vietnam

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Abstract: In Vietnam, PwDs account for about 6-7% of the population, according to 2016 census data. As a disadvantaged group, PwDs face life risks, injustice, and discrimination, especially in accessibility to education and employment opportunities. The article points out that assuring the rights of PwDs to education and employment is a prerequisite for them to have a stable, independent, autonomous and integrated life in society; meanwhile, assuring effective access to justice is indispensable for PwDs to protect themselves against injustice and discrimination in education and employment. The article also figures out that, in the past 10 years, the state's policies and laws, society's awareness of PwDs, and the status of PwDs themselves in society have been significantly ameliorated. However, more efforts are required by the state, society, and the international community to promote self-reliance and the rise of PwDs, contributing to advancing sustainable development in Vietnam.

Keywords: PwDs, justice, access to justice, education, employment

1. Introduction

Approximately 650 million people in the Asia and Pacific region live with some form of disability. PwDs are often poorer than others and live in families with food insecurity. The denial of equal employment opportunities, discrimination in the workplace, and access to education and vocational education play a key role in perpetuating the disadvantage of PwDs and preventing their full integration into the social and economic life of the community. Ensuring that PwDs can fully exercise their rights to employment and education on an equal basis with others should be a priority for Governments. Ensuring that PwDs can effectively complain about discrimination and justice for violations of their rights in the workplace and denial of equal opportunities for economic participation is essential to achieve this goal.

About 6.225 million people live with disabilities in Vietnam, nearly 4.917 million of whom are of working age (aged 15 years and older). The Vietnamese state has joined many international treaties recognising the rights of PwDs, including CRPD, the International Convention on Economic, Social and Cultural Rights (ICESCR), and ILO Convention No. 159. Vietnam is also a signatory to *the Incheon Strategy "Make the Right real" for PwDs in Asia and the Pacific*, with an important objective of eradicating poverty and enhancing labour and employment opportunities for PwDs.

Over the last five years, Vietnam has made rapid progress in motivating the inclusion of PwDs in employment, but more than 40% of PwDs in Vietnam are still unemployed. PwDs are also the typical case of the poorest people in Vietnam, with more than a fifth below the poverty line. Thus, ensuring equality of opportunity in employment and education for PwDs and access to justice is pivotal to reducing poverty and achieving full participation of PwDs in Vietnam.

2. The relations between the right to access justice and the right to employment and vocational education of PwDs

2.1. Outline of the right to access justice

Justice is a concept that exists in all cultures and traditions, enforced by both formal judicial and informal dispute-resolution mechanisms. Justice is "the idea of accountability and fairness in the protection and justification of rights, and the prevention and punishment of violations. Justice implies

respect for the rights of the accused, the interests of the victims and the well-being of society at large”. Overall, the meaning of justice might vary among cultures and traditions. However, the idea of justice is universal and often encompasses ideas of equality, accountability, and fairness of results.

Access to justice is a very broad and multifaceted concept. In terms of the legal system, it includes an element of equality of access, namely that everyone must have effective access to “the systems, processes, information, and places used in the administration of justice”, as well as the idea that the administration of justice should be socially and procedurally fair. The latter refers to the quality and accountability of the justice system as well as the effectiveness and appropriateness of available remedies.

Access to justice is both a fundamental human right and an essential means or prerequisite for protecting, enforcing and promoting all other human rights. The traditional narrow sense includes guarantees related to the right to a fair trial: equal access to courts and equality before the law, equal protection under the law, the right to a fair hearing, and the right to meaningful participation in all legal proceedings. It also includes the right to seek and obtain a fair and timely remedy for rights violations, the right to access information about laws and policies, and the right to legal aid.

In a broader sense, access to justice includes the basic elements: (1) *a framework of citizens' rights and obligations or legal protection*, reflected in two main aspects: the *source of law*, i.e. a set of rights and obligations of citizens, and *institutions*, i.e. processes and procedures for use by stakeholders in the exercise of rights; (2) *institutional framework*, i.e. the system of agencies established to implement and ensure the implementation of *legal protection*, including *formal judicial institutions*, *informal judicial institutions*, and *supervisory institutions*; (3) *the ability to claim compensation* which is often closely related to two basic factors: people’s *understanding of the law* and *the availability and effectiveness of legal aid and advice systems*. Thus, in a broader sense, access to justice includes sufficient guarantees that all disputing parties, especially vulnerable groups, can reach equitable solutions.

2.2. Outline of the rights to employment and vocational education of PwDs

The right to employment of PwDs is recognised in many international treaties, including CRPD, ICESCR, and ILO Convention No. 159. Article 27 of CRPD provides that PwDs have the same right to work as others. To ensure this right, States Parties is obliged to “recognise the rights of PwDs to work on an equal basis with others,... [and] safeguard and promote the realisation of the right to work... by taking appropriate steps, including through legislation, to, inter alia:

- 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, the continuance of employment, career advancement and safe and healthy working conditions;
- b. Protect the rights of PwDs, 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;
- c. Ensure that PwDs are able to exercise their labour and trade union rights on an equal basis with others;
- d. Enable PwDs to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
- e. Promote employment opportunities and career advancement for PwDs in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

- f. Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
- g. Employ PwDs in the public sector;
- H. Promote the employment of PwDs in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
- i. Ensure that reasonable accommodation is provided to PwDs in the workplace;
- j. Promote the acquisition by PwDs of work experience in the open labour market;
- k. Promote vocational and professional rehabilitation, job retention and return-to-work programmes for PwDs.”

The CRPD in Article 24 also stipulates that PwDs have the right to education at all levels and to lifelong learning and recognises the State Party's responsibility to “*PwDs are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others*” (Article 24(5)).

ILO Convention 159 provides that a State Party should “*consider the purpose of vocational rehabilitation as being to enable a person with disabilities to secure, retain and advance in suitable employment and thereby to further such person's integration or reintegration into society*” (Article 1(2)), and “*ensure that appropriate vocational rehabilitation measures are made available to all categories of PwDs, and at promoting employment opportunities for PwDs in the open labour market*” (Article 3).

The standard rules on equalising opportunities for PwDs adopted by the United Nations General Assembly under Resolution 48/96 of 20 December 1993 also affirm, States “[...] *should recognise the principle that PwDs must be empowered to exercise their human rights, particularly in the field of employment. In rural and urban areas, they must have equal opportunities for productive and gainful employment in the labour market*” (Rule 7).

The Incheon Strategy “Make Rights Real” for PwDs in Asia and the Pacific calls on the Member States to prioritise increasing opportunities for meaningful employment for PwDs. *The Incheon Strategy* recognises that PwDs must contend with disadvantages in the labour market whose elimination will contribute to achieving inclusive development and the eradication of poverty.

Thus, it can be seen that the CRPD and the above-mentioned international documents uphold and affirm the state's and other actors' role in ensuring that PwDs have equal opportunities to participate in the labour market and that their rights to equal treatment in employment and education are fully realised and enforced.

2.3. The impact of ensuring the right to access justice on ensuring the right to employment and vocational education of PwDs

The CRPD is the Firstly core human rights treaty to encompass a separate provision for access to justice. Specifically, the CRPD in Article 13(1) requires Member States to:

- [...] ensure effective access to justice for PwDs on an equal basis with others, including through the provision of procedural and age-appropriate 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.

The emphasis on *effective* access to justice *is* important, and it means that access to justice *must* be *available, attainable, and understandable* to PwDs and persons without impairment. In order to achieve effective access to justice, the CRPD in Article 13(2) requires States Parties, among other things, to “*promote appropriate training for those working in the field of administration of justice,*

including police and prison staff'. In addition, Article 13 must also be considered for implementation in conjunction with many other provisions of the CRPD, including Article 5 prohibits discrimination of any kind on the basis of disability; Article 9 requires Member States to ensure access to information for PwDs, including information on legislation, policy and social services and other forms of assistance; Article 12 recognises that PwDs have the right to recognition everywhere as persons before the law and to enjoy legal capacity on an equal basis with others; and Article 29 requires States Parties to ensure that PwDs can participate effectively and fully in public life on an equal basis with others.

International principles and guidelines on access to justice for PwDs, published by the United Nations High Commissioner for Human Rights and the Special Rapporteur on the rights of PwDs, provide more comprehensive advice on effective access to justice, stressing the obligation of States: (1) To ensure that all facilities and services related to the justice system are accessible to all PwDs, including people with multiple disabilities; (2) Must ensure that PwDs have access to free or low-cost legal information and legal aid so that they can know what the law is and that they can get legal aid by which and where; (3) Must ensure that PwDs can bring complaints, initiate legal proceedings to exercise their rights, and that their complaints are investigated fairly, and effective remedial measures are imposed.

In general, the above factors related to *accessibility* (physical infrastructure used in the administration of justice; legal and related information and services, including means of communication, enabling full participation in the administration of justice at all levels; transportation to and from public transport) are necessary to ensure that PwDs who have their rights violated are able to seek accountability and redress, including violations of their employment and vocational education rights.

3. Situation and barriers to ensuring the right to access to justice and its impact on ensuring the right to employment and vocational education of PwDs in Vietnam

3.1. Situation and barriers to ensuring access to justice for PwDs in Vietnam

In terms of *legal protection*, over the years, the State of Vietnam has made efforts to build and perfect the appropriate legal and policy framework on the rights of PwDs to create equal opportunities and favourable conditions for PwDs to have a stable, independent, self-reliant life and confidently rise and affirm their position in social life. The 2013 Constitution recognises the obligation of the state to *have the policy to assist... PwDs...* (Article 59(2)). The 2013 Constitution also acknowledges that *all citizens*, including PwDs, *have the right to work, choose a career, employment and workplace* (Article 35(1)) and *have the right and obligation to study* (Article 39); at the same time, the state *enables PwDs... to study culture and vocational training* (Article 61(3)).

Following the Constitution, *the Law on PwDs* (2010) is the Firstly comprehensive law guaranteeing the rights of PwDs. In terms of employment and vocational education, the Law on PwDs stipulates to ensure the exercise of the rights of PwDs *to education, vocational training, employment, legal aid, disability and degree of disability* (Article 4(1)(d)). This law dedicates *Chapter V* to vocational education and employment for PwDs. Specifically, the general principle of this law is that the state has an obligation to facilitate PwDs to be rehabilitated in order to be able to work, to receive free advice on employment, and to assist in getting a job in accordance with specific health conditions and disability characteristics (Article 33(1)). The state ensures that PwDs enjoy free vocational training counselling, selection and vocational training according to their ability and capacity equally as other people (Article 32(1)).

Along with the Law on PwDs, many other laws, such as the Education Law (2019), the Vocational Education Law (2014), the Labor Code (2019), the Employment Law (2013), the Safety and

Sanitation Law Labor (2015), Children's Law (2016), and other related laws and guiding documents have formed a fairly comprehensive and specific legal and policy framework, assuring the rights of PwDs in general, the rights of PwDs to access education, vocational education, employment and equal opportunities in the labour market in particular. For example, *the Law on PwDs* specifies that it is forbidden to discriminate against PwDs in recruitment, to refuse to recruit qualified PwDs or to set illegal recruitment standards to limit the employment opportunities of PwDs (Article 33(2)). Along with this prohibition, Decree 144/2014/ND-CP also sets out sanctions for violations (Article 13(1)).

The Labor Code (2019) was revised to be more flexible, appropriate and respectful of the rights of PwDs and employers in labour relations. For example, *the Code* stipulates that employers must *organise "regularly appropriate" health check-ups for employees with disabilities* (Article 159(1)), replacing the phrase previously used as *"regular" health care* that can create apprehension for employers and limit employment opportunities for PwDs in practice. For prohibited acts when employing employees with disabilities, *the Code* still maintains the same spirit as before. However, it stipulates more openly and flexibly on the basis of respecting the rights of PwDs to select special working conditions freely (Article 160).

In terms of *the institutional framework component*, state and non-state institutions have been established to implement and ensure the implementation of the rights of PwDs in general and the rights of PwDs to employment and education in particular. For example, violations of the rights of PwDs can be resolved through a common complaint or denunciation mechanism or the court system. PwDs can also seek support through Legal Aid Centers, Employment Centers, Vocational Education Centers, or organisations of PwDs. However, these institutions are generic without any specific advantages for PwDs.

In terms of *the ability to claim redress*, the lack of legal awareness of PwDs about their rights is an often-cited reason for the rarity of disputes over the enforcement of disability rights. In Vietnam, the state has laws and policies on propagating and disseminating the law to the public and establishing Legal Aid Centers to provide legal aid to special subjects. However, the accessibility of PwDs is very limited due to subjective and objective reasons. For example, each province now has a Legal Aid Center; in some provinces, those centres also establish their sub-branches in the communes. In addition, private legal centres of social organisations, such as the Vietnam Bar Association, are also available to receive requests and provide legal aid to PwDs. PwDs in remote and rural areas are difficult to access because of barriers such as traffic, travel costs, and means of communication.

3.2. The impact of barriers to ensuring the rights of access to justice on ensuring the right to employment and vocational education of PwDs in Vietnam

Albeit the legal framework and policies on the rights of PwDs in general and the rights to employment and vocational education, in particular, have been gradually enhanced, many gaps still need improvement. For example, *the Law on PwDs* removed the mandatory provision of employing a certain percentage of employees with disabilities of *the Ordinance on PwDs* (1998) and replaced it with a provision that "encourages" the use of employees with disabilities. (Article 35), which are not compulsory. This regulation leads to the fact that the recruitment of employees with disabilities depends entirely on the perception and attitude of the employer towards PwDs. It can be seen as an important factor in reducing employment opportunities for PwDs. Because if there is no regulation to set aside a certain percentage of labour and employment for PwDs, PwDs may forever stay out of the labour market.

Regarding vocational education for PwDs, the current policy is that each locality issues a list of occupations, time and cost of primary and short-term vocational training according to the reality and

characteristics of each region and locality. However, the list of these occupations is often lacking in diversity, limited to only a few occupations that are “default” for different groups/types of disability (such as movement disabilities often trained in information technology; visual disabilities are often trained in lapping or making crafts such as knitting brooms or toothpicks; hearing and speech disabilities are often trained in barbers or tailors;...) leading to the proportion of PwDs that obtain adequate vocational training is still very low.

The dispute settlement mechanism, redress, and compensation for PwDs whose rights have been violated are still limited. For example, the mechanism of complaints, denunciations, redress, and compensation in labour and employment is applied to all employees without any specific provisions for PwDs. This is not in line with Article 13 of the CRPD, which requires States Parties to ensure effective access to justice for PwDs on an equal basis with others.

According to current law, dispute settlement procedures for employees are often time-consuming. Specifically, *the Law on Complaints* (2011) states that the time to accept and settle complaints is 10 days from the date of receipt of the complaint. For complicated cases, the time limit for settlement may be longer but must be at most 45 days from the date of acceptance. If the Firstly-time complaint settlement is unsatisfactory, the second-time complaint shall be settled. The time limit for settlement of the second-time complaint shall be at most 45 days from the date of acceptance. For complicated cases, the time limit for complaint settlement may be longer but must be at most 60 days from the date of acceptance (Articles 27, 28, 36, 37). The maximum time limit for denunciation settlement is 60 days from the date of acceptance, the time to accept and handle the denunciation is also 10 days from the date of receipt of the denunciation (*Law on Denunciations* (2018). Articles 24, 29, 30). In particular, according to the provisions of *the Civil Procedure Code* (2015), the time for a lawsuit related to a labour dispute can last from 4 to 6 months or even longer.

Accessibility to dispute settlement authorities is also a hindrance. Competent agencies to settle disputes related to workers’ employment are often located far from the place of residence of PwDs. Therefore, travelling to perform these procedures is challenging for many PwDs. Specifically, at present, in order to initiate a lawsuit to settle disputes and compensate for violations of labour contracts, PwDs must go to the district-level People’s Court (*Civil Procedure Code* (2015), Article 32, 35); whereas complaints and denunciations also require to travel to various agencies, usually at the district level or higher, because the current law has not yet supported the settlement of complaints and denunciations related to employment by the People’s Committee at the commune level.

The limited awareness and perception of PwDs about their rights also limit their ability to participate in the labour market and access quality jobs. One of the major causes is that PwDs face impediments in accessing education, leading to their low educational attainment. Some families of PwDs may oppose sending their children to school because of the perception that PwDs cannot benefit from education. Families also fear that PwDs are unable to care for themselves and will be bullied at school or discriminated against in the workplace. Many families are also afraid that PwDs will be unable to complete work, so they discourage PwDs from trying to find work outside of their homes. Such negative attitudes show a lack of confidence in the abilities of PwDs, thereby discouraging and supporting PwDs to go to school and find work. In addition, most households with PwDs have difficult family economic conditions. They can only meet their basic needs for food, clothing and accommodation but cannot afford other social and study costs. This is a major deterrent limiting the ability of many PwDs to attend school. Meanwhile, state-funded education programs currently cover primary school.

The awareness of many PwDs about forms of stigma or discrimination against them in relation to recruitment, employment, wages, employment contracts, working hours, or vocational training opportunities is also limited (for example, being denied a job because of their appearance when they have height and mobility disabilities; blind or deaf people are often discriminated against in terms of wages and working hours). Many PwDs feel thankful to have a job, so they suffer and accede if they face discrimination at work. Limited job opportunities also prevent PwDs from changing jobs even if they are stigmatised and discriminated against. The low quality of education does not prepare PwDs to participate effectively in the labour market or to fight against unfair working conditions (e.g. no employment contract, lower wages, longer working hours).

In general, PwDs have yet to be made aware of how to recognise violations of their rights and how to complain and claim compensation when their rights have been violated. Information on relevant laws and policies, including those prohibiting discrimination against PwDs, is not yet available and accessible to all PwDs, especially PwDs in remote areas. Only when PwDs clearly understand their rights, obligations and abilities can they convince others to respect and acknowledge their abilities. Only when PwDs are aware and clearly understand their rights, obligations and abilities can they have a critical voice for the state to evaluate and perfect laws and policies to ensure their rights.

4. Solutions to remove barriers to ensuring the rights to access justice to promote the right to employment and vocational education of PwDs in Vietnam

Assuring and advancing the rights of PwDs in general, and the right to employment and vocational education in particular has been the consistent policy of the State of Vietnam ever since. Vietnam's legal and policy system on this issue has been increasingly consolidated and perfected, especially in the past decade. Vietnam is also a signatory of CRPD (since 2014), ILO Convention No. 159 (since 2019) and many other related international treaties. To strengthen the guarantee of access to justice to promote the right to employment and vocational education of PwDs in Vietnam, it is recommended to take the following measures:

Firstly, reinforce and diversify forms of propaganda and education on the law and rights for PwDs and their families, guaranteeing that all PwDs and their families, wherever they live, can obtain a full understanding of the legal provisions and the rights of PwDs, including the process of complaints and denunciations for fairness and reparation for violations of rights, such as stigma and discrimination based on disability in employment, education, training and in the workplace.

Secondly, fortify the counselling and legal aid centres system to ensure that all PwDs, including those with communication barriers, can access and attain effective and free legal support when needed. Study the experiences of some countries to establish or support the establishment and operation of legal aid and counselling centres or a network of people specialising in providing legal advice and assistance to PwDs. Encourage and support the formulation of places and spaces on the ground or on the internet where PwDs, including those with mobility and sensory disabilities, as well as intellectual and cognitive disabilities, have access to advise and consultation from people who are a connoisseur or do legal advice and assistance regarding their rights, and/or can help them file complaints about discrimination against them.

Thirdly, provide training and education on the rights and treatment of PwDs to officials and employees of judicial and administrative agencies and legal aid and counselling centres, which are responsible for receiving and settling complaints and denunciations and working with PwDs. Facilitating mechanisms to allow PwDs to privately voice a concern or complaint about discrimination or ill-treatment, including protections from employer retaliation or colleagues' complaints or denounced by them.

Fourthly, build selection dispute resolution mechanisms for employees with disabilities. Expand and ensure the participation of PwDs in the justice system in all positions, such as lawyers, judges, jurors, investigative officers, and prosecutors. Strengthen mechanisms to ensure fair and accurate communication for PwDs during the proceedings, encourage social organisations and NGOs to actively assist PwDs, and oversee the relevant judicial or administrative proceedings.

Fifthly, the prosecuting agencies, organisations, and individuals providing legal services must ensure that those services are accessible to PwDs (including face-to-face and online access). Ensure that agencies and organisations providing legal services have full-time staff or staff with knowledge or training about the rights of PwDs and how to support and work with PwDs; be able to provide sign language interpreters or Braille communication when necessary. There are mechanisms to deal with judicial or administrative officers who engage in discriminatory conduct during legal proceedings involving PwDs.

Sixthly, study the experience of some countries to organise mobile court sessions and online legal dispute resolution mechanisms to enhance access to courts and legal dispute resolution mechanisms for PwDs. Ensure that everyone with a disability has access to financial and other assistance throughout the proceedings in accordance with their type and degree of disability.

Seventhly, ensure that all reform policies and measures to promote the right to access justice for PwDs are developed and implemented in consultation and supervision of organisations of PwDs.

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The realisation of rights of persons with disabilities in a smart city

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Abstract:

The paper discusses the implementation and protection of the rights of PwDs in the social sphere in a smart city. The following areas are considered: the right to health in conditions of electronic healthcare, the right to education by using distance and E-learning, and the right to social security. The performed analysis shows that the broad introduction of information technologies in a smart city allows to protect and better realise the rights of PwDs. Proposals are given on the development of smart city standards and the development of the legislative framework.

Keywords: smart city, digital platform, rights of PwDs in a smart city.

1. Introduction

The development of the information society and the formation of e-government has led to a new stage in the development of the country - the creation of smart cities, which will be the main component of the country's infrastructure. Smart cities, while more like experimental sites, began to appear in various countries.

A smart city integrates information and communication technologies for managing urban property, combining schools, transport, catering facilities, libraries, hospitals, power plants, water supply, waste disposal and much more [1]. That is, a smart city is a city that uses high technologies to use available resources to improve living standards fruitfully, causes less damage to the environment, supports the introduction of innovations and the rational use of energy and saves all costs.

In 2020, the Minsk City Executive Committee and interested bodies developed a program for developing Minsk as a “smart” city until 2025. The program's activities provide for the development of a basic concept for the development of Minsk in the direction of a smart city, taking into account the concepts developed by the republican authorities and a number of state program projects. Together with the program, a basic list of projects has been formed. It covers most areas of life: energy, housing, education, construction, transport, and security - about 47 projects [2].

Smart City includes various components in the following areas [3]: City development management; Housing and communal services and property management; Fuel and energy complex; Urban planning and construction; Management of urban infrastructure facilities; Public safety; Public and private transport; Health and social protection of the population; Education; Culture, tourism; Vital activity and leisure of citizens; Ecology.

Their accumulation requires integrating them into a single, smart platform. This platform will help to manage urban processes and give a holistic view of them. It is also clear that smart cities should serve PwDs.

Let us consider three main areas of smart city for PwDs: public safety, distance learning and e-health.

2. Public safety in “smart city” for PwDs

Intelligent video surveillance systems are started to be widely used in our cities. They will play an increasingly key role in creating and functioning “smart cities”. Using such systems leads to a positive trend in reducing crime and preventing major accidents; on the other hand, only some societies in a particular country are ready for total control by the state and see this as an infringement on the privacy of private life.

Modern video surveillance systems also allow recognising PwDs in video and help them if necessary.

Such systems can also make the full identification of a person. In this regard, the search for a balance between the interests of the state and the individual leads to the need for both technical protections of information and legal regulation of issues of protection of privacy, including strict regulation of access of persons, the responsibility of persons with access to systems, the consolidation of human rights.

Along with the great positive effect of introducing AI systems for public safety, there are also negative sides. In people's minds, there is a connection between constant surveillance of them and totalitarianism. In this regard, it is extremely important to determine the directions of legal regulation of public security systems in such a way as to ensure respect for the right to privacy to prevent arbitrary interference in human life [4].

The ethical issue of the “intrusion” of video surveillance systems and video analytics into the private life of each respectable citizen, to which he did not give his prior consent, deserves a separate discussion. However, the main legal question can be formulated quite quickly: how much is it, in principle, consistent with the norms of the country's basic law - The Constitution?

To date, there are many databases in the country that contain personal and other data regarding each person. Thus, the state-centralised, automated information system “Population Register” has been created and is functioning, the basis of which is a database of personal data of citizens, foreign citizens and stateless persons permanently residing in the Republic of Belarus. In this regard, the use of AI systems allows not only to recognise a person's face but also to obtain all information about him by sampling, which is contained in all databases of the country.

Thus, it is necessary to define a clear legal mechanism for the collection and protection of personal data and privacy in terms of obtaining this information:

- identify the purposes for which it is possible to use information from surveillance cameras;
- to determine the circle of persons who have access to databases with the obligation to keep this information secret and responsibility for its disclosure;
- strictly regulate the order of access of other persons;
- provide effective technical protection (including identification of system users);
- to obtain the person's consent for data collection and processing.

In addition, in current conditions, the mechanism for protecting his rights in case of violation needs to be more developed and understandable for an ordinary citizen.

One of the problems is to open access to algorithms for society, with the help of which it analyses people's behaviour to increase people's confidence in artificial intelligence systems. With the right strategy and control, AI-based public safety control systems greatly benefit citizens and the government. However, to fully exploit the full potential of AI technologies, trust and legitimacy must remain top priorities for everyone.

Thus, when planning, designing and implementing a smart city, public authorities must take into account the threats to the realisation of a person's right to privacy, as well as the protection of his data. A high level of information security, as well as providing detailed and convenient information to the public about the conditions of data processing and the possibility of defending their rights in accordance with applicable legislation, are among the main tasks of state bodies. The use of ICT to meet the needs of the state and society is a challenge to the realisation of human rights in the context of building smart cities.

3. Distance learning for PwDs

The education system in the context of the development of the information society is undergoing

profound changes due to the increasing needs of members of this society in education. The general secondary education system is being modernised and improved, and higher education is becoming widespread. Universities are being transformed into educational centres that provide people with lifelong education. Recently, open education systems have implemented such paradigms as electronic education (e-learning), lifelong learning, and mobile education (m-learning). Additionally, traditional forms of education are widely used in society, such as full-time, correspondence, distance and others. Recently, “e-learning” or “e-learning” has been firmly synthesised with the educational space and has become the subject of study by many researchers.

Distance learning came before e-learning [5]. The last stage of the development of distance learning is already associated with the emergence of new information and communication technologies based on the use of computer technology and the global computer network Internet. In this regard, along with the concept of “distance learning”, the terms “online learning”, “network learning”, and “e-learning” have appeared, which emphasise the fact of using Internet technologies in distance learning. In the definition adopted by the Distance Learning Association of the USA, “distance learning is the acquisition of knowledge and skills through a combination of information and teaching, including all technologies and other forms of learning.”

It can be seen from the presented definition that the key points of distance learning are the “remoteness” of the student from the teacher, the interaction between them and the use of Internet technologies.

Thus, distance learning can be defined as a special form of organisation of the educational process in which teaching is carried out, as a rule, remotely from students, using modern means of communication and special teaching methods.

Distance learning is a very suitable form of special education for children with disabilities, which involves significant changes in the approaches, organisation and structure of the general and special education system. The change is to create an electronic remote adapted system of socialisation, education, upbringing and development of all children, regardless of their psychophysical state and level of development.

This form of education allows students to study at school at their residence while interacting with a remote educational and development environment and informative, educational resources. However, it is necessary to take into account the danger of using and implementing distance learning in those cases and for those categories of citizens who require a unique approach and special learning conditions [6].

For children with disabilities, distance learning provides an opportunity to study, choosing not only the place and pace of learning but also the time, which is important when following a course of treatment with frequent hospitalisation of children with disabilities. Also, each child is allowed to master general education programs according to a unique curriculum or study according to special school programs that meet personal needs and diagnoses.

Thus, distance learning of children with disabilities, carried out in the special education system in cooperation with general education, psychological, medical and pedagogical support services, and district information technology centres, has a number of advantages:

- efficiency - manifested in improving the ratio of the achieved result to the time and other resources spent on its achievement;

- flexibility – the ability to learn by choosing the time, place and pace of learning in accordance with living conditions, psychophysiological and individual typological features of children with

disabilities;

- modularity – the ability to study according to an individual curriculum, follow an individual correctional and educational route that meets personal needs, as well as opportunities in accordance with primary and secondary disabilities;

- parallelism – the possibility of learning simultaneously with the assimilation of the basic program and correction of developmental disorders

- novelty – the use in the educational process of the latest information and telecommunication technologies based on computer equipment, computer networks, and multimedia systems, allowing for controlled independent work of a child with disabilities;

- a tutor-consultant performs the new role of a teacher.

- the new role of the student is self-organisation and self-control of the educational process.

Distance learning is widely used in our country for teaching PwDs. A characteristic feature of distance learning for PwDs is the possibility of organising the educational process online, including in interactive mode. The teacher, while at the workplace, through the remote asynchronous learning system, carries out full-fledged interaction with the trainees, and the trainees also provide feedback. In real-time, the teacher, through the remote asynchronous learning system, conducts the following training sessions with students: lectures, seminars, laboratory classes, virtual excursions, and practical classes, and monitors and evaluates students' knowledge through computer testing, tests, consultations, and exams. Students can access an electronic library, using basic and additional electronic training courses to study the subjects taught.

The online distance learning system makes it possible for students to communicate with each other in real-time. This is all the more important for the category of PwDs who are unable to move. Communication via the Internet distance learning system will allow even those PwDs who study at home to feel like members of the student audience to communicate without difficulty with their virtual classmates - the same trainees.

4. E-Health and rights of PwDs

Electronic Healthcare is a revolutionary concept, the advantages of which can be expressed in the following.

Promoting “smart” technologies in healthcare improves the population's health because citizens will be able to pay more attention to proper nutrition and physical activity. Patients will benefit greatly from effective treatment with minimal expenditure of personal resources (time, money) by expanding the mechanism's capabilities for detecting and preventing diseases. However, at the same time, the introduction of smart healthcare systems involves high financial costs for the purchase of necessary equipment and the sponsorship of scientific research, which, of course, will ultimately positively impact the realisation of the human right to health protection [7].

Attention is once again drawn to the vulnerability of personal data and human privacy rights, in connection with which, when conducting various theoretical and empirical studies in the field of smart healthcare, it is necessary to take into account and monitor the legality of the actions carried out. Also, when implementing smart healthcare, each state should ensure appropriate control over the manifestation of discrimination on various grounds (race, age, computer literacy).

Electronic Health Records (EHR) of the patient have been introduced recently in many countries. They are a structured set of electronic medical documents, records of the patient's health, facts about his requests for medical care and other information about the patient in a centralised health information system. When forming an EHR, it is assumed that the patient's consent to the formation

of the EHR is obtained in advance. However, it should be noted that this rule is only sometimes observed in practice. Also, based on the interpretation of the current norms of the legislation of the Republic of Belarus on healthcare, it is necessary to note the problem of obtaining consent to the entry and processing of personal data, the information constituting a medical secret, in the electronic medical record of a minor patient. In the future, there may be situations when the legal representatives of a minor patient will be against maintaining his electronic medical record, which subsequently will only negatively affect the realisation of the right to health protection of a minor in connection with the rejection of the essential advantages of an electronic medical record [8].

The Law on Equal Rights for PwDs (in many countries) states: “a person with disabilities has the right to access a public institution and public services.”

E-Health allows for improving the quality and accuracy of health analysis and forecasting based on relevant data sets, including using AI and big data for PwDs. Wireless medical technologies are rapidly emerging as an important medium to send and receive data, text, voice and video seamlessly and ubiquitously. Data from devices and sensors can be aggregated, which allows you to obtain images, perform diagnostics and analyse data using boundary calculations. The ability to record data at the place of care and take photos that can be analysed using AI or remotely by experts located far from the place of medical care increases the possibility of universal coverage of health services offered by different medical specialists. Health data can also be used to provide targeted preventive care to communities.

5. Conclusion

We considered the implementation and protection of the rights of PwDs in the social sphere in a smart city. The following areas were considered: the right to health in conditions of electronic healthcare, the right to education by using distance and E-learning, and the right to social security.

Proposals are given on the development of smart city standards and the development of the legislative framework.

The performed analysis shows that the broad introduction of information technologies in a smart city allows to protect and better realise the rights of PwDs.

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Prospects of social support for the persons with disabilities in the new strategy of Uzbekistan

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Abstract:

Based on the UN recommendations on measures to radically improve the system of state support for PwDs and guided by national priorities and programs to achieve these goals, Uzbekistan has developed its plans to improve and develop the necessary comprehensive measures to improve the system of support for PwDs further and strengthen guarantees of protection of their rights and freedoms, providing for the implementation of targeted measures, among them are the ratification of the UN CRPD, the creation of a Fund for the Support of PwDs, a unified electronic automated register of PwDs, the establishment of a Day for the Support of PwDs, the improvement of public administration in this area and achieving more dynamic progress necessary to implement the transformations envisaged by the Agenda for the period up to 2030 in Uzbekistan.

Keywords: social security law, PwDs, labour, labour law

1. Introduction

The protection of socially vulnerable segments of the population is an expression of humanity and social orientation in the state policy of any country. It is the support of the population, particularly of certain categories (pensioners, PwDs), that helps the state understand social problems in society and their causes. The measures taken by the state in this direction affect each of us (everyone will become a pensioner someday), and the prevention of social problems depends on their effectiveness. Therefore, social policy in Uzbekistan has the status of a state policy. In the Strategy of Actions on five priority areas of development of the Republic of Uzbekistan

2. In the Strategy of New Uzbekistan, one of the priority areas of state policy for the protection of the rights of PwDs is to provide PwDs with equal opportunities with other citizens, civil, economic, political and other rights and freedoms provided for in the Constitution in accordance with the proclaimed generally accepted international norms and principles, as well as international treaties ratified by the Republic of Uzbekistan. And also, in the Address to the Oliy Majlis dated December 29, 2020, President Shavkat Mirziyoyev noted that in 2021 social protection of the population would be further strengthened. Thus, a phased transition to a “social model” for determining disability that meets world standards is ahead. The task of modern society is to ensure that PwDs have the same rights and obligations as other members of society. Barriers still exist in many parts of the world that prevent PwDs from exercising their full rights and freedoms, making it difficult for them to participate in public life.

3. Methodological and theoretical basis of the article. The main importance of the systematic approach is among the general scientific methods used in this study. Among the private-scientific methods, it is necessary to name the formal-legal and comparative-legal methods. The current situation of PwDs in society: the existence of physical, economic and social barriers to their integration into society, institutional separation, their passivity and functional dependence. All this once again confirms the relevance of the problems of ensuring the rights of PwDs. In this regard, society and the state must take the necessary measures to remove obstacles and provide fellow citizens with equal opportunities. Thanks to this, different social systems (services, work, information and transport) will become accessible to PwDs. On January 4, 2019, a holiday dedicated to the invention of the French tiflopedagogue Louis Braille was celebrated for the Firstly time. According to the CRPD, Braille is used by blind and visually impaired people to read books and periodicals. It is also

a means of communication for the blind and plays a crucial role in their education, access to information and exercising the right to freedom of expression and belief. There are currently about 39 million blind people worldwide. An additional 250 million people are visually impaired. In December 2018, the UN General Assembly decided that every year from 2019 to January 4, World Braille Day will be celebrated to raise awareness of the importance of the alphabet for realising the human rights of blind and visually impaired people. More than 45,000 registered blind or partially blind citizens live in Uzbekistan. On the eve of the 28th anniversary of the Constitution of the Republic of Uzbekistan, for the first time in the country, our Basic Law and the new Law “On the Rights of PwDs” were published in the form of books in Braille. These official publications are published by the National Center of the Republic of Uzbekistan for Human Rights and the National Legal Information Center “Adolat” to implement the National Strategy of the Republic of Uzbekistan for Human Rights. The Office of the OSCE Project Co-coordinator in Uzbekistan also actively participated in this noble work. In this sense, the Constitution of the Republic of Uzbekistan and the Law on the Rights of PwDs, issued in Braille, create great opportunities for PwDs to participate on an equal basis with other members of society in all spheres of life in the country and will serve the purpose of ensuring and implementing them. Rights, freedoms and legitimate interests in our country. This indicates that the nature of the legal regulation of social relations included in the subject of social security law is undergoing some changes today, as a result of which some changes in the system of the branch of law have become possible. The formation of a complex legal institution for the social protection of PwDs is substantiated. Based on the study of legal facts that affect the emergence, change and termination of legal relations for the social protection of PwDs, the conclusion is that disability is the main one. I wanted to analyse the signs of this category (cause, group and time of onset of disability) and justify the need to unify the causes of disability, which can help improve the effectiveness of legal regulation. After analysing the procedure and conditions for providing various types of social protection to PwDs, proposals were formulated to change the norms of the current legislation. Among them, the expediency of changing the conditions provides PwDs with temporary disability benefits, extending to medical workers at risk of contracting HIV infection, compulsory social insurance against industrial accidents and occupational diseases, regulating medical and labour activities by labour law, etc.

4. By studying the experience and the legal framework, a number of proposals for improving legislation have been formulated. In particular, it substantiates the need to settle by special acts 8 issues related to calculating the mandatory fee for non-fulfilment of quota conditions, the organisation of the quota itself, and other measures of professional and social rehabilitation (for example, sign language translation). The phenomenon of disability is closely related to a number of acute problems. Social exclusion and the vicious circle of “disability - the inability to get a decent education - the inability to find a job”² is a reality that millions of people face and from which no one is immune. Thus, 82% of the total number of PwDs live below the poverty line. In developing countries, only 1-2% of children with disabilities have access to education; everywhere, disability increases the risk of unemployment for these people - in some states, about 80% of PwDs are of working age and cannot exercise their rights to work. In foreign science, the rights of PwDs have been actively studied since the late 50s of the XX century, which allows us to single out a number of scientific centres for their study by now: Berkeley and Cornell Universities (USA). Lund (Sweden), Lidza (Great Britain) and others. However, most foreign research is aimed at studying national policy and legislation on disability. International legal studies are usually devoted only to certain aspects of the rights of PwDs; comprehensive studies are just beginning to appear. A significant amount of research in this area was carried out before the adoption of the CRPD, and, despite their great importance, they need to reflect

the significant features of the current situation and require creative rethinking. The global nature and severity of the problem required its global solution: in 1975, the UN adopted the Firstly international act, the Declaration on the Rights of PwDs,⁵ and in 2006, the Firstly international legal acts, the CRPD and its Optional Protocol, were adopted.⁶ The UN General Assembly adopted this treaty based on the conviction that “a comprehensive and unified international convention to promote and protect the rights and dignity of PwDs will be an important contribution to overcoming the deeply disadvantaged social situation of PwDs and to increasing their participation in civil, political, economic, social and cultural life with equal opportunities - in both developed and developing countries. The adoption of the Convention - a universal, legally binding international treaty - was an important milestone in the development of the entire global system of human rights. In the human rights complex, a new education has begun - an international legal institution for the protection of the rights of PwDs. But the development of international protection of the rights of PwDs indicates that the recognition that PwDs have universally significant human rights does not mean their automatic implementation - a complex process of implementing conventional norms into the legal systems of states is still needed.

5. Conclusion

The development of Uzbekistan at the present stage is accompanied by the process of strengthening the social protection system in society as a socially conditioned form of public health protection. Currently, interest in the system of healthcare practices is determined by their place not only in the reproduction of the human potential of society but also in ensuring the right of any person to a long and active life. The guarantee of compliance with this right is one of the criteria for assessing the quality of the entire social system. The relevance of the research topic is determined by the need for scientific analysis of the most important directions of the state's social policy, one of which is the formation and development of the system of social protection and rehabilitation of PwDs in the Republic of Uzbekistan. At present, fundamental changes are taking place in approaches to the definition and solution of disability problems in accordance with international standards.

The relevance of the dissertation research on the legislative provision of the constitutional rights of PwDs is due to the following circumstances. Firstly, the consolidation of the priority of fundamental human rights and freedoms at both the international and domestic levels has played a huge role in the development of the methodology of constitutional law. This phenomenon cannot be temporary or have a narrow territorial distribution. The fundamental rights and freedoms of man and citizen at the present stage of development may well become (and should always remain) the national idea of the country.

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Toward an Inclusive Society in Vietnam ~ From a Perspective of Barrier-free

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Abstract:

The CRPD, adopted on December 13 2006, has led to a worldwide discussion of the rights of PwDs (hereinafter called PwDS). The countries, which have ratified it, recognise the participation of PwDs in society as subjects of rights rather than objects of protection. Among the things necessary for an inclusive society for PwDs are social security, rights protection, legislation, rehabilitation, pensions, employment, education, and so on. The author concluded that barrier-free is necessary to create an inclusive society. The barrier has two kinds in society: physical (visible) and social (invisible) barriers. The author specialises in Asian studies. He has conducted interdisciplinary research with Disability Studies for barrier-free surveys in his wheelchair in Vietnam for more than 10 years. Generally, only economic factors are considered the cause of inadequate barrier-free facilities in developing countries. Is this true? Looking at the BRT and public buses in Hanoi, the reasons for the inadequate facilities in Vietnam can be considered as follows: 1. Low prevailing of the term “barrier-free (tiếp cận)”: 2. Lack of understanding of physical barriers: 3. Fewer researchers in Disability Studies. As a possible solution to these problems, the author recommends that Disability Studies be adapted to Vietnamese culture.

Keywords: inclusive society; disability studies; barrier-free; Barrier Free Triangle; non-practical barrier-free.

1. Introduction

This paper shows that economic factors do not prevent Vietnam from creating a barrier-free society. An inclusive society that does not exclude PwDs is one of the principles of the CRPD adopted in 2007. However, while such a society is ideal, a society with barriers realistically excludes PwDs. Indeed, since what constitutes the barrier is diverse depending on the individual's disability, it will not be easy to adapt to each barrier and realise an inclusive philosophy. However, for those restricted in mobility because of their physical disabilities, the barriers in society are a double barrier that prevents them from participating, so barrier-free access is an urgent issue of an inclusive society. CRPD specifies Accessibility in Article 9 and Mobility in Article 20. Therefore, countries that have ratified the CRPD have the barrier-free obligation to remove the restrictions on mobility. Vietnam is one of these countries.

Since 2009, the author, as a researcher of Asian area studies, has been using his wheelchair to conduct fixed-point observations of the barrier-free in Vietnam and has observed changes in Vietnam's barrier-free. When talking with Vietnamese people about the slow progress of a barrier-free in Vietnam, many point out economic factors as the reason, saying that Vietnam does not have the economic power of Japan. Therefore it should be impossible to achieve a barrier-free like Japan. Certainly, the economic factor is one of the major factors for the barrier-free. However, the author conducted a field survey of more than 20 Asian cities in East Asia, focusing on Vietnam, and found that factors other than economic power also significantly influence the barrier-free. Furthermore, in the case of Vietnam, the existence of barrier-free tools led the author to believe that economic factors alone are not the cause of the lack of barrier-free in Vietnam.

2. Methodology

In the previous study, the Firstly one in Vietnam called *Giao thông Tiếp cận* published in 2008 [1]. The centre content is translated from *Mobility for All* [2], providing technical guidelines for barrier-free access in the United States. *Giao thông Tiếp cận* shows barriers to Vietnamese society using developed countries as a model, and it is the leading literature on barrier-free in Vietnam. However, it does not discuss how to remove the barriers in Vietnam. Elsewhere, Akito Ito, Japan, researches the latest technological barrier-free hardware in Hanoi as of 2010 from an engineering perspective, but it is limited to a report on the current situation [3]. There is a lack of literature on barrier-free in Vietnam as a research subject.

The small accumulation of studies on barrier-free in Vietnam means that barrier-free in Vietnam still needs to be considered a research subject. In general, regarding inconvenient barrier-free in developing countries, it is possible to obtain information from travellers and other visitors about the existence or non-existence of hardware that “There are a lot of barriers.” However, no previous studies analyse the causes of inconvenience due to the absence of barrier-free. This is probably because developed countries also consider the absence of barrier-free access an economic factor, and the low economic power of developing countries is for granted such inconvenience, so they refrain from mentioning it again. In this way, it is necessary to analyse the current status of barrier-free in Vietnam from the perspectives of both developed and developing countries to understand the factors other than economic power that have prevented progress in barrier-free Vietnam, rather than regarding it as the economic factor for granted.

Based on the above issues, the author looks at barrier-free movement from the perspective of developed countries. Next, from the ethnographic method of Uwe Flick's qualitative research [4], the author analyses four perspectives using the gaze of a developing country.

Firstly, to understand the government's perspective, a literature review on enacting laws related to PwDs will be conducted to systematise the barriers-free laws in Vietnam. In doing so, we will also focus on the degree to which terminology has been established from an epistemological perspective. Secondly, to understand the providers' perspective of barrier-free tools, a fixed-point survey will be conducted on the changes in barrier-free hardware in urban areas. Furthermore, by actually using this hardware, the author will make a participant observation of the barrier-free software by the providers. In addition, interviews will be conducted on how providers comply with the government legislation of barrier-free.

Thirdly, to understand the viewpoints of PwDs, who are on the demand side of barrier-free services, the author will set up a common problem of barriers in daily life and interview local PwDs to see how they are coping with it. At this time, the author's disability will also be used as a tool for this research. The author is a quadriplegic with a cervical cord injury and is bound in a wheelchair on a daily basis. By speaking the local language, the author can collect data on the perceptions of local users with disabilities in accordance with their living arrangements. Based on the data obtained from the fixed-point survey and participant observation the author conducted to understand the company's perspective, the data will be matched with the barrier-free data perceived by local PwDs. This is intended to bring objectivity to the data collected by the author.

This research method corresponds to emancipatory research. It is a method in which researchers with disabilities take the initiative in interviewing subjects with disabilities. In general, many interviews conducted by researchers without disabilities with subjects with disabilities feel oppressive because the subjects with disabilities are merely objects of medical and rehabilitation research [5]. In contrast, in the case of emancipatory research, researchers with disabilities can interview more in-depth

because they have a better understanding of disability than researchers without disabilities because of the similar presence of disabilities and are more likely to develop empathy.

Furthermore, the author's direct interviews with local PwDs can have the effect of educating subjects with disabilities. When the author completed his rehabilitation in Japan in the 1990s, the country transitioned from the medical model of disability to the social model. The social system and people's responses to PwDs were still harsh. In the 2000s, the social environment gradually changed to a barrier-free environment, and people with severe impairment were able to participate in society, as AUTHOR experienced firsthand in Japan. One of the objectives of the emancipatory study is that PwDs in developing countries learn about the author's experience through the interview process and are made to feel that social participation of people with severe impairment is possible even in developing countries if the society changes to a barrier-free environment.

It is not easy at this stage to implement emancipatory research on PwDs in developing countries similarly. Firstly, researchers with disabilities who have the gaze of developing countries are needed. In addition, in developing countries today, practical studies are given priority, and the academic field of disability studies has not yet been established. Furthermore, as mentioned in the previous section, more than accumulating previous research is required. Therefore, emancipatory research in this environment is the most important feature of this paper.

Finally, as a fourth, a questionnaire survey will be conducted to determine what residents in Hanoi and Ho Chi Minh City, Vietnam's two largest cities, think about barrier-free in their own country. By analysing the questionnaire results, it will be possible to determine trends in the perceptions of barrier-free held by the Vietnamese people. In addition, the author will conduct fixed-point surveys of barrier-free hardware (barrier-free buses and train stations) in cities to gather primary data on attitudes toward PwDs from service providers and members of society.

The author's research focuses on barrier-free. However, in the barrier-free process, the opposition of companies, the government's enactment of barrier-free legislation, and the attitudes of people in society and other stakeholders toward barriers can also be considered barriers. Therefore, since such barriers are included, the term "barrier" in this paper is not limited to physical barriers but also includes social barriers.

3. Global Trends in Barrier-free

We trace the global trend of the barrier-free environment from the past to Vietnam and confirm the change process.

The following points can be drawn by focusing on barrier-free in Scandinavia and the US, which have become models for the rest of the world as advanced welfare countries. Barrier-free society is an adversarial structure between PwDs and service providers and a three-party structure involving the government. Society influences this three-party triangle. In this social structure, Firstly of all, PwDs, who are the demanders of barrier-free access, demand barrier-free access from companies, while companies, who are the suppliers of barrier-free access, reject it because it is not cost-effective for a small number of users (Figure. 1).

In response to this conflict structure between PwDs and companies, the society initially either supported the business side or was a bystander. However, the social change happened in the social environment and shifted to support the side of PwDs. In the case of Scandinavia, this change in the social environment is normalisation, and in the case of the US, it is the independent living movement of PwDs. In this sense, the change in the social environment in Japan is the shift to a barrier-free society due to the ageing society. This change in the social environment has led to a series of moves by the government to legislate barrier-free. In other words, the legislation of barrier-free involves

direct actors such as PwDs, companies, and the government and barrier-free are realised when society moves from an onlooker to an influential spectator (Figure 2).

Because of the experience of the series of movements from Figure 1 to Figure 2, it is easy for discussions about barrier-free to occur in developed barrier-free countries, and through these discussions, it is easy for the society to reach a consensus on barrier-free. The author defines the relationship among these three parties in Figure 2 as the Barrier-Free Triangle.

When this Barrier Free Triangle was applied to Vietnam, PwDs made no apparent demands for barrier-free services. For this reason, a conflict structure between PWDS and companies still needed to be established. As a result, the barrier-free system in Vietnam was introduced in a government-driven manner and legislated with low social involvement. Considering such social conditions in Vietnam, it is not easy to consider and realise barrier-free in Vietnam like in developed countries. Therefore, rather than introducing the barrier-free tools of developed countries as they are, we must consider the barrier-free adaptation that can be adapted to the Vietnamese culture.

We confirmed that there are three actors in establishing a barrier-free system: PwDs, companies, and the government. The next section looks at how each actor perceived barrier-free.

3.1. Government: Legislation

3.1.1 ANSI 117.1

Going back to the history of barrier-free facilities worldwide, Sweden and Denmark already had barrier-free environments in their facilities in the early 1930s. The world's first barrier-free code was created in the United States in 1961. The code, building code for barrier-free construction is ANSI 117.1. The code is titled, *Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped* [6]. It is a guideline consisting of 11 pages, but except for the Forward and Contents, there are only six pages of substantive content. It provides definitions and dimensions of wheelchairs, ramps, and other tools for living with disabilities and specifics on what tools are good for PwDs. However, as the title indicates, the standards are for barrier-free access in buildings, and it seems that at that time, barrier-free was considered a point in the everyday living space. The concept of mobility was not yet in existence.

According to the Standards, compliance with its articles was voluntary and not legally binding. However, it was indirectly binding, as state laws and local regulations mandated compliance with its provisions.

3.1.2 Definition of Barrier-free

The term “barrier-free” was first defined in 1974 at the United Nations Expert Group Meeting on Barrier-free Design. The meeting report was published worldwide in 1975 as *BARRIER FREE DEESIGN* [7].

The report refers not only to the physical barriers but also to the social barriers [7]. However, as a global trend, the barrier-free generally means removing the physical barriers, and the social barriers were rarely mentioned. In Chapter VIII, “Conclusions and Recommendations,” 76 [8] of the same document, following “While the concept of Human Rights was stressed throughout the meeting and there was complete accord with the fact that PwDs have a basic right to share in the resources afforded to all citizens”, it was followed that “developing countries where cultural and social differences, as well as economic limitations, will affect the practical implementations of these rights.” The participants in this meeting recognised that in developing countries, various problems prevent the practice of these rights, partly due to economic constraints and cultural and social differences” [Duncan 1975:31]. Thus, while acknowledging the difficulty of making progress in developing

countries, the meeting also provided a grace period for developing countries to work toward barrier-free access. This was even more so in the case of Vietnam since Vietnam war had ended.

3.1.3 The Vietnamese terminology of Barrier-free

The Vietnamese terminology for barrier-free is “tiếp cận,” as defined in Article 2.8 of the Law on PwDs (Luật Người khuyết tật, 51/2010/QH12). The word “barrier-free” spread worldwide during the global International Year of PwDs (1981) and the United Nations Decade of PwDs (1983-1992), and even in Asia. Barrier-free is used as a foreign word in Japan. According to a survey conducted by the Agency for Cultural Affairs, Government of Japan, on foreign word retention, the barrier-free word had a recognition rate of the barrier-free term was 85.5% in 2002. In China and Thailand, barrier-free is used as a direct translation from their language. However, in Vietnamese, the term of barrier-free has not been used.

According to the semiotics of Saussurean linguistics, the acoustic image (*signifiant*) precedes the concept (*signifié*). In addition, in the research method of area studies, the start of using a term can also be judged as an indicator of when the concept prevailed in a country. In this regard, we can examine the history of the term “tiếp cận” in the Law on PwDs.

Since the law was enacted in 2010 and came into effect in 2011, it appears that the term “tiếp cận” was directly translated from the CRPD adopted in 2006 into the Law on PwDs, and was formally borrowed. However, Vietnam had its movement toward barrier-free.

Within Vietnam, the 1959, 1980, and 1992 Constitutions have, in principle, guaranteed equal rights to PwDs. However, the domestic environment in the 1990s was different from earlier years. In 1998 Ordinance on PwDs (Pháp lệnh về người tàn tật, 06/1998/PL-UBTVQH10) was enacted. This Ordinance is a decree used for a certain period before it is enacted into law. The preamble of the Ordinance states that it was enacted on the basis of the 1992 Constitution, which regulates the responsibilities of the family, society, and the State towards PwDs and the rights and duties of PwDs in accordance with Articles 59, 67, and 91 of the 1992 Constitution. The 1992 Constitution was influenced by the Doi Moi reform, which entrusted the general management of the Party and the State to the authorities. Ordinance on PwDs was made by the authority. Before this Ordinance, the “Labour Code” enacted in 1994 also mentions the employment of PwDs and the war invalid. This is due to the inherent subject of the employment of war invalid in Vietnam, but it can also be said that Vietnam has begun to pay attention to PwDs in earnest.

Furthermore, looking at international influences, the 1990s was also when Vietnam turned its policy toward an all-round foreign policy, partly due to the collapse of the Soviet Union. According to interviews with Vietnamese welfare officials, Vietnam also studied the welfare policies of developed Western countries in formulating its welfare policies and laws. This suggests that, due to the influence of the Doi Moi reform, the Vietnamese authority concerned are also seeking the global standard. In the process, they have likely encountered a phrase equivalent to tiếp cận. However, tiếp cận is not yet used within the Ordinance enacted in 1998. The expressions related to barrier-free are included in some articles. The agencies concerned do not use the term, tiếp cận, but instead use the phrase “make conditions convenient for PwDs (tạo điều kiện thuận lợi cho người tàn tật)” in Articles 3, 18, 24, and 25, and “convenient for PwDs (sử dụng thuận tiện của người tàn tật)” in Article 26, expresses barrier-free. Tiếp cận was expressed without using tiếp cận, which shows the authority had a hard time.

In 2002, the Ministry of Construction issued the Building code of construction accessibility for PwDs (QCXDVN 01:2002 về Quy chuẩn xây dựng công trình để đảm bảo người tàn tật tiếp cận sử dụng.) was promulgated, establishing a law on barrier-free. For the Firstly time, tiếp cận is used in an official

document. Since it predates the enactment of CRPD in 2006, it can be said that Vietnam defined the term independently.

One of the government's barrier-free educational activities was publishing a book entitled “*Giao thông Tiếp cận* (Barrier-free Public Transportation)” in 2008. The book was written by several Vietnamese researchers and uses “*tiếp cận*” in the book title. The book is based on *Mobility for All* [Rickert 2000] and includes content on the concept of barrier-free and the rights of PwDs, as well as technical content, such as the design of ramps and elevators for facilities, also means of making roads, railroads, ships, airports, buses, and aeroplanes barrier-free. The book contains many photos showing the barrier-free roads, railroads, ships, airports, buses, and aeroplanes in other countries and photos of non-barrier-free areas in Vietnam, comparing them with those in other countries and pointing out problems. It also introduces barrier-free bus experiments in Vietnam.

3.1.4. “*Tiếp cận*” in society

“*Tiếp cận*” appears to have become widespread in the period leading up to the Law on PwDs. The author conducted descriptive questionnaires in 2011 and 2012 on how *tiếp cận*, which was Firstly used in an official government document in 2002, is perceived, focusing on university students and their graduates from Foreign Trade University in Hanoi and the National University Ho Chi Minh City University of Social Sciences and Humanities in Ho Chi Minh City.

There were 134 respondents in Hanoi and 144 in Ho Chi Minh City, and their profiles show that in both cities, the ratio of male to female respondents was 3:7, with a female bias. Regarding the age range, about 80% of respondents in Hanoi and 75% in Ho Chi Minh City were under 30 years old. In both cities, 80% of the respondents were company employees and university students. Based on the above, we considered how residents of the two cities perceive the term “*Giao thông Tiếp cận*”, imagining the respondents as white-collar women in their 20s who are the future leaders of Vietnam. The results show a recognition rate of about 40%, with 58 in Hanoi and 64 in Ho Chi Minh City, and after about 10 years, the term has yet to prevail enough in society.

A few respondents indicated “assistive devices”. In addition, three Ho Chi Minh City respondents who answered “Yes” answered “wheelchair”. When the author saw it got the Firstly case, he believed the respondent misunderstood the question's meaning and gave an invalid response. However, since two more respondents said “wheelchair,” he even considered why they thought *tiếp cận* is a wheelchair with the content of “assistive device”.

After the consideration, the author concluded that respondents did not consider the definition of “*tiếp cận*” as “being able to board a bus in a wheelchair,” but rather as “approaching (accessing) a bus (from home), which is the general meaning of the Vietnamese custom.

At the time of the author's survey, some Vietnamese did not take it for granted that PwDs use a wheelchair at home but viewed it as a special transportation tool. This differs from Japan, which takes it for granted that PwDs use wheelchairs in their homes and considers *tiếp cận* of public transportation for long-distance. This analysis shows that going out of the house is difficult in Vietnam and one aspect of the government's definition of “*tiếp cận*” is not exactly understood.

In addition, the author uses barrier-free in this paper. However, the term “*tiếp cận*” in the Law on PwDs seems equivalent to the term “access” in Vietnam at the moment, not “barrier-free”. Actually, *tiếp cận* is one aspect of barrier-free. In 1975, barrier free design [7] defined physical barriers as access and social barriers, which refer to people's awareness in society. However, in the global trend for decades, physical barriers are predominant, and social barriers are rarely mentioned. The main reason for this could be that physical barriers are visible, while social barriers are invisible. Furthermore, because the subject of social barriers is not PwDs, it is usually overlooked. However,

the attitudes of the people in society are also important. In other words, services of “tiếp cận” mean the access PwDs can participate in society and the attitude of people who provide. For example, an officer of a bus company said in my interview, “We don't want barrier-free buses because there are only a few PwDs take it, and it is not profitable for the bus company”. This perception is a social barrier.

3.2 Companies: Survey of Barrier-free Buses in Ho Chi Minh City

The author must discuss the actual barrier-free environment in Vietnam. The following is a report from the author's survey.

3.2.1. December 2003: Firstly para-game in Vietnam.

The author visited Vietnam for the Firstly time as a tourist. He contacted a hotel in advance and asked if it was safe to go there in a wheelchair, without using the term “barrier-free.” The reply was “Yes. Is there any problem with a wheelchair?” However, the entrance was only stairs. Perhaps the answer meant to say there is the staff who assist him even in a wheelchair. This city was full of such barriers, but if there was a barrier, people in the street immediately gathered to give a hand. The author described this situation as “a town where people do not feel barriers even if there are barriers.

Coincidentally, when the author visited Hanoi, Vietnam's Firstly Para Games (a sporting event for para-athletes in Southeast Asia) were being held. Although the author, a Japanese tourist, had nothing to do with the Para Games, he was cheered by the people of Hanoi, “Para Games!” because he was just bound in a wheelchair. In the questionnaire, some respondents answered that they learned that PwDs also participate in society through the Para Games. This seems to be a general answer. In fact, through the Paralympics in 1964, PwDs in Japan learned that foreign para-athletes participated in society. Vietnam's Firstly Para Games was also the top news on Vietnam Television (VTV) at night, and there is much to be gained from the Para Games.

3.2.2. March 2009: Bus Wheelchair Lift by Benz.

The author conducted a barrier-free survey as a researcher for the Firstly time after receiving information on the Internet about the availability of a barrier-free bus in advance. This survey needed some help. Firstly, when the author's Vietnamese assistant called the bus company to inquire about the barrier-free bus, the bus company staff did not know about it and was surprised to learn of its existence.

On the other hand, when we conducted a group interview of 10 ordinary HCM City residents about their awareness of barrier-free buses as a preliminary survey, none of the respondents knew of the buses' existence. Almost all responded that such a bus would never run in Vietnam because the country's welfare system lags behind Japan's. When the author informed them that the bus runs in Ho Chi Minh City, they replied, “I don't think Vietnamese people can wait for the bus to depart until their wheelchairs finish boarding the bus”, “I don't think Vietnamese buses stop at stops and only slow down so that passengers can jump on and “I don't think it is possible to get on the bus with a wheelchair,” were the only negative comments about the existence of barrier-free buses. The author, who came to investigate, could feel that he came for nothing.

Furthermore, the Center for Sponsoring - Vocational Training and Employment Introduction for PwDs in District 3, Ho Chi Minh City city (Trung tâm Bảo trợ - Dạy nghề và Tạo việc làm cho người tàn tật TP. Hồ Chí Minh), where the junior grade students learn. The author finally confirmed the existence by asking their opinions and obtaining responses that they were aware of its existence but had never ridden on it. They never used the service because the route they wanted to use did not operate a barrier-free bus.

Finally, we found out that it was a bus wheelchair lift, made of Benz, on Line 1, Chợ Bến Thành - Chợ Bình Tây.

Although it is a cultural gap, there is a bus timetable in Japan. However, in Vietnam, there was none. For this reason, we could not find the departure time for the return trip even after inquiring with the driver. Presumably, the bus would depart when the next bus arrived at the terminal. Also, on the return bus, the conductor was unaware of the disability discount on tickets, indicating that it was not common for passengers with disabilities to board the bus.

3.2.3. October 2013: Low-floored (charity) Bus of Korea

The author examined Vietnam's Firstly low-floor bus with the electric ramp from Bến Xe An Suong to Đại Học Nông Lâm

Ôn Huê Xuong, an investor of a Vietnamese overseas Chinese living in Australia, had returned to Vietnam several times since 2002 and saw that the buses were lagging compared to Vietnam's development, so he bought two Korean-made low-floor buses to help the environment and the PwDs, elderly, and children [see Đường Bộ 2013]. Since these were the Firstly low-floor buses in Vietnam, there was a lot of media coverage on the Internet. In an interview with the author, he said that the buses are used by PwDs every 2-3 days, but the electric ramp was oiled when the author rode. It appeared that not many PwDs use the buses. The reason for this is that the bus operates in a development area called Line 104, which is far from the general residential area, and some disabled organisations in Vietnam joked that they had to take a taxi to get on the bus.

3.2.4. October 2016: Remodelling Công Viên 23/9 and Chợ Bến Thành bus terminals (but no barrier-free bus)

Công Viên 23/9 and Chợ Bến Thành bus terminals were remodelled to be barrier-free, and many of the bus stops in Ho Chi Minh City were designed to be barrier-free. Although the spread of bus stops throughout the city, barrier-free buses were not running in Ho Chi Minh City. When the author asked the staff at the bus terminals about the availability of barrier-free buses, all of their information was inaccurate, as no barrier-free buses existed at the locations they were told about. It seemed like that we went on a fool's errand.

3.2.5. August 2019: Low-floored bus of Euro

In August 2019, the author confirmed that low-floor buses were now running on some routes. Unlike the Korean-made barrier-free buses in 2013, these are Euro II buses, similar to those that began running in Hanoi, with manual folding ramps. University students with disabilities in Ho Chi Minh City also used the bus. However, unlike in 2013, such a breakthrough did not receive media coverage via the Internet.

3.3. PwDs in Vietnam: ramp challengers

In the author's experience, barrier-free cannot occur if PwDs only wait. PwDs must overcome inconvenient environments. Even if the place is inconvenient at Firstly, when contractors see that PwDs face difficulty, they will think about barrier-free together. Suppose the social participation of PwDs is increasing. In that case, as it is today, the "Conflict model" of the Barrier Free Triangle can be changed to a "Cooperation model" due to the support of society.

From this perspective, the PwDs in Kaohsiung City, Taiwan, who have created their tools for PwDs in Taiwan and are working with local government agencies and companies for community development, can serve as a reference for Vietnam as a completed model of the Barrier Fee Triangle (Figure 2) at the city level rather than at the national level. This could serve as a reference for Vietnam.

For this reason, the author planned one project for Vietnamese PwDs. The author provided a portable ramp manufactured in PwDs organisations in Kaohsiung City to Vietnamese PwDs to see if they could perform activities in inconvenient places in their daily lives. We named them “*Ramp Challengers*”

The ramp is compact, measuring 53 cm in length and weighing 1.25 kg, and can be hung from the back of a wheelchair while moving around. However, while it could be adapted to the Japanese and Taiwanese environments, it did not meet the requirements of the Vietnamese environment.

However, the project's true purpose is that even if the portable ramps are maladaptive and cannot meet the environmental conditions, PwDs will use them and recognise the need for adaptable ramps because they will be aware of the inconvenient environment. Alternatively, Vietnamese PwDs themselves can also modify the ramps themselves so that they can adapt to the environmental conditions in Vietnam. In this case, PwDs organisations in Kaohsiung City could also cooperate.

As a result, this project was premature for the lifestyle of PwDs in Vietnam. Although there is the coronavirus pandemic, Vietnamese PwDs did not want to take the unsuitable ramp with them.

This is understandable from the lifestyle of the interviewees' responses. When there is no low-floor bus with an electric ramp, as Korean-made in 2013, PwDs in Japan and Taiwan would prefer a low-floor bus folding manual ramp to a one-step-up bus. However, Vietnamese PwDs prefer to be carried on a one-step-up bus (without a ramp) because folding the manual ramp would burden the driver. From this perspective, they would prefer to be carried to the bus as they are rather than using a simple ramp in an inconvenient location. Another advantage of buses is that they do not take time to fold up the ramp before, while and after the PwDs is on board, so the bus departs earlier. In the past, the author described Vietnam as “a city with barriers, but without feeling barriers”, but this lifestyle will not contribute to barrier-free development.

As buses and other modern assistive devices are introduced, there will be a difference in safety between barrier-free environments, where people know about barriers and assist others and barrier-free environments, where people lend a hand without knowing about barriers.

3.4. Disability Studies

We have mentioned that it is the support of a society that determines the Barrier-Free Triangle. What kind of person among the many people in the society can strike a balance among the three parties of the Barrier-Free Triangle? The author believes that it is necessary to be able to understand the position of PwDs. In addition, the author emphasises the existence of scholars who can think of barrier-free not only in physical terms but also as a problem within society.

During his research, the author visited a research institute in Vietnam and asked if there were any researchers in the field of disability studies. There, he was told that there were many researchers on PwDs or impairments but none on disabilities. In Vietnam, PwDs were still treated only as subjects of research. Considering that in Asia, disability societies were established in Japan in 2003, South Korea in 2009, and Taiwan in 2018, it may not be easy to establish a disability academic society in Vietnam immediately. However, for example, if there were researchers studying disability studies, even privately. As in Kaohsiung in Taiwan, the balance among the three could be adjusted.

4. Conclusion: Perspective from Barrier-Free Triangle

While it is continually said that economic forces cause the delay in barrier-free in Vietnam, the author has been observing Vietnamese society from a fixed point of view for over a decade. He has examined how the government, companies, and PwDs have made barrier-free a reality. Progress in barrier-free seems to be slow compared to improving the quality of life in Vietnam.

The government has taken the initiative to make barrier-free facilities in Vietnam, and companies have responded. The Barrier Free Triangle must be fixed because PwDs are waiting rather than seeking barrier-free.

Moreover, it is the support of a society that ultimately determines the Barrier-Free Triangle. One indicator of this is the awareness of the term barrier-free, “tiếp cận.”. The term was defined in 2010 in the Law on PwDs. However, although the term was firstly used in official documents in 2002, the awareness among people in 2012 was low, around 40% in both Hanoi and Ho Chi Minh City. The fact that barrier-free is not well understood among people in society means that the direction of support for the barrier-free triangle is hard to move. This is by no means a matter of economic factors alone.

During the author's regular observations of Hanoi and Ho Chi Minh City, there have been large-scale renovations of train stations and bus terminals, suddenly becoming barrier-free. During his research and use of these facilities, the author feels the architecture and its landscape and the high degree of completion of barrier-free. The existence of barrier-free tools does not mean that it is difficult to create barrier-free environments in Vietnam due to economic factors. The problem is that barrier-free only extends beyond that point.

In Vietnam, there is a form of barrier-free but not usable barrier-free. The author defines it as “Non-Practical Barrier-free”. The cause of Non-Practical Barrier-free can be seen in the fact that the renovation work was done only by the companies or that PwDs needed to be sufficiently involved in the project.

The same is true for barrier-free buses in Ho Chi Minh City: the fact that barrier-free buses, buses wheelchair lift, were running in 2009 is compared to the fact that in Bangkok, Thailand, also in Southeast Asia, barrier-free buses began running in 2018, an earlier stage of transportation barrier-free efforts. If this is the case, the participation of PwDs is necessary, and the fact that buses do not run on routes they want to use must be seen as a problem. It makes no sense for barrier-free buses to run non-practically on routes not used by PwDs. The companies must know whom they are trying to provide barrier-free services for. In this regard, the role of government agencies that can guide companies is also required. This brings up the problem of the Barrier Free Triangle in Vietnam today. In the future, when Vietnam loans from an international institute for large projects, both barrier-free and the participation of PwDs will be conditional for the loan. PwDs will need to make barrier-free an issue by themselves. PwDs will have to overcome their inconvenient circumstances to become barrier-free. Companies must not always treat PwDs as the object of patronage. PwDs must grow from the object under patronage because PwDs must be a very important part of the Barrier-Free Triangle.

The shape of the Barrier-Free Triangle varies from place to place. However, the actors remain the same. It is important to ensure that Barrier-Free Triangle is well-balanced among the three actors. And in the case of Vietnam, the author strongly recommends the spread of Disability Studies that can consider the balance among the three actors. It can prevent the country from falling into a Non-Practical Barrier-free for an inclusive society.

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Understanding the rights of persons with disabilities and social exclusion

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Abstract:

While the 1986 Political Reform dramatically reduced poverty rates, increased market economy opportunities, and modern industrialism, the poor have been disproportionately left behind. Exclusion is primarily caused by ignorance and a lack of governmental responsibility in spreading more information about PwDs. The classification of impairments is viewed as a broad term that encompasses various perspectives based on mental and physical characteristics. This study analyses a strategic, critical and comparative understanding of the Vietnamese PwDs' rights and the factor behind experienced social exclusion. For that, the Law on PwDs has been analysed and studied its challenges, pros and risks. The international UN convention is also reflected here, with an assessment of policy and approach to improve PwDs' lifestyles and market opportunities.

Keywords: Vietnam, PwDs, Human rights, Rights of PwDs, right to education and job opportunities, National Law on Persons with a disability, Social Exclusion

1. Disability and social exclusion: a theory

1.1. Contributing factors of social exclusion of PwDs

Vietnam's ratification of the International Convention on the Rights of Persons with Disabilities (CRPD) in 2015 signalled a “basic human rights commitment” to PwDs. In contrast, previous research pointed out the marginalisation of this minority. Studies stated limited educational opportunities of availed institutes for job employment, resulting in limited supply or means of finances. The 2009 Vietnamese census report identified 7.8% of the country's population, approximately 6.7 million individuals, comprising the PwDs section [1]. A high contributing factor to the isolation and social exclusion of this minority is Agent Orange exposure of parents, a Vietnam War-induced dioxin, resulting in a large population being born with defects and varying neurological impairments. While the 1986 Political reform ensured poverty rates' dramatic reduction, market economy opportunity increase, and modern industrialism, the PwDs have been left disproportionately in the poverty lines. The contributing factors of exclusion are primarily birthed from unawareness and lack of governmental liability in spreading more knowledge regarding PwDs.

The classification of impairments is seen as an all-encompassing word encompassing a wide range of perspectives dependent on mental and physical characteristics [2]. PwDs are typically defined as those who have long-term sensory, physical, mental, or intellectual limitations. According to the social framework, these may develop as obstacles or hindrances to interaction and productive involvement. Social-cognitive processes such as cues, stereotypes, prejudice, and discrimination all contribute to the stigma associated with mental disabilities [3]. The general public may use physical characteristics and poor social skills, including psychiatric symptoms, but also labels to determine whether a “person has a mental handicap (PLMI)”. Prejudice is described as a conviction in the integrity of stereotypes and actions based on them [4]. It arises from widespread beliefs about PLMI, such as ineptitude, weakness, or danger. As a result, discrimination against PLMI is widespread and manifests itself in various ways, including bullying, interference in interpersonal relationships, exclusion from jobs and school, and social isolation.

“Discrimination, stigma, and violations” of human rights are all connected, bolstered, and justified by one another. For instance, stigmatising a “person with schizophrenia (PLS)” becomes a type of discrimination; refusing them employment due to their schizophrenia is another, which infringes on their right to employment. Discrimination fueled by stigma results in human rights violations,

legitimising stigma [5]. If the cycle is not stopped, it will keep repeating and intensify. Therefore, stigma puts PLMI's well-being in danger, with some of these threats constituting human rights abuses. According to a “human rights framework”, stigma and discrimination violate basic human rights and the right to be free from discrimination. Other human rights, such as the right to health, dignity, privacy, and freedom from harsh, inhuman, or degrading treatment or punishment, are also violated when PLMI are the target of discrimination. Major health consequences can result from violations of human rights.

For instance, developing and implementing health policies and programmes can support or infringe upon human rights; consequently, efforts taken to uphold, protect, and fulfil human rights can lessen the likelihood and effects of poor health [6]. A “Social, Political, Economic and Cultural (SPEC)” framework developed by the “WHO Social Exclusion Knowledge Network (SEKN)” revealed the theoretical assumption of exclusion being a “state” as false [7]. According to their analysis, social exclusion is a procedure that operates along different dimensional levels, comprising individuals, regional levels and “global levels state”. A contributing factor for PwDs' social exclusion is unjust resource distribution, unequal access, and capabilities' returns, with the essential incorporation of rights that dictate participatory and “cohesive social systems”. The assumption of PwDs being excluded is false and denotes their easy vulnerability to this factor due to dysfunctional and unequal social structures.

Generic depression is also considered an eminent attribute to the PwDs minorities with risk factors including low folate, poor health, vitamin B12 deficiency, brain injury, and “raised plasma homocysteine levels” [8]. In Vietnam, individuals within or above 60 years are termed under the constitution as “older persons or elderly people”. A 2009 statistics report on “Vietnam population and housing census” revealed the alarming rise of elderly citizens, with major occurrences of abandonment by the family or severe disabilities developed in later years. Under the “Years Lived with Disability (YLDs)” in 2000, depression is measured as crucial, in addition to being conceived as the 4th “leading contributor” to global diseases' burden as per the “Disability Adjusted Life Years (DALYs)” measurement [9]. Owing to the high maintenance and caretaking essential for elderly individuals, they are extensively vulnerable to social exclusion, being ignored potentially from the relative duty of nursing.

1.2. The Law on PwDs: the challenges

The national and socio-political perception of “PwDs” has changed considerably in the past 2 decades. The Vietnamese government has progressed to general acceptance of welfare, charity and medical services, adding legal rights acceptance of “PwDs (PwDs)” citizenships, largely reflected in new social policies and legislation. Promulgated in the early-2010, the Law on PwDs is the country's “Firstly comprehensive national law” representing the PwDs' legal rights [10]. The new law mandates equal social participation through PwDs accommodation and accessibility. The latter includes cultural services, employment, “sports and entertainment”, information technology, vocational technology, rehabilitation, public places, education and health care. The law's origins are traced back to the 1998 Ordinance on PwDs passage, an initiatives series for PwDs' “rights and interests”.

It aligns with the inter-agency establishment of the “National Coordinating Council on Disability (NCCD)” and barrier-free enactment for public transportation “code and standards” accessibility. Advanced by the “International Labour Organisation's Social Protection Floor Recommendation (2012)” and SDGs 2015-2030 recognition, PwDs inclusivity in basic human rights accommodation and expectations is a national growth essentiality [11]. Under Article 34 of The 2013 Constitution, the “right to security” is codified, adding the further description of the 2012 - 2020 strategic

strengthening of national social protection in Resolution 70/NQ-CP/2012 [12]. One of the socio-political challenges addressed under this framework is the high poverty risk of PwDs and providing adequate social assistance for such groups. It also comprises the social insurance intent for mitigating ageing, sickness and occupational injury-associated financial risks. The challenges in this conclude the varying issues recognised and challenged under the Vietnamese “National Law on PwDs”, providing policies for opportunity improvements in decent work availability.

The Vietnamese remit comprises social protection “policies and programmes” ranges in place, monitoring non-contributory entitlements such as PwDs awareness programmes targeting other groups and disability-targeted schemes. Joint-Circular 37/2012/TTLT-BLĐTĐ-BYT-BTC-BGDĐT is the “Disability Degree Determination Council (DDDC)” determinant of the disability “type and degree”, located within the decentralised Vietnamese administration units. Disability-targeted entitlements require disability assessment for eligibility under the previously mentioned DDDC determinant, using two age-group-centric assessment tools. The factors of social protection accessibility among Vietnamese PwDs, adding to potential challenges, are “attitudes on disability and social protection need, geographical and financial accessibility, broader disability-inclusive planning”, programmes utility awareness and perception, and “criteria and procedures” for disability assessment. Decree No. 28/2012/ND-CP introduced in 2012 shifted the prevalent provincial capital conduction of disability-targeted programmes, administering social protection application forms for PwDs within “local commune-level People's Committees”, therefore leveraging both national and local information documentation and human rights resolutions.

Here, the primary challenge is the exception of DDDC’s inability to determine an assessment on a local level, sending case referrals to the “Medical Evaluation Council (MEC)” located at the provincial level. Children <6 and people with “mental health conditions” are likely to be directed to MEC referrals [13]. With the re-evaluation opportunity provided to PwDs, the challenge lies in the financial difference between “direct application costs” and “appeal assessment fee”. The primary factor requires VND 50,000, rounding up to above US\$2, while the latter is charged at VND 1,150,000, marked at US\$50 above, decreasing the scope for financial accessibility. The policy “review and key informants” exhibit extensive limitations in the assessment criteria focusing on “physical functioning and self-care” disproportionately, tending to certain impairments' impact underestimation, such as “mental health conditions” and profound “hearing and communication impairments”. Key informants noted the increased likelihood of lower-degree classifications or exclusion as the leading pathway to these setbacks.

1.3. PwDs Vietnamese government support

The 2019 Labour Code revokes its 2012 version to expand the application scope of “workers with labour relation” as workers without a legal employment contract. It also redefines an employee as “a person who works for an employer under an agreement, is paid, managed and supervised by the employer” [14]. This law reformation allows PwDs to claim rights to a job with proper certification and employment eligibility, discharging the employer's right to rejection or dismissal under discriminatory grounds. The 2013 Constitution enshrines “PwDs” protection [15]. Another important governmental support is noticeable through the 2010 edition of the Law on PwDs, introducing the inter-agency “National Coordinating Council on Disability (NCCD)” establishment, “Vocational Training Law” disability-inclusive provisions, barrier-free access code enactment, and public construction and transport standards. A recent UNICEF report identified the current PwDs count in Vietnam as 6.2 million, comprising about 7% of the national population [16]. The study also revealed that an estimated 13% of noting 12 million population live with PwDs. The study reported that only

2.3% of Vietnamese PwDs receive recovery services even with all being eligible for seeking health insurance.

The Vietnamese government is responsible for ensuring the equal distribution of capital and legal support for this minority, requiring the mitigation of concurrent discrimination and unequal lifestyle opportunities. The Decree 28/2012/ND-CP under the Vietnamese legislature provides articles guidance of the Law on PwDs [17]. Furthermore, the 2002 “Barrier-Free Access Code & Standards” implemented through Vietnamese government support establishes the construction sector’s “national accessibility standards”, providing PwDs with the right to employment in this field with legal recognition. The new decade launched by the government in November 2012 is named “Make the Right Deal”. It aims toward the full PwDs rights realisation promotion, including “UN CRPD” implementation and essential ratification. The Ministry of Labour, War Invalids and Social Affairs (MOLISA) is rightful to political mandate for PwDs issues and is responsible for disability legislature implementation coordination. The most direct disability-related policy implementers include the People's committees at the commune, provincial and district levels.

Considering all these drivers of change, the overall lifestyle and accessibility of human rights facilities and other health care essential for PwDs are expected to have developed extensively. The new “Asian and Pacific Decade of PwDs” is set by the Vietnamese administration to achieve SDG targets between 2013-2022. The 2015 “Inclusive Education” is government support in Vietnam for providing inclusive education for “children with disabilities (CwDs), with the Vocational Training Law mandating organisational tax provisions for PwDs training services. Ho Chi Minh City conducted a “Monitoring the Implementation of Article 27 of the CRPD on the Right to Employment of PwDs in Vietnam” consultation workshop in 2021, held by the UN Development Programme (UNDP) and the Norwegian Embassy [18]. Partnered with the PwDs-specific organisation “Action to the Community Development Institute (ACDC)”, its aim was to strengthen PwDs community leaders’ capacity and “human rights indicator” monitoring synergies’ increase.

Another fundamental purpose of the workshop was to ensure PwDs inclusive employment in Vietnam. Governmental support is prominent to legislative and social actions procured to improve lifestyle quality and health care facilities of the PwDs. A prominent example is the “National Action Plan to Support PwDs”, which was approved in August 2012 to provide suitable jobs and vocational training to an estimated 250,000 working-age PwDs [19]. The project encountered, recognised, and mitigated varying socio-economic and living environment issues such as public building accessibility, medical services, public transport utility, legal services and early intervention. These are recognised at the triumphant efforts of the Vietnamese government to recognise and be responsible for the healthy lifestyle of this minority section.

2. The Convention for Rights of PwDs

2.1. Importance of the human rights convention for Vietnamese PwDs

Vietnamese citizens understand “human rights” as “natural and inherent” human needs and the presentation of mandatory interests. National laws and “international legal agreements” recognise and protect these rights, representing the ability to exercise humans’ “natural and objective privileges”. Directed from numerous studies on the “Vietnamese human rights situation outside the UN Convention”, there are major issues in civil liberties and equal accessibility distribution to human rights. “CRPD (2015)” is important in countering outdated “customs and practices” hindering human rights protection of PwDs on a global scale, including in Vietnam [20]. The CRPR guarantees an equal distribution of and accessibility to social, public and economic life to PwDs. Adopted on December 13 2006, by the “UN General Assembly”, Switzerland's accession to the Convention was

marked on April 15 2014. The importance of this Convention lies in the providence of leading an independent and economically capable autonomous life, further adding the right to one's family, education accessibility, adequate social protection and standardised living.

Under the Convention policies, the State parties are obliged to create “focal points” for supervising commitment implementation and developing a new national programme for Convention implementation and promotion [21]. PwDs and their allies, followed by the CRPD adoption by the United Nations, returned to national legislature reforms for accommodating the advancement of freedom, equality and dignity expected rights of PwDs, dissecting the concurrent legal system discrimination. Vietnam was noted to delay CRPD ratification, initiating its Firstly “domestic disability law”, enacting the Vietnamese PwDs' Firstly-time right to “employment and education”. Encouraged by the UN's national, legal and social growth, Vietnam strengthened its international cooperation for the protection and promotion of human rights, becoming the 7/9 essential member of the international human rights Convention [22]. With independence, development, self-reliance and peaceful foreign policy, Vietnam introduced active participation in the “international legal system” since the 1986 Doi Moi (Renovation). The 2007 Convention signing for PwDs' rights became the domestic transformation phase of Convention implementation promotion.

The country showed a strong commitment to PwDs' rights measurement, with the Firstly-ever Vietnamese law to recognise PwDs, providing social integration, and later founding the official organisation, which is directed and facilitated by ministers' coordination [23]. The adoption of the UN Convention further led to 63 “legal aid centres” throughout Vietnam, serving the PwDs' “right to accessibility law”. “Resolution no.48-NQ/TW and Resolution no.49-NQ/TW” were implemented by the Vietnamese government 17 years back in 2022 for employment, resource allocation and distribution, and health care accessibility improvement of the citizens' safety and good lifestyle laws, the PwDs were not considered for any legal specification, them being mainly perceived in most Asian countries as long-term children relying upon codependence, thus without any legal approach for exclusively them [24]. According to the Vietnamese “General Statistics Office”, 58% of the Vietnamese PwDs population comprises women, with 28.3% marking Children.

The current year's final PwDs count in the nation is expected to reach 8 million between 5 years and older, including approximately 4 million women and 1.2 million girls. The end of 2020 shows 3 million approx PwDs being granted legal disability certificates, with a larger section still living in dire conditions and no state recognition [25]. Inclusive education (IE) for PwDs has been a growing academic subject for nearly the past 3 decades in the country, with various programmes being introduced for the likelihood of implored improvement and increased employment rates. While the government has legally mandated employment capabilities and rights for this minority, conservative organisations are set against the idea due to potential unawareness about and rigidity against PwDs and their skill sets. The VIE/01/021 “Support to Develop and Implement Agenda 21 for Vietnam” started in November 2001 and provided an Agenda 21 background, which included a strategic educational scope and skill development opportunity for PwDs [26]. The Convention ratification also increased the understanding of the state and provincial government's roles in enabling better lifestyle and employment creation for this minority [27].

2.2 Disability Policy Enforcement

“Policy Implementation (PI)” is a legal authorisation of policies giving them legal and real results utilising state apparatus-based organisational activities conduction [28]. The “policy enforcement” purpose is subject to goals realisation for policy applicability and addressing “pressing social problems” [29]. The “social security policies” are objective to individuals under or below the working

age, including PwDs, as individuals are unable to procure employment due to long-term prejudice and industrial scepticism. The “social security policies” beneficiaries are subject to following a pay-benefit principle, where individuals experience risks, disabilities and difficulties due to both personal and impersonal reasons. An elemental example is construction project malfunctions leading to on-site workers' injury and often disability. While these individuals did not priorly belong to this category, organisations often need to catch up on these employees due to the biased mindset of PwDs reflecting a slowing, inefficient and unproductive work culture [30]. Here, the government is liable to ensure the person is provided properly until any further recovery and provides them suitable jobs subsequently.

The state's role as a promulgator is vital for “social security policies” implementation and regular application assessment. With the Firstly Vietnamese law ever to recognise PwDs, allowing social integration, and later forming the official organisation managed and facilitated by ministers' coordination, the nation demonstrated a strong commitment to protecting PwDs' rights. Following the approval of the UN Convention, 63 legal aid centres were opened nationwide in Vietnam to support the PwDs' legal right to accessibility. Resolutions No. 48-NQ/TW and No. 49-NQ/TW were incorporated by the Vietnamese government 17 years after 2022 to improve the citizens' safety and favourable lifestyle laws regarding employment, allocation of resources and transmission, and health care accessibility [31]. The PwDs were not deemed for any constitutionally protected specification because they are primarily seen in most Asian countries as long-term children who rely on emotional neediness without any right to appeal exclusively.

According to the principles of the Convention, the State Parties are required to establish focal points for monitoring commitment implementation and to build a new national programme for the implementation and promotion of the Convention. Following the UN's approval of the CRPD, PwDs and their allies moved to national legislative reforms to advance the freedom, equality, and dignity that PwDs are anticipated to have as rights while analysing the contemporaneous legal system discrimination. Vietnam is known for delaying ratification of the CRPD to pass its domestic disability law and grant Vietnamese PwDs their Firstly rights to employment and education. Vietnam improved its international cooperation for the preservation and promotion of human rights, becoming the 7/9 key member of the “international human rights Convention, encouraged by the national, legal, and social development carried out by the UN.

“Disability due to Addiction” is a rising concern in Vietnam, with 7 socio-cultural factors mapped as the addiction disability correlations [32]. % Hofstede dimensions in this aspect include uncertainty avoidance, long-term orientation, indulgence, individuality and masculinity, with the 2 globalising variables complementary for “positively impacting addiction behaviours”. According to studies conducted on Vietnamese PwDs, extensive social exclusion and employment unavailability are major causes of addiction disability causes. The Vietnamese construction industry exhibits major health concerns and risks, with a high rate of fatal accidents experienced by hard labourers, often ending with different forms of disabilities [33]. Health policies and practices can either support or violate human rights; as a result, efforts to preserve, defend, and satisfy human dignity can reduce the probability and impact of poor health.

Unjust resource dissemination, inadequate access, and capability returns are identified as contributors to PwDs' social exclusion, with crucial inclusion of rights that determine interactive and comprehensible social systems. The assumption that PwDs are vulnerable to exclusion is false; rather, it reflects their incredibly simple security vulnerabilities to this factor due to dysfunctional and inequitable social systems [34]. Disability-targeted entitlements call for two age-group-focused assessment instruments to determine a person's ability to receive benefits under the DDDC mentioned

above criteria. The accessibility of social protection for Vietnamese “PwDs” is affected by their attitudes toward disability and the need for social protection, as well as by factors like geography, debt capital, relatively broad disability-inclusive planning, programme awareness and perception, and the regulations and procedures for impairment evaluation. The administration of social assistance job applications for “PwDs” inside local commune-level People's Committees, utilising national and state information documents and civil rights decisions, was changed by Decree No. 28/2012/ND-CP, which was enacted in 2012.

3. PwDs human rights policies and social exclusion impacts in Vietnam

The Vietnamese mandate involves overseeing quasi entitlements such as PwDs community awareness, trying to target other groups as well as disorder schemes, established social protection policies, and programme ranges. Article 34 of the 2013 Constitution codifies the right to security, which also contains a characterisation of the 2012-2020 strategic strengthening of “national social welfare” throughout Resolution 70/NQ-CP/2012. This template addresses two sociopolitical concerns: the high levels of poverty risk of PwDs and the provision of sufficient government welfare to such people. It also includes a social insurance plan to reduce the investment risk related to ageing, illness, and workplace injury. The obstacles in this chapter bring to a close the different challenges recognised and questioned under the Law on PwDs that either offers strategies to enhance access to decent work.

Furthermore, the study concluded that while training programmes and job employment opportunities for “PwDs” have increased, socio-cultural bias and a lack of awareness remain dominant. Indeed, the government had already failed to maintain non-discrimination. While expanding the scope is critical for this minority, increasing PwDs' understanding and acceptance in Vietnamese society is critical for any future SDG expansion but also advantageous improvements for this minority [35]. PwDs' social exclusion is attributed to unfair resource distribution, limited access, and capability returns, with an important role for rights that shape interactive and understandable social systems. The notion that PwDs are at risk of exclusion is untrue; rather, it reflects their absurdly basic security weaknesses to this element due to broken and unfair social structures. Two age-group-focused assessment tools are required by disability-targeted entitlements in order to determine a person's eligibility for benefits under the DDDC mentioned above standards.

According to the study, while a large number of PwDs are gaining government citizenship based on their disabilities, these are limited to specific groups. The fact that the majority of mental illness-related disabilities, such as chronic anxiety and depression, are not recognised as disabilities by the state has resulted in an increase in the number of depression cases with no resolution or societal accommodation for their services and financial support [36]. Policies are legally sanctioned by conducting organisational operations based on the state infrastructure and given legal and tangible outcomes. Achieving objectives for policies applicable and addressing urgent social issues is a requirement for policy enforcement. The social security programs are objective to those of working age or younger, and they include PwDs as people who are unable to find jobs because of entrenched prejudice with industrial scepticism.

Conclusion

In contrast to earlier studies that highlighted the marginalisation of this minority, Vietnam's ratification of the “United Nations CRPD (CRPD)” in 2015 signalled a “fundamental human rights commitment” to PwDs. According to studies, there are few educational chances offered by institutions for job employment, which results in few resources available. PwDs comprised 7.8% of the country's population, or roughly 6.7 million people, according to the 2009 Vietnamese census

report. Parental exposure to Agent Orange, dioxin created during the Vietnam War, plays a significant role in the isolation and social alienation of this minority. As a result, a significant portion of the population is born with abnormalities and other neurological disabilities. In comparison, the 1986 Political Reform provided a sharp decline in poverty rates and expanded opportunities in the market economy.

Disability-targeted entitlements call for two age-group-focused assessment instruments to determine a person's ability to receive benefits under the DDDC mentioned above criteria. Among Vietnamese PwDs, social protection accessibility factors include attitudes toward disability and the need for social protection, geographic and financial accessibility, broader disability-inclusive planning, programme utility awareness and perception, and “criteria and procedures” for disability assessment. These factors all contribute to potential challenges. With the addition of formal citizenship rights for PwDs, the Vietnamese government has advanced in accepting welfare, charity, and medical services, which is substantially reflected in new social policies and regulations. The Law on PwDs, promulgated in early 2010, is the nation's Firstly comprehensive national statute to reflect the legal rights of PwDs.

The study has analysed the current legal and policy structure adopted by Vietnam for PwDs and witnessed a few concerning aspects. The study pointed out that while a major section of the PwDs was gaining government citizenship recognition based on their impairments, these are limited to certain sections. The majority of mental illness-imparted disabilities, such as chronic anxiety and depression, are not recognised as a disability by the state, resulting in a growing rate of depression cases without any resolution or societal accommodation for their services and financial backup. Furthermore, the study also conclusively determined that while training programs and job employment facilities for PwDs have increased, the socio-cultural bias and awareness lack is still dominant, and the government has failed to ensure non-discrimination. While scope increase is elemental for this minority, increasing PwDs awareness and acceptance is essential in Vietnamese society for any hopes of future SDG growth and opportunity improvements for this minority.

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Inclusion in Vietnam: Does the Government's responsibility go far enough to the right to education for children with disabilities?

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Abstract:

Children with disabilities are people with double vulnerability, facing many obstacles in enjoying human rights, including the right to education. Vietnam ratified the International Convention on the Rights of the Child in 1990, signed the International CRPD in 2007 and already ratified this Convention in November 2014, setting forth the responsibility to fulfil international commitments for ensuring children's rights with disabilities. The article explores the state responsibility of Vietnam in implementing international commitments to ensure the right to inclusive education for children with disabilities by analysing how the Vietnamese government respects, protects and fulfils this right. The article argues that, although there have been many efforts to incorporate international standards and norms on the right to education for children with disabilities, there are still gaps in policies and laws. In addition, accessing quality inclusive education, especially at higher education levels, remains challenging for children with disabilities in Vietnam. The article finds that gaps in ensuring the right to inclusive education for children with disabilities will affect the realisation of many other human rights, such as participation, entertainment, and employment. This situation requires the Vietnamese government to fulfil its state responsibility for the international human rights commitments that Vietnam is a member of.

Keywords: Inclusive education, children with disabilities, government's responsibility, right to education.

1. Introduction

Ensuring the rights of children with disabilities is an issue of global concern. According to UNICEF data, there are an estimated 240 million children with disabilities in the world [1] who face many challenges in accessing rights, including the right to education.[1] The double vulnerability of children with disabilities causes them to be denied their human rights, leading to social consequences, thus requiring countries to take action so that they are not “left behind”.

In Vietnam, the statistics of children with disabilities are officially reported. As of 2016, Vietnam has about 6.2 million PwDs aged 2 years and older, accounting for 7.06 per cent of the population, of which there are more than 663 thousand children with disabilities from 2-17 years old.[2] Like children with disabilities, Vietnamese children with disabilities face many barriers to realising their human rights, including the right to access education. For children with disabilities to exercise this right, there are three approaches to child education: special education, semi-inclusive education and inclusive education.[3] With inclusive education, children with disabilities fully develop physically, emotionally, intellectually, and aesthetically and form a personality. They can learn and acquire knowledge with other students without any discrimination. That helps them to be more confident in life and study.

Vietnam signed the International CRPD in 2007 and ratified it in February 2015 [4] That shows the goodwill of the Vietnamese Party and State towards ensuring the rights of PwDs. As a member state of the Convention, Vietnam has an obligation to implement the Convention and codify its provisions into the constitution and legal system of the country. The Convention stipulates that member states must have conditions to ensure that children with disabilities can attend school and learn.[5] Vietnam has made efforts to fulfil international commitments to protect the right to education, including inclusive education for children with disabilities. However, there is still a gap that needs to be filled,

including improving the responsible subjects' legal regulations, the sense of responsibility, and the efforts of the whole society. Most importantly, it is necessary to research and answer the question: Has the Government of Vietnam fulfilled its responsibility as a member state to protect the rights of children with disabilities in terms of inclusive education?

2. Why inclusive education for children with disability?

Children with disability - who are you?

The CRPD does not define PwDs specifically but broadly describes this group as “persons with long-standing 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”. [6] Article 1 of the Convention does not emphasise the identification of disability but focuses on the barriers that affect the enjoyment of rights and the participation of PwDs in social life. [7] This is the “social model” approach to disability. [7] This model posits that barriers are the cause of a person with a disability being excluded from community activities or unable to participate fully and not the result of the individual's inability to participate. For example, suppose a child with a disability cannot go to school because he or she has a mobility disability. In that case, the school must have policies for that student to have access, rather than blaming that he or she cannot attend school due to limited mobility.

PwDs are defined in the Law on PwDs as follows: “person disabilities is understood as a person who has a defect in one or more body parts or a functional impairment that is manifested in the form of a disability that causes difficulties in working, living and studying”. [3] This understanding is reconfirmed in Circular No. 03/2018/TT-BGDĐT regulating inclusive education for PwDs by the Ministry of Education and Training [8]. The Vietnam Law on Children (2016) also clearly states in article 1 that a child is a person under 16 years old. Apart from these definitions, children with disability in Vietnam can be defined as a person under 16-year-old with the characteristics determined in the Law on PwDs.

What is inclusive education?

Inclusive education is defined as a process that focuses on and meets all learners' diverse needs, removing barriers to quality education, thereby increasing learning engagement and reducing exclusion within and outside the education sector. [9] In an inclusive education environment, all students are guaranteed access and the right to participate in all activities, including children with disabilities. The Vietnam Law on PwDs also defines inclusive education as a method of joint education for PwDs with persons without impairment in educational institutions. [3] However, that environment also needs to take into account the unique characteristics of children with disabilities to ensure that they can participate in activities. For example, a child with cognitive problems (cognitive disabilities) will have limited cognitive and learning abilities, even understanding the requirements to participate in activities. Teachers need more attention and support for that students to be equal and develop to the best of their ability. That is the goal of inclusive education.

Thus, inclusive education can be understood as supporting all students, including children with disabilities, to have an equal opportunity to receive educational services with the necessary support in the appropriate classroom at a school where children live to prepare them to become full-participated members of society.

From the goal of inclusive education, this education method is aimed at target groups who, for different reasons, have not traditionally been included in general education. That education is towards equality, easy access, and easy integration with the best educational conditions. Discrimination will be eliminated in the community and society from the educational environment in schools.

The positive point of inclusive education is that children with disabilities can act, live and participate in activities with other children without disabilities. That helps them get close to family and friends, eliminate prejudices and discrimination, be confident to carry out activities in a group, and grow up and integrate into society more easily. If children with disabilities are separated to study in a different environment, they will think they are inferior to other children, making themselves inferior in both study and life. At the same time, children with disabilities will have advantages in accessing school because they can go to school right where they live with their families. Hence, the cooperation between the family, the community and the school is also better.[10]

Inclusive education benefits not only children with disabilities but also other subjects:

For families with children with disabilities, taking care of them requires time and effort. Schools are usually located in residential areas, but separate schools are scattered and difficult to access. Children with an inclusive education will get to know their neighbourhood friends, creating connections with them outside of school. Therefore, inclusive education helps them integrate at school and into society and community activities.

Children with disabilities in inclusive education and participation in common activities will help the community have a more positive and humane view of children with disabilities. Concurrently, efforts will be made to find suitable models and activities to help children participate effectively, thereby increasing creativity, solidarity and humanity.

For schools, inclusive education forces training institutions to design diverse content and programs suitable for different students. It also requires teachers to self-standardise and improve their pedagogical knowledge and skills to meet standards. Therefore, both students with disabilities and students without disabilities benefit from this capacity-building of teachers.

Inclusive education is the right of children with disabilities

Children with disabilities are subject to double trauma. In poor and developing countries, children with disabilities are considered bad luck for the family [11]. They are deprived of their rights to spiritual life with no education, enjoyment and entertainment play. Children with mild disabilities are allowed to go to school, but when they go, they are mocked and discriminated against by their peers.

Over the past decade, awareness and understanding of issues related to the rights of PwDs have improved. In particular, the CRPD, adopted in 2006 and entered into force on May 3 2008, is an integral part of promoting the recognition of the human rights of PwDs and officially introducing a new right in international human rights law: the right to inclusive education.[12]

Article 24 of the CRPD affirms that inclusive education is a means to realise the right to education of PwDs. This is also an appropriate approach through the human rights lens aimed at the universality and non-discrimination of the right to education. With a human rights approach, inclusive education is a child's right, not a gift or a humanitarian one.[13] As a human right, states are responsible for ensuring that PwDs enjoy the right to education, including the right to inclusive education.[14]

The right to education is one of the basic human rights. For PwDs, access to education is even more important because it helps them improve their awareness of themselves and other social issues, understand their rights and integrate into the community. The International CRPD also highlights the importance of education, requiring States Parties to mobilise all their resources to take all necessary measures to ensure that children with disabilities enjoy the fullness of human rights and fundamental freedoms on an equal basis with other children.[6] At the same time, States Parties shall ensure that education at all levels and lifelong learning are available to PwDs together with persons without disabilities on the basis of equality of opportunity, enabling PwDs to practice life and social

development skills so that they can participate fully and equally in education, as members of the community.[6]

In 2016, the Committee on the Rights of PwDs adopted General Comment No. 4 on the right to inclusive education. This is an important document, marked in guiding and requesting member states to fulfil their responsibility to ensure the right to inclusive education for PwDs in general and children with disabilities in particular. General Comment No.4 stresses that inclusive education is a fundamental human right for all learners. Notably, education is the right of the individual learner, not depending on parents or carers. It is also seen as a principle that values the well-being of all students, respects their inherent dignity and autonomy, acknowledges individual requirements, and their ability to participate and contribute effectively to society. Most importantly, it is a means of realising other human rights, enabling PwDs to recover from poverty, gain the means to participate in their communities fully and be protected from exploitation.[15]

The Convention on the Rights of the Child [16] (1989) is an important international legal document recognising inclusive education for children and young PwDs as a human right. Accordingly, States Parties to the Convention should ensure that “children with disabilities have effective access to education and training”[16] so that they can “enjoy a meaning life in sufficient conditions that guarantee dignity, promote self-reliance and facilitate children's active participation in the community”.[14]

In addition to the two legally binding documents ensuring the right to inclusive education for children with disabilities, a number of other documents are also important. In 1993, the United Nations General Assembly adopted the Standard Code of Equal Opportunities for PwDs, which recommended that “education for PwDs should be an integral part of national educational planning, developing a framework for training programs and organising schools”.[17] This was the premise for the 2000 World Education Forum in Senegal to issue the World Declaration on Education for All, which underlines that the education system must be inclusive and responsive to the circumstances and needs of all learners.[18]

From the above documents, inclusive education is considered a basic human right, even a moral right.[19] For children with disabilities, this is an important right that prevents them from being discriminated against in their education, and their care has enormous legal and moral power.[19] At the same time, ensuring the right to inclusive education also helps children with disabilities exercise other rights, such as participation and entertainment. According to the principle of interdependence of human rights, ensuring a specific right will positively or negatively affect the enjoyment of other rights. Ensuring the right to education in general and inclusive education, in particular, will help children develop comprehensively with morality, knowledge and skills. Ensuring this right will help children with disabilities escape poverty independently and participate fully in the community. Knowledgeable children will confidently participate in school, community, and other entertainment activities. To ensure the performance of its obligations, States should have a responsibility to respect, protect and exercise this right in accordance with the international commitments to which they are members.

3. What responsibility does Vietnam take to ensure inclusive education when ratifying the CRPD?

On December 13, 2006, the United Nations General Assembly adopted the International CRPD. This is the Firstly international legal document affirming the rights of PwDs as members of the human community. Accordingly, PwDs have the same rights and dignity as other members.

On November 22, 2007, Vietnam signed this Convention. The signing demonstrated Vietnam's goodwill, as well as Vietnam's spirit and sense of responsibility in protecting the rights of PwDs.

The Convention recognises that children have the right to education. Ensuring children's schooling and education is affirmed by the Convention and the role and responsibility of States parties. Therefore, although it only showed goodwill when signing the Convention, Vietnam has also made efforts to perfect its legal system by promulgating the Law on PwDs in 2010 to replace the Ordinance on PwDs, 1998. The Law on PwDs asserts that education, including children, is a right of PwDs.

Signing the Convention, Vietnam has proved that the State and Government of Vietnam deeply respect the rights of PwDs. That is the right of PwDs, not a gift or humanitarian activity of the social community. For PwDs who have physical and mental disabilities all have noble and beautiful values deep in their souls that need to be respected. The state, family, society and even schools need to act to realise the rights of PwDs, especially children with disabilities.

On February 5, 2015, Vietnam ratified the CRPD.[20] The Convention's ratification has placed the Vietnamese state responsible for internalising the Convention. Simultaneously, demonstrate a strong political commitment to protecting and promoting development for the benefit of the PwDs and children with disabilities. This is the legal basis for Vietnam to express its consistent stance on human rights in general and PwDs in particular [21]

Among the many rights of children with disabilities as community members, the right to education and inclusive education is important. As a member state of the Convention, Vietnam must fulfil its responsibility to recognise this right in the legal system and realise the right to inclusive education in practice.

Under international human rights law, member states have three obligations in ensuring the rights of children with disabilities, including respecting, protecting and fulfilling. So how has Vietnam implemented these three levels in ensuring the right to education for children with disabilities?

Firstly, the obligation to respect: This obligation requires Vietnam to recognise the right to inclusive education of children with disabilities in the national legal system; develop specific standards on the right to inclusive education that are in compliance with international commitments; Focus on raising awareness for teachers, education administrators and the whole society about the right to inclusive education of children with disabilities. This obligation is considered negative when it does not require state agencies to take initiatives, measures or programs to assist children with disabilities in enjoying their right to inclusive education. This requires the state to refrain from interfering (directly or indirectly) in the enjoyment of the educational rights of children with disabilities as recognised in the law.

Secondly, the obligation to protect: This obligation explains that the people, educational institutions or government agencies, and social, economic, and state organisations must be responsible for intervening and solving any violation of the treaty's provision. This is considered a positive obligation because states need to proactively take political, legal and institutional measures to prevent violations of the right to inclusive education of children with disabilities by government agencies, schools, social organisations and individuals. Simultaneously, the Vietnamese state needs to prevent discrimination or the creation of threats to violate the right to education. States are obliged to prevent, investigate, punish and reinstate the rights violated or compensate whenever possible.

Thirdly, the obligation to fulfil: This obligation requires Vietnam to take measures to assist children with disabilities in realising their right to inclusive education, including building an institutional framework (organisations, apparatus, people) to realise the provisions of law and standards on the right to education; create a favourable and supportive economic environment for children with

disabilities access to the rights, establish and maintain a transparent and effective mechanism to monitor the implementation of the right to inclusive education.

To fulfil these three levels of obligations, Vietnam has improved the legal system and institutions and ensured in practice the right to inclusive education for children with disabilities.

4. How has Vietnam fulfilled its national obligations to ensure the right to inclusive education for children with disabilities?

4.1. Internalise provisions on the right to inclusive education for children with disabilities under the CRPD into the national legal system

In 2013, Vietnam passed an amended Constitution with many important new points on human rights recognised. In Article 14, the constitution affirms: "...human rights, civil rights in political, civil, economic, cultural and social fields are recognised, respected, protected and guaranteed according to the Constitution and law"[22] without discrimination.[22] Articles 59 and 61 of the Consitution emphasise the rights of PwDs when setting forth the state's responsibility to create equal opportunities for citizens to enjoy social welfare.[22] PwDs and the poor are given chances to study at schools and vocational training.[22] This document, with the highest legal value in the Vietnamese legal system, recognises the rights of PwDs, including the right to inclusive education for children with disabilities, demonstrating Vietnam's efforts in codifying the text of the CRPD and the national legal system.

Another important document for PwDs is the Law on PwDs 2010. This is the time when Vietnam has just signed but has not ratified the Convention, displaying a positive legal adjustment to ensure the compatibility of Vietnamese law with the CRPD prior to ratification by Vietnam. According to the provisions of Article 27 of the Law on PwDs 2010, the state has the responsibility to create conditions for PwDs, including children with disabilities, to study in accordance with their needs and abilities; be provided with dedicated learning aids and materials in case of necessity; people with hearing and speaking disabilities are taught in sign language; People with visual disabilities are taught in Braille according to national standards.[3]

The Law on Children 2016 provides a fundamental legal framework to ensure the full realisation of the rights of all children, including children with disabilities, with provisions more consistent with the Convention on the Rights of the Child. Other codes and laws (Criminal Law, Criminal Procedure, Handling of Administrative Violations, Labor, Marriage and Family, Organization of People's Courts) are updated accordingly, which satisfy fully international practices and standards related to children's rights in general and ensure the right to inclusive education of children with disabilities in particular.

Thus, Vietnam always pays attention to the issue of education for children with disabilities. The regulations on education for children with disabilities ensure the fulfilment of the learning needs to know others. Furthermore, Vietnam also supports and creates necessary conditions for children with disabilities to participate in learning; promotes and encourages community-inclusive education. Regulations on education for children with disabilities include special regulations on education for children with disabilities, methods of educating children with disabilities; [3] the subject's responsibility in education for children with disabilities.

In addition to the 2013 Constitution and the 2010 Law on PwDs, which are specialised legal documents, Vietnam has also issued many sub-law documents ensuring the right to inclusive education of children with disabilities.

On January 29, 2018, the Ministry of Education and Training issued Circular No. 03/2018/TT-BGDĐT regulating inclusive education for PwDs. This is the most direct document stipulating provisions related to inclusive education for PwDs in general and children with disabilities in

particular. Accordingly, inclusive education aims for PwDs to develop their abilities, integrate and increase opportunities to contribute to the community. Inclusive education also aims to ensure equal, quality and appropriate learning rights for PwDs.[8]

The Circular emphasises the right of PwDs, including children with disabilities, to learn to integrate. These rights are the concretisation of the contents recognised in the CRPD. Specifically, children with disabilities are admitted to school at an age higher than the prescribed enrollment age; to study in educational institutions suitable to their level and capacity; be interested, respected and protected; and equal treatment in learning in educational activities to develop personal abilities; to be provided with information, textbooks, academic products and scholarships as prescribed; to study, practice and support in individual lessons on specific knowledge and skills for effective integration learning; be consulted on support services, early intervention, inclusive education, career orientation suitable to the abilities and needs of PwDs; and their information is kept confidential [8]

An important point is the circular defining the organisation and activities of inclusive education for PwDs regarding individual education plans. Accordingly, each child has an individual education plan developed by teachers and lecturers in collaboration with educational support staff for children with disabilities and their families on the basis of their abilities and needs, which is appropriate to the actual conditions of the educational institution. [8]

Recently, the Ministry of Labour, Invalids and Social Affairs collaborated with the Ministry of Education and Training to take an important step forward in implementing inclusive education by publishing a guide to establishing and operating inclusive education support centres. These centres will provide information, materials, curricula, parent support, early detection, early intervention, and other beneficial services to PwDs and their families. By promulgating Joint Circular No. 58/2012/TTLT-BGDĐT- BLDTBXH stipulating conditions and procedures for the establishment, operation, suspension of operation, reorganisation and dissolution of the Education Development Support Center Inclusive Education for Children with Disabilities, the two ministries hope to build effective centres in all 64 provinces.

In addition, many documents of the government and ministries and branches encompass provisions to support children with disabilities to access inclusive education, such as Decree 49/2010/ND-CP dated May 14, 2010, Decree No. Decree 61/2006/ND-CP dated June 20, 2006, stipulates that teachers and administrators working in schools and classes with disabilities are entitled to an allowance of 70% of their current salary (Point 2, Article 5); Decision 23/2006/QĐ-BGD & DT dated May 22, 2006, specifying the organisation of activities related to inclusive education for children with disabilities, teachers, lecturers, support staff providing technical assistance for the work of inclusive education, facilities, equipment and teaching aids for children with disabilities; Official Dispatch 9890 / BGD DT-GDTH stipulating the content of inclusive education.

The above documents affirm the efforts to fulfil the obligation to internalise the provisions of international law on the rights of PwDs into the national legal system. At the time of submission to the National Assembly for ratification of the CRPD, the government's report to the President stated: when signing the CRPD, due to the existing limitations of the Vietnamese legal system on disabilities, especially the 1998 Ordinance on PwDs, it takes time to amend and supplement to conform to the provisions of the CRPD. Until now, our country's legal system on PwDs has been relatively complete and conforms to the Convention.

The state and society ensure equal access to education opportunities for all and create suitable educational modes based on the circumstances and abilities of each person with difficulties. That means that children with disabilities have the right to quality education, not only “inclusive

education". This spirit is reflected in policies oriented to the development of inclusive education, focusing on improving the professional capacity of teachers, assessing students with disabilities, and building and developing systems and programs that can relate to them.

4.2. Ensuring the implementation of the right to inclusive education for children with disabilities in practice

Results of the 2016 National Survey on PwDs by the General Statistics Office show that about 7.06 per cent of the population aged 2 years and older are PwDs, of which the rate of children with disabilities from 2 to 17 years old is 2.83%, and adults are 8.67%. By the end of 2016 - early 2017, the country had more than 6,199,048 PwDs permanently residing in households, including 663,964 children 2-17 years old, 635,811 children aged 2 - 15 years old and 5,535,084 people aged 18 years and over. If the data source is included in the total administrative review of PwDs and the total number of PwDs, the country has 6,225,519 PwDs, including 671,659 children aged 2 - 17 and 5,553,860 people from 2 to 17 years old. 18 years or older. [2]

To ensure the right to inclusive education for children with disabilities, Vietnam has established a system of centres to support the development of inclusive education at the provincial level in over 20 cities and provinces. There have been 107 special education institutions and 12 centres for educating children with disabilities and implementing inclusive education at all general education levels. The number of children with disabilities attending school in Vietnam has increased tenfold over the past two decades. The rate of children with disabilities attending primary school at the correct age is about 88.7% and 33.6% in upper secondary school.[23]

Currently, 4 Pedagogical Universities and 3 Pedagogical Colleges in the country have established special education departments and opened codes to train teachers for children with disabilities. Each year, these schools train nearly 600 teachers for children with disabilities. Annual training on inclusive education for 600 - 700 managers and about 2,000 - 2,500 teachers of pre-school, junior high and high schools in 63 provinces/cities so that these people can conduct training and guide local teachers on inclusive education, thereby expanding a network of teachers teaching children with disabilities throughout the country.[23]

The above figures have partly testified to Vietnam's efforts in ensuring the right to inclusive education for children with disabilities. However, in current reality, the work of inclusive education for children with disabilities has only focused on pre-school and primary school. Children are learning and evaluated according to their progress; teachers also try to prepare lesson plans suitable for the type of disability of the child. Not much attention has been paid to the education level from lower secondary school and above, especially for children with mental retardation. Many of them have to stay at home and drop out of school when they are at a higher education level. Thus, the synchronous attention of education still has many limitations, making it difficult for many children to receive inclusive education at higher education levels.[24] These are challenges for Vietnam in implementing international commitments on the rights of PwDs, not only in promulgating legal documents but also in ensuring their implementation in practice. That is also the basis for Vietnam to identify gaps and implement solutions to improve the right to inclusive education of children with disabilities.

In implementing its national obligations related to ensuring the right to inclusive education for children with disabilities, Vietnam has achieved certain results, such as promulgating legal documents and progress in practice. However, there are also certain barriers in legal documents and, in reality affecting the right to inclusive education for children with disabilities.

In terms of legal regulations, the concept of disability in Vietnam does not fully reflect social aspects and environmental factors. Therefore, children with disabilities have not been understood or defined

according to the full meaning of this concept. Moreover, at point (f), clause (1), article 3 of the Law on PwDs of Vietnam, the category of “other disability” is stated, but the function and purpose of this regulation are unclear. Furthermore, when placed in compatibility with the International CRPD, the Law on PwDs in Vietnam needs to take into account the reasonableness of determining the degree of disability, “severe” or “especially severe”, in correlation with the ability to measure support and assistance needs for PwDs.

In terms of practical barriers, many educational institutions do not have sign language interpreters for the deaf and hard of hearing, Braille for the visually impaired or accessible facilities for children with disabilities, such as walkways or toilets accessible to wheelchair users, especially in rural areas and areas with difficult socio-economic conditions. In addition, the number of children with disabilities in these areas is often from households with difficult economic conditions, poor households, near-poor households, and ethnic minorities, causing education even more difficult.

Statistics also show that 0.5% of PwDs in special classes for PwDs in regular schools; 2.9% of schools have designs suitable for children with disabilities, and 9.9% of schools have toilets designed suitable for PwDs; 55.5% of PwDs aged 5-24 who are attending school are exempted from tuition fees. Only 1 out of 7 primary and lower secondary school teachers is trained to teach students with disabilities (14.1%).[25]

Inclusive education program requires schools to have individual plans to exempt or reduce some subjects for children. However, only special education programs are currently available for primary school students, not for the high school system. These barriers indicate that the rights of children with disabilities, as stipulated in Articles 27, 29 and 30 of the Law on PwDs, have not been effectively implemented.

According to data from the United Nations Children's Fund (UNICEF), in the years 2016-2017, in Vietnam, 94.2% of children with disabilities attended traditional schools.[25] Despite the large number of children receiving inclusive education, the challenge is to ensure equity in inclusive education for children with disabilities from areas of lower socio-economic status. The participation of children with disabilities in inclusive education between the ages of 5 and 14 in poor households is lower than that of children without disabilities (21%).[26]

From the above legal and practical gaps, continuing to improve the system of policies and laws to fully internalise the provisions of the CRPD and the recommendations of the Committee on PwDs of the United Nations are issues that Vietnam needs to continue to work on. At the same time, Vietnam also needs to implement a number of key solutions to implement the member's national obligations in ensuring the right to inclusive education for children with disabilities as follows:

- *Firstly*, Vietnam continues to promote a rights-based approach in promulgating policies and laws and implementing inclusive education plans for children with disabilities. Accordingly, when promulgating guidelines and policies on inclusive education, it is necessary to respect, consider and take measures to meet children's legitimate needs and aspirations. In policies and implementation plans, it is necessary to ensure that children with disabilities have the opportunity to participate and equally enjoy the results that these policies and plans aim for. Adopting this rights-based approach requires ensuring the general principles of the CRPD, which are: (i) Respect for the inherent dignity and individual autonomy, including freedom of choice and individual independence; (ii) Non-discrimination; (iii) Full and effective participation and social inclusion; (iv) Respect differences and accept PwDs as part of human diversity and humanity; (v) Equality of opportunity; (vi) Access; (vii) Equality between men and women; and (viii) Respect the developing abilities of children with

disabilities and respect the right to protect the identity of children with disabilities. Accordingly, the rights of children with disabilities are fully realised and enforced.

- *Secondly*, it is necessary to study and amend the Law on Education to provide more detailed regulations on inclusive education

As inclusive education meets the diverse needs of all learners, the definition of inclusive education in the Law on PwDs refers to merely one aspect of joint education for children with and without disabilities. As such, inclusive education involves all learners and plays a pivotal role in the entire education system. Meanwhile, the current Education Law only refers to the regulated subjects who are citizens, while the stateless or foreigners are not subject to the law's regulation. Therefore, the Education Law must be revised to refer to “all students” or “all learners” consistently and provide more detailed regulations on inclusive and equitable education.

- *Thirdly*, study the establishment of a national human rights institution

As defined by the United Nations, “National Human Rights Institutions” (NHRIs), or National Institutions for the Protection and Promotion of Human Rights, are bodies assigned specific functions in promoting and protecting human rights. “The National Human Rights Agency is part of a complex, multi-layered system built to promote and protect human rights”.^[27] Establishing a national human rights institution in Vietnam will be pivotal in ensuring human rights in general, including the rights of children with disabilities, more specifically, the right to inclusive education. Because based on the functions and tasks of national human rights agencies in some parts of the world, this agency will ensure the good implementation of human rights issues in the field of inclusive education for children with disabilities in the following areas:

- To consider whether the promulgation of laws and sub-law documents is consistent with the provisions of the constitution on ensuring the right to inclusive education for children with disabilities;

- To promote and protect the right to inclusive education for children with disabilities through propaganda, education, and raising people's awareness of international standards and national regulations on the right to inclusive education at the national and regional levels;

- To make recommendations to the government and government agencies on policies and laws related to inclusive education for children with disabilities.

- To conduct research programs and field surveys on the right to inclusive education of children with disabilities and supervise the implementation of international human rights treaties that the country has ratified or acceded to, including CRPD.

- To review national human rights reports, considering the compatibility of national legislation with the provisions of the CRPD.

- *Fourthly*, raise awareness about the right to inclusive education for children with disabilities. In order for children with disabilities themselves, as well as society, to understand that inclusive education is a child's right, raising awareness for children as well as society is very necessary. Education about human rights in general and the rights of children with disabilities, in particular, is one of the obligations to be performed by member states of the United Nations. Moreover, this awareness raising is done most effectively through human rights education.

Education on the right to inclusive education includes training and dissemination on the right to inclusive education to empower children with disabilities to learn and fulfil the teacher's responsibility for the protection of children with disabilities in order to: (i) Promote respect for the rights and fundamental freedoms of children with disabilities in education; (ii) Develop qualities, capacities and skills to respect,

protect and exercise their rights and respect the rights of others; (iii) Create conditions for children with disabilities to participate equally and effectively in educational activities.

On September 5, 2017, the Prime Minister approved the Project “Incorporating human rights content into the educational curricula in the national education system for 2017-2025”. The project's overall goal is to propagate, disseminate and educate human rights to create a change in the awareness of learners, teachers and educational administrators about the importance and awareness of human rights. Protect their rights, respect the dignity, rights and freedoms of others, and sense of responsibility and obligations of citizens towards the state and society, contributing to the comprehensive development of Vietnamese people to meet the requirements of integration and sustainable development of the country. This is an important opportunity for the Ministry of Education to integrate and integrate the content of human rights in general and the right to inclusive education of children with disabilities in particular into the curriculum at all levels, contributing to raising the awareness of children with disabilities and the whole society about this important right.

5. Conclusion

To respect, protect and fulfil the right to inclusive education for children with disabilities is the responsibility of Vietnam as a member state of the CRPD. Vietnam has made great efforts to implement international commitments on this issue by promulgating legal documents and action plans and ensuring the right to inclusive education for children with disabilities in practice. However, there are still many gaps that Vietnam needs to overcome for inclusive education to be truly a human right. Education is about quality, not just only participation. That will help Vietnam affirm its initiative and positivity in better ensuring human rights in general and the rights of children with disabilities in particular

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Improving the quality of legal education for persons with disabilities in Vietnam today

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Abstract: Legal education is the Firstly stage of the law enforcement process, which is an activity that demonstrates the close relationship between law building and law enforcement and contributes to disseminating the viewpoints and policies of the Communist Party and the policies and laws of the state to the people. This article assesses the current quality of legal education for PwDs in Vietnam and discusses limitations and causes in the implementation process. On that basis, some requirements and solutions are proposed to improve the quality of legal education for PwDs in the coming time.

Keywords: Legal education; quality; PwDs; improve the quality of legal education.

1. The role of legal education for PwDs in Vietnam

Legal education is vital in strengthening socialist legality and building a socialist Vietnam ruled by the law of the people, by the people and for the people. This issue is always a concern and focus of our Party and State; it contributes to raising the people's awareness, understanding and sense of law observance. The quality of legal education for PwDs is critical, contributing to improving the knowledge, awareness and legal consciousness of PwDs, helping them protect their rights and interests when participating in legal relations and being more confident to live and integrate into the social community. Thereby ensuring the best human rights and creating political, economic, social, legal and organizational premises and conditions for PwDs to exercise their legitimate rights, freedoms and interests recognized by law.

PwDs are a particular object in society, and they are the most vulnerable group whom the state pays special attention to and issues appropriate policies to help them be equal before the law and be protected by the law, and be entitled to the benefits of the law equally, without any discrimination. According to statistics from the National Committee for PwDs in Vietnam, by the end of 2020, there will be about 6.2 million PwDs in the whole country, accounting for 7.06% of the population aged 2 years and older, of which 58% are female, 28.3% are children, nearly 29% are people with severe and especially severe disabilities” [12]. According to statistics on the rate of disability types in Vietnam in 2021: “Mobility disability accounts for 29.41%; hearing and speech disabilities 9.23%; vision disability 13.48%; neurological and mental disabilities 16.83%, intellectual disabilities 6.52% and other disabilities 24.08 %” [13].

Clause 1, Article 2 of the Law on PwDs 2010, defines: “*Person with a disability is a person who has a defect in one or more body parts or a functional impairment manifested in the form of a disability that causes difficulties in working, living and studying*” [9].

The right to education, in general, and legal education, in particular, is one of the momentous and fundamental rights for everyone, including PwDs. Through legal education, society is increasingly developing, and people are becoming more and more perfect in all aspects. For PwDs, legal education is more meaningful than ever. Thanks to legal education, they improve their awareness and legal consciousness, expand their relationships and have more job opportunities. Moreover, it encourages them to be confident to live in harmony with the social community. At the same time, it contributes to building a society in which everyone always has a sense of respect for the law, upholds the spirit of law protection, voluntarily and strictly abides by the provisions of the law, and enjoys legitimate

rights and interests as prescribed.

The international and Vietnamese legal documents system has created a solid legal framework for legal education to be implemented synchronously, uniformly, and throughout the country with specific regulations on tasks and powers of all levels, branches and localities. Vietnam acceded to the United Nations Convention on PwDs (CRPD) on November 22, 2007. It is the Firstly international legal document to affirm that all approaches to PwDs are based on their rights, with the commitment of Member States to assure and promote the realization of human rights and freedoms for PwDs without any discrimination on the ground of disability. Article 1 of the Convention states: *“PwDs 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”*. Based on that, the State Parties recognize that everyone is equal before the law and has the right to the protection of the law and to enjoy the benefits of the law equally without distinction.

In Vietnam, legal documents regulating and protecting human rights in general and the right to the legal education of PwDs, in particular, are: the Constitution; Law on PwDs; Education Law; Law on Legal Popularization and Education; Legal Aid Law; Law on Lawyers as well as international conventions to which Vietnam is a Party, especially the International CRPD. Article 61 of the Constitution of 2013 has recognized the right to education of PwDs and the responsibility of the State *“to create conditions for PwDs and the poor to access education and vocational training”* [7]. Article 4 - Law on PwDs stipulates the rights of PwDs *“To receive health care, rehabilitation, cultural education, vocational training, employment, legal assistance, access to public facilities, means of transport, information technology, cultural services, sports, tourism and other services suitable to the forms and degree of disability”*. Clause 1, Article 20 of The Law on Legal Dissemination and Education of 2012 prescribes: *“The legal popularization and education for PwDs shall focus on the legal provisions on the rights of PwDs; regimes and policies of the State, responsibilities of the State and society in facilitating and supporting PwDs and other provisions of the law related to PwDs; ...”* [8].

Thus, from a legal perspective, PwDs, like many other people, also fully enjoy basic civil, political, economic, social and cultural rights acknowledged and guaranteed by the Constitution, laws, and other international legal documents. These are fundamental human freedoms as members of the human community to be protected and cared for as a particular group of disabled, vulnerable people.

2. Some limitations of legal education for PwDs in Vietnam today

Over the past time, in addition to achievements, the legal education for PwDs in Vietnam still reveals some limitations and shortcomings:

Legal education for PwDs needs to be on par with the requirements and tasks of social management by law. Several levels of Party-affiliated committees and local authorities have not paid due attention and have yet to conduct in-depth implementation. The enforcement is not regular, continuous, or synchronous. There still needs to be more focus and smooth and effective coordination among agencies and organizations and between appropriate levels and sectors.

Compared with international law on human rights, Vietnam’s legal documents on protection, care and education for PwDs still need to be thoroughly and explicitly regulated in terms of contents, provisions, and the object of education; the mechanism to supervise the enforcement still needs to be improved. Regulations related to PwDs have yet to stimulate the active participation of the PwDs community, organizations and groups representing PwDs. Regulations on the responsibilities of state agencies, organizations, individuals, and families in caring and protecting to respect and ensure the

rights of PwDs still need to be specific and apparent. There is no separate regulation on the activities of organizations for PwDs.

The perception of competent entities when implementing legal education for PwDs has yet to meet the objectives and requirements for specific subjects in society and ensure the full enjoyment of legal rights and obligations of PwDs in practice. These shortcomings have entailed the limitations of legal knowledge of PwDs. They need to obtain appropriate legal knowledge to be proactive in protecting their legitimate rights and interests when participating in legal relations. The capacity of some cadres, lecturers, reporters and law propagandists, in general, has yet to meet the job requirements in terms of quantity, quality and structure. The legal education models have yet to be replicated effectively.

At times, some localities have not paid due attention to legal education for PwDs; the selection of educational content, programs and methods is not appropriate; The facilities and documents system still needs improvement. The training and employment of cadres, lecturers, reporters, and legal propagandists are ineffective, as these activities have yet to reach the organizations of PwDs. The number of legal propaganda, dissemination and education sessions in some localities is still very rare. Information and communication technology plays a pivotal role for PwDs, helping PwDs overcome barriers to social integration. Meanwhile, the percentage of households with PwDs owning communication technology devices is still low compared to households without PwDs. Specifically:

Table: Percentage of households with PwDs owning communication and technology devices compared to households without PwDs			
No.	Device	Households with PwDs	Households without PwDs
01	Television	87.7%	94.4%
02	Internet	16.8%	30.9%
03	Computer	13.7%	28.6%
04	Phone	84.7%	96.25%

[Source: 14]

The limitations and shortcomings mentioned above stem from a number of main reasons as follows: Although the law on legal popularization and education in 2012 is the legal basis for all levels, branches and localities to implement for various subjects. However, sometimes this work has yet to be implemented regularly and in-depth. The propaganda, dissemination and legal education of newly promulgated, amended and supplemented legal documents have yet to be timely, leading to difficulties in law application by competent agencies and organizations.

The coordination in providing legal education for PwDs between the labour-invalids and social affairs agencies and the People's Committees at all levels, organizations of PwDs at all levels and other agencies and organizations have yet to be organized regularly and effectively. The target audience for propaganda and education still needs to grow. PwDs are unable to access the law and enjoy the right to legal aid, access to information and participate in social activities.

Summarizing and assessing the legal documents and implementation of the United Nations Conventions on the Rights of PwDs has yet to be held regularly. Reviewing and detecting problems, limitations and inadequacies to propose to competent state agencies to amend, supplement and perfect legal policies on ensuring the rights of PwDs needs to be more unified and consistent.

There still needs to be a binding scheme to realize the legal provisions. Consequently, PwDs face

impediments in educational and vocational training and suffer stigma and discrimination in education, the workplace, and community activities. Legal policies need to guarantee financial resources and sufficient capacity to exercise the rights of PwDs.

3. Some solutions to improve the quality of legal education for PwDs in Vietnam

To achieve the goals and requirements set out on the quality of legal education for PwDs in the current context, all levels, sectors and localities need to implement the following solutions well:

3.1. Promote the leadership of the Party on the quality of legal education for PwDs

Directive No. 32-CT/TW dated December 9, 2003, of the Secretariat of the Party Central Committee on “*strengthening the leadership of the Party in law dissemination and education, raising awareness of law observance of cadres and people*” pointed out that legal education is a part of political, ideological and moral education. On June 3, 2020, the Prime Minister signed Decision No. 753/QĐ-TTg promulgating the Plan to execute Directive No. 39-CT/TW dated November 1, 2019, of the Secretariat of the 12th Party Central Committee on “*enhancing the leadership of the Party in terms of works related to PwDs*” in promoting propaganda and dissemination of policies and laws on PwDs. The Prime Minister assigned the Ministry of Justice to develop and organize the implementation of the project “*Propaganda, dissemination and education of specific laws for PwDs*”. On that basis, agencies, organizations and individuals need to step up the organization of research, thoroughly grasping and seriously and effectively implementing the Party's views and guidelines on legal education for PwDs, contributing to transforming awareness, responsibility and actions of all levels, branches and people of all walks of life regarding legal education for PwDs. In addition, Party committees and organizations at all levels should actively implement and execute in a timely and synchronous manner; the agencies, organizations and individuals being assigned the task are responsible for formulating specific plans and organizing the implementation on schedule, substantively and effectively; mobilizing the participation of the whole political system and the whole society in legal education for PwDs.

3.2. Continue to develop and improve the system of legal documents on policies and legal education for PwDs

In line with building and perfecting the socialist rule of law state, and continuing to innovate and develop the country, ensuring the rights and interests of the people in general and PwDs in particular, it is required for the legal system of our country to be comprehended promptly, supplement and accelerate the legal system building in a synchronous manner that is suitable to the country's socio-economic development; in compliance with the practice of social management by law. Accordingly, it is necessary to have specific and clear regulations on the responsibilities of state agencies, organizations and individuals for legal education in order to respect and ensure the rights of PwDs; it is necessary to develop and publish a charter of organizations for PwDs; there should be regulations to link cultural learning with rehabilitation in the community or at schools for PwDs.

It is essential to supplement provisions on enforcement and handling of law violations on ensuring the right to education, labour rights and employment of PwDs to be compatible with international human rights law; have mechanisms to monitor law enforcement to secure those rights.

Law is a tool to concretize and legalize the actual value of human rights. The state ensures the observance and enforcement of human rights on the basis of the law. Furthermore, the law is also a tool for each individual to protect their rights, including PwDs. If the provisions of the law are specific and flexible and are communicated in time to PwDs, it will lead to violations of the rights of PwDs in practice. Thus, it should continue to improve the mechanisms to oversee the execution of the law on ensuring the rights of PwDs.

Moreover, in order to ensure that human rights in general and the rights of PwDs, in particular, are effectively implemented in practice, apart from building and perfecting the legal system, the application and implementation of the law synchronously and uniformly throughout the country and raising the people's legal consciousness should always be upheld in practice. Only when there is a consensus between the legal norms and the practice of law enforcement will the rights of PwDs be guaranteed; so that PwDs can participate more comprehensively and equally in society. This is one factor that directly impacts ensuring that PwDs fully enjoy their rights and benefits as prescribed, including the right to legal education.

3.3. Continue to perfect the organization and apparatus and raise awareness of entities carrying out legal education for PwDs

The leaders at all levels and sectors in localities must further promote the consolidation and organization of the administrative apparatus in carrying out the task of legal education for PwDs. Boost the training and raising awareness about the position, role and importance of legal education for PwDs for the officials, lecturers, reporters and legal propagandists who are directly performing this work in order to create a high unity of awareness and action; uphold the spirit and responsibility of the subjects in the process of performing tasks. Only by raising awareness can competent agencies, organizations and individuals have the right attitude and high responsibility for legal education for PwDs, assuring that their tasks are conducted in a proactive, positive and effective way, overcoming difficulties and obstacles in the process of performing tasks. Clause 4, Article 20 of Law on Legal Dissemination and Education of 2012 stipulates: “*The Labor - Invalids and Social Affairs agency shall assist the People's Committee at the same level to preside over, coordinate with organizations of PwDs at all levels, other agencies and organizations to carry out legal dissemination and education for PwDs*” [8].

Currently, legal education for PwDs in localities is carried out by many entities. Therefore, consolidating and organizing the apparatus and management for legal education activities for PwDs needs to be regularly implemented, and raising awareness and responsibility of leaders and command all levels at competent agencies, organizations and individuals to implement uniformly, synchronously and in-depth. This solution plays an important, inclusive and cross-cutting role in improving the quality of legal education for PwDs nationwide.

3.4. Intensify inspection, supervision, review and draw experience on the quality of legal education for PwDs

Reinforcing the inspection and supervision of the quality of legal education for PwDs is an essential and indispensable activity. Because only through this activity can the effectiveness and quality of legal education for PwDs be assessed. Inspection and supervision are important leadership contents for party organizations and state agencies. We see that the result of any activity without inspection and supervision could be better. Through inspection and supervision, leaders and commanders can detect, prevent and correct the existing shortcomings and inadequacies of the subjects performing legal education work and determine the causes. The leaders and commanders develop appropriate plans and measures to properly and promptly overcome the shortcomings and handle the violations. Therefore, the process of developing content, plans and forms of inspection and supervision needs to be conducted regularly and systematically, periodically or irregularly. The inspection and supervision of the quality of legal education for PwDs can achieve high efficiency and quality when there is a close combination of inspection and supervision activities of superiors and close coordination between all levels and branches in the localities.

Along with inspection and supervision, leaders at all levels and branches in localities need to frequently review and draw experiences on the quality of legal education for PwDs in their localities to properly

assess the actual situation of organization, implementation, results, limitations, and identify the causes of limitations and draw lessons for legal education for PwDs. Simultaneously, by summarizing and drawing experiences, agencies, organizations, and individuals in localities have the opportunity to exchange, learn from each other, and discover the outstanding person/organization in implementing legal education for PwDs within the organization in order to promptly reward, praise and replicate examples. Promote close and unified coordination among relevant agencies, organizations and individuals in improving the quality of legal education for PwDs.

3.5. Secure conditions of facilities, materials and funds to serve legal education for PwDs

Assuring facilities, materials, and funding for legal education for PwDs is an important and necessary factor to meet the requirements of learning, researching and accessing the law of Vietnam. Localities have initially invested in facilities to meet basic requirements and tasks to improve the quality of legal education for PwDs. Clause 3, Article 20 of Law on Law Dissemination and Education in 2012 specifies: *“The State has a policy of training, fostering and supporting people engaged in law dissemination and education for PwDs; encouraging organizations and individuals to provide financial support for the implementation of law dissemination and education for PwDs.”* [8].

However, the facilities, equipment, and funding for legal education for PwDs need to be exploited more effectively by localities by increasing funding for training staff, lecturers, reporters, and legal propagandists, as well as the needs of PwDs to learn and access the law. Therefore, the authorities need to coordinate with the locals to pay attention, research and review to propose directions and solutions for investment in facilities and equipment in the direction of modernization, ensuring compliance with the objectives and requirements of the quality of legal education for PwDs. Firstly and foremost, all levels, branches and localities need to invest and excellent infrastructure, materials and funding. Thus, the staff, lecturers, reporters, and legal propagandists can periodically update them promptly so that they can conduct different forms and methods of legal education for PwDs, such as handing out leaflets, posters or on the mass media so that PwDs can self-study, explore and learn the provisions of the law. Increase the broadcast time of television programs using sign language interpreters; compiling and distributing communication materials appropriately to reduce prejudice and discrimination against PwDs.

In addition, the state should have funding and policies on training and retraining and creating conditions for subjects directly conducting legal education in localities to train and study to improve their knowledge and professional qualifications and accumulate more experience. Regularly strengthen and adjust allowances and timely support for people doing legal education for PwDs, especially PwDs, to encourage their enthusiasm, and love for their profession, help them feel secure in their work and complete their assigned tasks well.

Conclusion

Improving the quality of legal education for PwDs is an important issue that contributes to ensuring that PwDs understand and grasp legal knowledge to actively protect their legitimate rights and interests when participating in legal relations. At the same time, assuring that PwDs enjoy the right to access knowledge, regulations and information about the law and the right to receive legal aid in accordance with the law. On the basis of clarifying the role of legal education for PwDs, assessing the current situation, and pointing out the results, limitations and causes of the quality of legal education for PwDs in Vietnam in the current context, the topic has proposed some basic solutions to further improve the quality of legal education for PwDs. On the basis of the assigned tasks and powers, all levels, branches, and localities need to keep implementing the above solutions in a synchronous, unified, and transparent manner throughout the country, serving as a basis for localities

to continue to effectively carry out legal education for other specific subjects in society.

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Assurance of the right to education of persons with disabilities in Vietnam today

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Abstract:

As members of the human community, PwDs have all fundamental human rights, including education. Ensuring the right to education is a basic condition to support PwDs to access and enjoy other human rights. PwDs are vulnerable, so they face barriers to accessing and enjoying the right to education. Therefore, Article 24 of the International CRPD 2007 stipulates the responsibility of State Parties (including Vietnam) to realize the right to education for PwDs. This article will focus on an overview of ensuring the educational rights for PwDs in Vietnam today, pointing out achievements, limitations and causes, and proposing some solutions to improve the right to education for PwDs.

Keywords: educational rights, educational rights of PwDs, assurance of educational rights of PwDs.

1. An overview of the educational rights of PwDs

The right to education is an inherent and objective human need recognized in international and national laws guaranteed by the state. It helps people access knowledge and skills in various forms and at different levels of education, protecting individuals and groups against actions that compromise people's chances of accessing education. Vietnam's concept of education is based on the concept of education that: *Legal guarantees are organized and implemented in a conscious and planned manner aimed at imparting and absorbing scientific knowledge and social experiences with the purpose of building and developing the personality of each person, promoting understanding and tolerance among individuals, between communities, peoples and between nations in the human community [6 p.36].*

Disability is a concept still under research, and disability emerges from environmental barriers to PwDs that limit their full and effective participation in society on an equal basis with others.

Disability is a biological constraint and a limitation of interaction between PwDs and the surrounding social environment. The United Nations CRPD (CRPD) emphasizes that a person is identified with a disability when they face limited access and social inclusion due to their disability [2, p.3, 4]. The classification of a person with a disability should be based on the hindrances encountered by her/him, not on the degree of impairment of the person's biological function.

PwDs are a special social group who always face challenges at many levels, hindering their enjoyment of education, especially school education; Countries also often encounter barriers both in terms of consciousness and psychology for PwDs and facilities to support PwDs to benefit from education despite legal efforts to prohibit discriminatory behaviour - attitudes against PwDs in many countries. Therefore, on the basis of defining the concept of "disability", countries can more clearly define groups of PwDs who are vulnerable to discrimination.

International law has built frameworks to protect the education of people in general and PwDs in particular because it is a necessary right to exercise other rights. Article 26 of the 1948 Universal Declaration of Human Rights stipulates: Everyone has the right to education. From ensuring education for all, the international community has established the grounds to evaluate the implementation of member states' commitments to ensuring basic human rights in general and education in particular [4]. The 1960 UNESCO Convention Against Discrimination in Education laid out the basic conditions to ensure education, including prohibiting all discrimination in education and

ensuring equality of educational opportunities for all subjects in society. Article 13 of the International Covenant on Economic, Social and Cultural Rights (1966) is rooted in the UNESCO Convention against Discrimination in Education, covering the fundamental right to education. The United Nations Convention on the Rights of the Child (1989) protects the right to education as a right of the child (Articles 28 - 30) and specifically addresses the education of children with disabilities (Article 23). Adopting the CRPD (2006) is significant, as PwDs, including children, are often victims of discrimination and deprived of equal opportunities. It is the only tool of the United Nations to comprehensively protect the rights of PwDs, including the right to education. In which, the right to education of PwDs is specified in Article 24 with basic contents such as *the obligation of the State Parties to ensure the right to education for PwDs in a comprehensive and equal manner; besides, it is necessary to focus on education of special skills and languages for PwDs so that they can integrate into social life; State Parties need to build a team of teachers and specialists, especially for PwDs; educational levels that PwDs are eligible to attend include: general tertiary education; vocational training, adult education and lifelong learning without discrimination and on an equal basis with others* [2].

Thus, identifying basic concepts such as *Disability, PwDs, the right to education, and the right to education of PwDs*, are the foundation for researching the right to education of PwDs in Vietnam today.

Besides, it is also important to refer to international experience. The countries that have achieved many successes in ensuring the implementation of the right to education for PwDs, all focus on promulgating and implementing an effective mechanism to ensure the implementation of the right to education of PwDs; *for example*, Sweden has promulgated the institution called *Education Act* and the *National curricula*, which prescribe the principles of compulsory education and advanced education; freedom of choice, and the right to be safe for all learners, regardless of disability or not. In terms of institution: *The National Education Agency (Skolverket)* is the central administrative body responsible for achieving the National Education Programs, Policies and Goals set out by the Swedish Government and Parliament; At the same time, three more special education agencies are supporting *Skolverket*, of which *The national agency for special needs education and schools* provides and supports PwDs to have the opportunity to develop and enjoy an equal right to education with everyone in society [6, p. 59].

2. Ensuring the right to education of PwDs in Vietnam today

As of April 2022, Vietnam has 6.2 million PwDs, accounting for 7.06% of the population aged 2 years and over, of which nearly 29% are persons with severe and profound disabilities [5]. In recent years, the State of Vietnam has made many efforts in ensuring and implementing the rights of PwDs in general and the right to education of PwDs in particular, to equip PwDs with diverse skills and opportunities to integrate into society and take control of their own lives.

2.1. Achievements and causes of achievements in ensuring the educational rights of PwDs in Vietnam today

2.1.1. Achievements in ensuring educational rights of PwDs in Vietnam today

Firstly, the state has developed a policy system on education for PwDs

Education rights of PwDs in Vietnam are stipulated in legal documents, especially the Law on PwDs 2010. These are important legal bases for the right to education of PwDs in Vietnam to be guaranteed and implemented. In addition, the state also formulates and directs the implementation of strategies, master plans, plans and policies for the development of education for PwDs. Such as Joint Circular No. 42/2014/TTLT-BGDĐT-BTC on Promulgating Policy on Education for PwDs; Decision No.

1100/2016/QD-TTg on Approval of the scheme to support PwDs in order to implement the International CRPD; Circular No. 03/2018/TT-BGDĐT dated January 28, 2018, of the Minister of Education and Training on Regulations on Inclusive Education for PwDs; Plan No. 388/2018/KH-BGDĐT on Education Plan for PwDs for the period of 2018-2020; Decision No. 3963/QD-BGDĐT dated October 1, 2018, of the Minister of Education and Training on Promulgating the Training Program on professional title standards for staff supporting education of PwDs; Decision No. 1438/QD-TTg dated October 28, 2018, approving the project to support children with disabilities to access protection, care and education services in the community for the period 2018-2025...

Among those, it is worth noting that regulations such as Article 7 of Decree 86/2015/ND-CP stipulates that one of the cases of tuition exemption is kindergarten children and pupils and students with disabilities or with financial hardship. Moreover, according to the guidance in Clause 2, Article 4 of Joint Circular 09/2016/TTLT-BGDĐT-BTC-BLDTBXH, the kindergarten children and students with disabilities with economic difficulties (under the category of poor or near-poor households, according to the Prime Minister's regulations) will be exempted from tuition fees. The Education Law 2019 (effective from July 1, 2020) regulates inclusive education; The age at which children with disabilities attend school is allowed to be older than the normal school age; Basic requirements for schools for PwDs.

In addition, the Program on support for PwDs for the period 2012-2020 was issued by the Prime Minister in Decision 1019/QD-TTg dated August 5, 2020, with specific goals and solutions that have achieved remarkable results in helping PwDs develop their abilities, rise to equality in social integration and improve their quality of life.

On August 27, 2021, the Government issued Decree No. 81/2021/ND-CP stipulating the mechanism of collection and management of tuition fees for educational institutions under the national education system and policies on exemption and reduction of tuition fees, and subsidy for study expenses; service prices in the field of education and training. According to Clause 1, Article 15, Chapter IV of the Decree, children in kindergarten and students with disabilities are exempt from tuition fees. Also, in Section 1, Chapter IV, Article 18, children in kindergarten and high school, students studying at regular educational institutions under the general education program with disabilities, are supported with study expenses.

Secondly, the education management system for PwDs has been formed and effectively operated. Specifically, all 63 provinces and cities nationwide have established a Steering Committee for Education for PwDs from Department to the Ministry level. The content of inclusive education for PwDs is considered important content in the operation of schools, given by the Ministry of Education and Training in the documents guiding the implementation of the school year's tasks.

Thirdly, the scale and forms of education for PwDs are increasing in quantity and quality.

The system of centres to support the development of inclusive education at the provincial level has been established in over 20 cities and provinces; there were 107 specialized education institutions and 12 centres for educating children with disabilities and implementing inclusive education at all general education levels. The number of children with disabilities attending school in Vietnam has increased tenfold over the past two decades. The rate of children with disabilities attending primary school at the correct age is about 88.7%, and 33.6% in upper secondary school [1]. Millions of PwDs and children with disabilities are cared for, nurtured and educated in social assistance facilities. In the period 2012-2020, the number of students with disabilities attending school increased tenfold compared to the period 2000-2010 [5].

Fourthly, a network of training and retraining institutions for PwDs has been formed and developed.

Currently, 4 Pedagogical Universities and 3 Pedagogical Colleges in the country have established special education departments and opened codes to train teachers for children with disabilities. Annually, these schools train nearly 600 teachers to teach children with disabilities, provide training in inclusive education for 600 - 700 administrators and 2,000 - 2,500 teachers of pre-schools, junior high schools, and high schools in 63 provinces/cities on the profession of inclusive education for students with disabilities so that these people can conduct training and guide for local teachers on inclusive education, further develop a network of teachers to teach children with disabilities throughout the country [1]. The training program for teachers at university and college bachelor's, master's and doctoral levels in special education in the direction of inclusive education has been compiled, promulgated and initially used effectively; The training program for education administrators, inclusive teachers at pre-school, primary and high school levels has been compiled and published step by step to meet the practical needs of education for PwDs.

The system of textbooks and training materials for teachers on early intervention and disability-inclusive education is becoming more and more comprehensive and complete.

Vocational training and vocational education for PwDs have been focused on.

There are 1,912 vocational education institutions for PwDs nationwide, with 3,359 vocational teachers. On average, 25,000 - 27,000 PwDs receive vocational training under the scheme on vocational training for rural workers. Nearly 1000 PwDs are supported with vocational training. Over 356 billion VND of the budget is used to implement policies to support education for PwDs. Localities have actively developed, reviewed and approved 4,355 lists of training occupations, 3,657 training cost norms as a basis for training for rural workers and inclusive training for PwDs; The localities have also selected and approved the list and norms of training costs for over 950 occupations to organize specialized training for PwDs. It is estimated that each year, socio-political organizations and organizations of/for PwDs at the central and local levels provide vocational training and job support for about 10 thousand PwDs. Vocational training and employment counselling for PwDs are also of great interest. Currently, there are 64 employment service centres nationwide, on average, each year, the centres provide vocational training and job placement counselling for about 20,000 PwDs with a success rate of over 50% [3].

Since 2012, Vietnam has launched a program to teach sign language on television so that PwDs can use sign language conveniently. Currently, there are 05 TV channels, including VTV1, VTV2, VTV4, People's Television, and O2TV, with TV programs with subtitles and sign language for PwDs [3].

2.1.2. Causes of achievements in ensuring educational rights of PwDs in Vietnam today

In general, the activities of ensuring the right to education of PwDs in Vietnam obtain the above positive achievements stemming from the following reasons:

One is, along with the economic and social development of the human race, international law on human rights, including the right to education of PwDs, continuously develops; awareness of the right to education worldwide has been constantly improved. The international legal system on the right to education of PwDs is diverse, including “soft” and “hard” laws. *International* treaties related to the right to education of PwDs are legally binding for the member states to respect, protect, and guarantee the right to education for PwDs.

As a member of international conventions on human rights, Vietnam is obliged to strictly implement international commitments on human rights, including the right to education of PwDs. Therefore, in order to maintain prestige before the international community and derive from the internal needs of the country, it is required that our Party and State have the political determination to ensure the right education of PwDs in Vietnam. The state has built a system of legal documents to guide the actions of socio-political

organizations, governmental/non-governmental organizations, as well as departments and branches in the process of participating and supporting education for PwDs;

Secondly, at present, Vietnam is making efforts to approach the achievements of the fourth industrial revolution in national construction and development. Reality has shown that a country can only access scientific and technological achievements when that country has high-quality human resources; that high-quality human resources can only be obtained from educational achievements. Therefore, our Party and State have promulgated many guidelines and policies to perfect the mechanism for ensuring the right to education for PwDs, meeting the requirements of the fourth industrial revolution. Since then, education programs for PwDs have been implemented on the basis of a secure legal framework, and resources have been approved and used to promote the care and education of PwDs.

Thirdly, the development of theoretical awareness of the Party and awareness of all classes of people about the importance and meaning of the right to education for PwDs has been significantly improved. Especially it is a remarkable development in awareness of the Party and State of Vietnam towards providing the right to education to PwDs. Respecting, protecting and implementing education for PwDs has always been a deep concern of the Party and Government of Vietnam and a political and legal commitment of the State of Vietnam before the international community. Our Party and State have deeply realized that: The most effective way to ensure the implementation of the right to education for PwDs today is to raise the awareness of people, cadres and civil servants in the State apparatus about human rights, including the right to education for PwDs to prevent and limit violations of human rights through education; in other words, it is the human rights approach in education.

2.2. Limitations and causes of limitations in ensuring educational rights of PwDs in Vietnam today

2.2.1. Limitations

Firstly, there is a comprehensive shortage of facilities, human resources trained in special education, equipment, teaching aids, and educational institutions to meet the diverse needs of PwDs in each locality, especially since 50% of children with severe disabilities have not had access to education [7]. Although the Law on PwDs regulates inclusive education and identifies it as the main educational model for PwDs, there are still certain barriers in practice that affect the right to education for PwDs, such as many educational institutions that do not interpret sign language for the deaf, use braille for the blind or offer accessible facilities for PwDs such as aisles and toilets accessible to wheelchair users, especially in rural areas, areas with difficult socio-economic conditions. In addition, the children with disabilities in these areas are often in households with difficult economic conditions, poor households, near-poor households, and ethnic minorities. Hence, participation in education becomes even harder.

According to a survey and assessment report on support for PwDs 2012-2020, out of every 100 schools, there are only 3 schools with appropriate design (2.9%), 8 schools with paths for PwDs (8.1%) and 10 schools with toilet facilities suitable for children with disabilities (9.9%). Most schools have yet to make reasonable adjustments to their facilities due to a lack of funding and inspection, supervision and sanctions. Only 1 out of 7 primary and secondary school teachers are trained to teach students with disabilities (14.1%) [1]. The need for supporting materials and equipment is also one of the major barriers for PwDs in inclusive education. Especially in the current context that the textbooks of the general education program are being revised and supplemented, there need to be more learning materials for PwDs. Moreover, the cost of distributing materials and learning materials (such as braille) is very high, so this is also one of the challenges in ensuring access to materials and training programs for PwDs.

Secondly, the legal documents on the right to education of PwDs are quite complete, but the efficiency and effectiveness of some documents have not come to life, and the roles and responsibilities of localities are unclear, so the benefits of policy beneficiaries have not been fully and properly paid attention to. For example, the preferential regime for teachers to conduct inclusive education for students with disabilities under Decree No. 28/2012, dated April 10, 2012, has not been comprehensively implemented in practice in localities. Some documents are still exclusive for each ministry and department and have yet to be linked into a unified system.

Thirdly, the inclusive education program requires schools to have individual plans to exempt and reduce some subjects for PwDs. However, there are only specialized education programs for primary school students, not for the high school system. These barriers show that the right to education of PwDs specified in Articles 27, 29 and 30 of the Law on PwDs still needs to be effectively implemented.

2.2.2. The cause of the restriction

Firstly, due to limitations in formulating and organizing the implementation of legal regulations on the right to education of PwDs, especially difficulties because the process of internalizing international legal regulations on the right to education of PwDs has disparities with the conditions of Vietnam.

Secondly, there are limitations in implementing the responsibility of giving the right to education to PwDs by relevant ministries, departments and agencies. Despite many efforts, the Ministry of Education and Training is still confused in performing its function of advising the Party and the State on ensuring the quality of education, affecting the protection of and awarding of the right to education to PwDs, in which it is noteworthy that the inspection and examination still face difficulties and limitations, not meeting the requirements set forth.

Thirdly, the cause comes from social consciousness and the psychology of discrimination against PwDs. Although the education system in Vietnam is relatively equitable at the basic stage of education, there is still a gap between students from disadvantaged backgrounds and students with favourable conditions, especially at the upper secondary level, colleges and universities; the gap expressed in indicators of access to education such as enrollment rate, dropout rate, double-class rate, graduation rate, as well as academic performance; the gap in educational results between Kinh students and ethnic minority students, students with difficult circumstances, and students with disabilities is increasing.

Fourthly, the cause derives from the limitation in granting the right to education by social institutions. The will and aspiration to access and benefit from the education of all classes of people, especially vulnerable social groups, i.e. women, girls, PwDs, people with HIV, the poor, and ethnic minorities, have not been focused. The performance of the supervisory role of state agencies - competent entities in implementing the right to education of PwDs is sometimes and somewhere superficial. The voices of social institutions are not yet effective and efficient. Propaganda and awareness raising of subjects responsible for empowerment, beneficiaries of the right to education of PwDs (Firstly of all, members of mass organizations and society) have not been focused, leading to ineffectiveness, and many subjects do not have a sense of respect, protection and assurance of education rights of PwDs. Besides, there are few opportunities to participate deeply and regularly in empowering the right to education to PwDs, such as: Gathering opinions, holding seminars, exchanging, discussing, and organizing dialogues on issues of the right to education of PwDs.

3. Some solutions to ensure the right to education in Vietnam

Firstly, strengthen basic education support activities

Firstly, it is necessary to promote the improvement of policies on education for PwDs, preferential policies for teachers and support staff for education for PwDs; research, develop and perfect standards for intervention and support activities for PwDs; intensify the policy of universalizing lower secondary education for PwDs in accordance with the Constitution and the International CRPD; functional agencies and localities should focus on reviewing and evaluating programs to support education for PwDs;

Secondly, research and develop educational programs, textbooks and educational materials for PwDs from pre-school to high school; For pedagogical training programs at universities and colleges, it is necessary to include the content of inclusive education as a compulsory subject or knowledge module.

Thirdly, enhance training and fostering professional skills for administrators, teachers and support staff of education for PwDs.

Fourth, build a database system on the educational needs of PwDs and a support system for the education of PwDs

Fifth, it is essential to invest in developing an effective system of services and education models for PwDs from the central to local levels, especially early intervention models to support children with disabilities, i.e. inclusive, semi-inclusive, and specialized distance and home education.

Secondly, sustain vocational education support activities

Firstly, to build and perfect a system of legal documents guiding the organization of vocational training and vocational skills education for PwDs; organize surveys to assess the operation of vocational training institutions for PwDs and vocational training needs of PwDs;

Secondly, to develop a vocational training plan for PwDs according to appropriate criteria in terms of time, place and training schedule for each specific occupation which should be implemented in the direction of coordination between vocational training institutions and enterprises, organizations of PwDs, business establishments that employ PwDs or businesses and establishments established by PwDs to ensure the job creation effects of the PWDS training program.

Thirdly, it is necessary to involve all actors in society in ensuring the right to education for PwDs.

Firstly, organize to thoroughly understand, propagate and develop a plan to implement the Directive of the Secretariat on strengthening the leadership of the Party in the work of PwDs in order to create profound changes in awareness and responsibility among officials, Party members, employees and all classes of people on the work of PwDs.

Secondly, strengthen the effectiveness and efficiency of state management in implementing policies and laws on PwDs; promote the connection of activities of ministries and branches for better policy implementation. Raise awareness and responsibilities of all levels of Party committees, party organizations, agencies, organizations and people in implementing the Party's guidelines and viewpoints, the state's policies and laws on support for PwDs.

Thirdly, along with that, associations and mass organizations need to bolster support activities and create favourable conditions for PwDs to access policies on health care, education, vocational training, employment, credit, social protection, cultural activities, physical training, sports, entertainment, tourism, travel; develop mechanisms and policies to enable PwDs to participate in the social insurance system, contributing to a rapid increase in the number of PwDs participating in the social safety net.

Fourth, intensify examination, inspection and supervision, promptly detect, prevent and strictly handle violations in the implementation of laws and policies towards PwDs; develop standards of essential infrastructure suitable to the lives of PwDs, creating equal opportunities for PwDs; promote the socialization of support for PwDs, mobilize organizations, individuals and communities to participate in supporting PwDs.

Fifth, promote scientific research in the fields of prevention, early detection and intervention, psychotherapy, and rehabilitation for PwDs; strengthen international cooperation in order to take advantage of technical assistance, experience and resources to assist PwDs; encourage PwDs who have the ability to study and work to overcome difficulties, rise to independent living, integrate into society, contribute to socio-economic development and help other PwDs; intensify communication and dissemination of policies and laws on PwDs, raise awareness of the responsibilities of families and social communities towards PwDs.

Conclusion

The process of the country reform in the past decades has created conditions for the right to education of people in general and PwDs, in particular, to be guaranteed at many levels. However, there are still barriers that limit the assurance of the right to education for PwDs. Therefore, the State, society, schools, and families, especially PwDs themselves, need to raise awareness and take responsibility for implementing solutions to ensure the right to education of PwDs, aiming to equip PwDs with knowledge and skills to integrate themselves into society.

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Inclusive Education in India: The Challenges in Achieving SDG 4

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Abstract:

World leaders adopted the objective of achieving inclusive education in the year 2015 by signing the Education 2030 Sustainable Development Agenda. The fourth goal aims at providing education which is accessible to all and inclusive. In India, the government's policies, such as the erstwhile Sarva Shiksha Abhiyan (SSA) or the current Samagraha Shiksha, aim to provide inclusive education. This is an enabled provision for the children enrolled in Government schools nationwide. Whereas a higher percentage of the private schools in the nation do not encourage the enrolment of differently-abled children. The government has set up commissions such as the State and National Child Rights Commission, administrative authorities such as the Chief Educational Officers in each district and district differently abled authorities and a Tribunal who are able to ensure that inclusive education is provided to all the children under the control of the government schools. However, the private schools have not been strictly advised to enrol the differently abled children. The Constitution of India, 1950 and The Rights of the PwDs Act, 2016, strictly provide for zero tolerance towards discrimination of children with regard to education. Data was collected from the parents of special needs children using a quantitative approach. The study suggests that the admission process of schools in India is similar to inclusive education is to be mandated, and an option to discriminate the child based on special needs to be eradicated.

Keywords: Inclusive education, SDG 4, Special needs Children, Right to Education-Indian Disability laws.

1. Introduction

The Constitution of India has used the term “citizens”, which includes PwDs, and all rights guaranteed under the Constitution apply to the PwDs. The right to health, freedom of religion, right to vote and right to contest in elections are some of the rights that have been enforced to date. The Constitution 86th Amendment Act, 2002, inserted Article 21A, which provides free and compulsory education to all children aged six to fourteen. The Right to Free and Compulsory Education Act 2009 includes children with special needs. Under the Rights of PwDs Act, 2016, it is mandated to provide inclusive education to all children with disabilities without discrimination.

1.1. Problem Statement

SDG 4 is a goal to be achieved with the support of government-run and private schools in India. To overcome the discrimination between normal children and special needs children, India has to mandate the admission of all children with physical or intellectual disabilities to be a part of the education system in private schools.

1.2. Research Questions

The research agenda is structured around three questions:

1. What are the experiences of the parents/caregivers while trying to admit a child with special needs in a private school?
2. How does inclusive education impact children enrolled in government schools?
3. Is the legislation pertaining to the right to inclusive education sufficient for achieving the goals of SDG4?
4. Whether the enforcement authorities in the country are vested with enough powers to provide inclusive education in both the government and private schools.
5. What are the different Boards under which education is provided in private schools?
6. What are the recommendations of the different Boards towards inclusive education?

1.3. Research Objectives

Inclusive education provides the opportunity for children with special educational needs to learn in the same classroom setting as their peers. The differentiated learning techniques benefit students without disabilities, and the acceptance level increases. UNESCO's policy guidelines for inclusive education (2009) require the legal framework of a nation to recognise inclusive education and identify and provide resources for students with disabilities. The research aims to analyse the different provisions of the National policies and legislations in light of the different international conventions on the rights of children with disabilities. The legal framework should apply to both public and private schools. This study aims to explore the possibilities of mandating the admission of special needs children in private schools and penalising any form of discrimination on the basis of disability.

1.4. Review of Literature

Researchers have conducted a study among the children with special needs, the teachers and the school management. During the pre-independence period, the provincial governments took a sporadic interest in educating children with disabilities by dispensing ad-hoc grants to schools and institutions run by the voluntary sector. (Alur, 2002). Kamalam (1996) conducted a study focusing on the capacity building of teachers educating the MMR. Paranjape (1996) concluded that deaf and hard-of-hearing students performed better than those already trained in the mainstream. In the study by Zaveri (2001), the teachers felt that inclusion was desirable but needed to be more feasible. In the same way, Kalaparasuram (2006) confirmed that the only variable that affected the teacher's attitudes towards inclusion was prior acquaintance with the person with a disability.

The Sargent Report of 1944 recommended sending children with disabilities to mainstream schools, which the Kothari Commission followed in 2005. Though all the government documents refer to inclusive education, there needs to be a specific mention of mainstream schools (Singhal, 2005); staying out of mainstream schools will marginalise vulnerable children (Serpell, 1999). The negative attitude of society blocks the integration of the PwDs to integrate into society. Rosenthal et al (2006), Cook et al (1998), and Smart (2002). The negative attitude ranges from the attitude of the educators, assistive materials and financial constraints (Teichman, 2010)

UNICEF, 2017 indicates the advantages of inclusive education are non-discrimination, the best interest of the children, the right of the child to be heard, protection from violence and abuse, the opportunity for life within the community, support with mobility, access to healthcare, habilitation and rehabilitation and the reason for promoting inclusive education is for participation in public life, the exercise of legal capacity, work and employment and to provide an adequate standard of living.

2. Methods

103 parents and caregivers were interviewed in this study. A questionnaire was provided to the respondents. The parents/caregivers provided their responses through an online survey.

2.1. Research Methodology

Exploring the previous research on this topic, more is needed to conduct quantitative research; therefore, qualitative research was also undertaken. This will help in better understanding the attitude of the parents or the caregivers. The method of quantitative research used in 'questionnaire'. The questionnaire involved questions pertaining to the nature of the disability, the reason for not approaching a mainstream school if regular schooling was denied with multiple choice, and there were also open-ended questions for the respondents to answer their mind. Only a small sample was gathered randomly. The methodology of the study also includes the thoughts and writings of various authors in the stream of academics and research

2.2. Results

The interview conducted with the parents of the CWSN suggests that the private schools have recommended that parents admit their children to special schools, not mainstream schools. The reasons for denial by the private schools, as narrated by the parents, is *“I was denied the admission for the child stating that they only communicate in English and it will further delay her communication skills. The school says that they already have a special child in place. Even the Montessori teaching skills, created for special children, stated that my child will be denied for the same.”* The schools have also denied admission stating that it is not possible for them to manage the child as stated by one such parent *“In mainstream schools they say that they cannot manage a child with special needs, especially my son with autism.”* Of the 103 respondents, only 26% have admitted their children to mainstream schools. However, nearly 82% have approached mainstream schools and been rejected for admission.

Total enrolment of Children with Special Needs (CWSN) in 2020-2021 stands at 21.69 lakh as compared to 22.49 lakh in 2019-2020, showing a decrease of 3.55% during 2020-2021 as compared to 2019-2020. The enrolment of CWSN by gender and school education level in Tamil Nadu (See Table 1) shows a drop in enrolment. Similarly, the percentage of schools having ramps with handrails for children with disabilities is lower in private schools than in government schools. The RPWDS Act, 2016 specifically states, *“make building, campus and various facilities accessible; ...”*. The state of the schools in Tamil Nadu is seen in Table 2.

Almost 53% of the respondents have been denied admission by mainstream schools. The parent of a special needs child narrated in the interview, *“Many normal schools do not have special educators, and they think that it is a waste of money to hire special educators and no work for them if there is no child with a disability.. but the real truth is there are lot of children who has difficulty in learning (learning disability) which does not look like other disability by appearance but spoils the child future if un noticed. There should be a law that every school should appoint a special educator. inclusion is seen only by the eyes of children but not the adults around them..”* Every parent wants their special child to have the same schooling experience as the other children. Another parent's statement affirms, *“My wish for my son is to put up in a nice school, where he can improve himself without anybody's denial and to accept them as they are and to provide the needs of the child for their future to be brightened.”* Admitting the child to the school and then neglecting the child is another way adopted by some schools, as stated by the parents, *“They directly did not deny but gave admission under few conditions like only half day is permitted and denied many extracurricular activities like yoga, sports.. did not even try to involve the child...”*

There are also instances where the parents have yet to send their children or ward to a mainstream school. The reason cited by one of the parents is *“1. Lack of awareness about autism spectrum kids 2. Lack of support staff 3. My kid cannot sit in a bigger group with too much environmental noise, which can overwhelm my child.”*

It also asked the parents whether special schools were run by the government in their locality as an alternative when the mainstream schools deny admission. It is seen that 91.3% have responded as special schools are unavailable.

Table 1. Enrolment of CWSN by gender and level of school education in Tamil Nadu

Year	Children With Special Needs (CWSN) enrolment								
	Primary (1 to 5)			Upper Primary (6 to 8)			Elementary (1 to 8)		
	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
2019 - 2020	46950	29372	76322	36079	25555	61634	83029	54927	137956
2020 - 2021	41031	25959	66990	37131	25278	62409	78162	51237	129399

Table 2. Percentage of schools having ramps with handrails for CWSN in Tamil Nadu

Year	Government	Government Aided	Private
2019 - 2020	37.15	13.94	11.18
2020 - 2021	63.76	34.87	26.24

3. Discussions and Conclusions

The Salamanca Statement and Framework for Action on Special Needs Education (1994) propounded inclusive education. Until the late 90s, special children were kept from mainstream schools and discouraged from receiving national education. Integrated education has always been in the policies and schemes of the government since 1950 but with limited success. Section 2(n) of the RTE Act, 2009 defines a school which includes government, government-aided, specified schools run by Central Government, schools run by the government directly, schools run by public sector undertakings and unaided schools or private schools. The RTE Act extends to all schools, including private schools nationwide.

The Universal Declaration of Human Rights, 1948, recognises education as a human right. This was followed by the World Declaration for education for all in the year 1990. In 1960, a multilateral treaty, the Convention against education discrimination, was adopted. One of the four principles of the Convention on child rights (1989) is the non-discrimination of children. The year 1994 saw the Salamanca Framework for Action on Special Needs Education (1994) propounded inclusive education. Till the late 90s, in India, special children were kept out of mainstream schools and were discouraged from being a recipient of national education. The Biwako Millenium framework of action (2002) is to provide an inclusive society for the PwDs.

In the Indian scenario, the Kothari Education Commission was constituted in 1964-1966, followed by the National Policy on education in 1968. However, the Planning Commission strongly recommended emphasising integrated education in 1971. This further developed into the Integrated Education for Children with disabilities (IEDC) in 1974. By way of the 42nd Amendment, 'education' was brought under the concurrent list in 1976. Free and Compulsory education was mandated vide Art 45 of the Constitution of India. In the late '80s, different national policies were implemented. The National policy on education dates back to 1986, and the Programme of Action to 1992.

The only recognised council for PwDs, the Rehabilitation Council of India, which recognises and provides the licence to educators, therapists and institutes, came into being in 1992. The PwDs Act 1995 was passed by the parliament and was further amended in the year 2016. In 2001, the government introduced Sarva Shiksha Abhiyan, currently renamed Samagraha Shiksha, with changes in certain provisions. The RTE Act extends to all private unaided schools per the definition of 'school' under the Act. The objectives of the RTE Bill, 2008 stated that *“the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through the*

provision of inclusive elementary education to all. Providing free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate governments but also of schools not dependent on Government funds. The RTE Act has a provision enabling the parent to admit their child to a neighbourhood school for elementary education.

3.1. School System

The school system in India starts with Pre-school, kindergarten, primary school or junior school, high school and higher secondary school. Free and compulsory education, as mentioned in the Constitution of India, is applicable to all children below the age of 14. The three main streams of education are the Central Board of Secondary Education, the Indian Certificate of Secondary Education and National Open Schools. Many international curriculums are followed as children aspire to move to international countries to continue their high school education. Every State in India has its own Board of education. The National Curriculum Framework for School Education (National Council of Educational Research and Training-NCERT, 2000) has also recommended inclusive schools. The CBSE, ICSE, and the State Boards have mandated inclusive education with required assistive technologies. Discrimination in any way is condoned by way of cancellation of the affiliation.

3.2. Administrative Machinery

Matters related to PwDs fall within the Ministry of Social Justice and Empowerment (MSJE) purview. The Department of Empowerment of PwDs (DEPWDS) under the MSJE is the nodal department.

The Child Rights Commission at the National and State level also enquire into the discrimination of special needs children with regard to their educational requirements. Apart from these administrative machineries, every state has District Educational Officers and Chief Educational Officers who also look into the affairs of children with special needs and their education.

3.3. Indian legislation

The RPWDS Act, 2016 (Sec. 16) lays down a specific list of duties to be followed by educational institutions:

- i. admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;
- ii. make building, campus and various facilities accessible;
- iii. provide reasonable accommodation according to the individual's requirements;
- iv. provide the necessary support, individualised or otherwise, in environments that maximise academic and social development consistent with the goal of full inclusion;
- v. ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication;
- vi. detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;
- vii. monitor participation, progress in terms of attainment levels and completion of the education in respect of every student with a disability;
- viii. provide transportation facilities to children with disabilities and also the attendant the children with disabilities having high support needs.

Similarly, the objectives of the RTE Bill, 2008 stated that “the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through the provision of inclusive elementary education to all. Providing free and compulsory education of satisfactory

quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate governments but also of schools not dependent on Government funds. The RTE Act casts a duty on every parent to admit their child or ward to a neighbourhood school for elementary education. However, it allows parents of children with “multiple disabilities” or “severe disabilities” to opt for home-based education. The RPWDS Act, which does not recognise home-based education models, allows parents of children with benchmark disabilities to opt for education in a special school.

Inclusive education provides the opportunity for children with special educational needs to learn in the same classroom setting as their peers. The school and teachers play a major role in the early intervention and diagnosis of children with special needs. The development paediatricians and other disability-related medical practitioners decide and guide the parents as to whether the child requires a special school or a mainstream school. In most cases with mild disabilities, it is advised by medical practitioners send the child to mainstream schools for better peer communication and to improve social skills. Though all children have the right to study in any mainstream school in the neighbourhood, not all parents approach the schools for admission. They need to be made aware that every school's responsibility is to provide inclusive education as mandated by the PwDs Act and the RTE Act. The enforcement vides the various appropriate government authorities, especially the National and State Child Rights Commission, which is the backbone of both legislations. The vivid usage of the suo moto powers of the commission in various such cases will bring the issue to the limelight. The financially weakened parents restrain themselves from knocking on the commission's doors or the administrative authorities to avoid further stress on the child and themselves. The study recommends that private schools should be explicitly mentioned in the legislation. The application form for admission to schools should contain a provision collecting details on the disability of the child. The percentage of CWSNs admitted to private schools each year has to be submitted as an early report to the Chief Educational Officer of each district for scrutiny. This will ensure that the children receive inclusive education from all quarters, not just government schools.

A checklist of actions governments must take to make inclusive education a reality has been enumerated by UNICEF (2017),

- √ Commit all government departments to work towards inclusion
- √ Introduce laws and policies to end discrimination and guarantee the right to inclusive education
- √ Make a plan of action and timetable for introducing inclusive education
- √ Make money and resources available to enable the transition to inclusion
- √ Collect information and measure progress
- √ Bring an end to institutions for children with disabilities
- √ Provide early childhood care and education
- √ Provide teacher training for inclusive education.
- √ Introduce inclusive testing and assessment
- √ Introduce complaints procedures

The two points from the above towards which India has to march forward are 1) Bring an end to institutions for children with disabilities; 2) Introduce complaints procedures. The need for special schools in the country should be largely reduced. All schools in the country should become inclusive schools. Similarly, when there is discrimination at the admission level being faced by a child/parent, a robust complaint procedure would enable the child to get immediate redressal.

3.4. Conclusion

The children admitted to the inclusive schools under the government SSA scheme had shown tremendous improvement in their social skills. India has a long way to go in achieving SDG 4. Though the legislation and government documents mandate inclusive education, this is unachievable as private schools have not been specifically included and mandated. The Indian government has to ensure that powers are given to the chief educational officers, child rights commission and other enforcement authorities to ensure that children with special needs are not discriminated against in any school. This requires major amendments by way of inclusions in the different provisions in the RPWDS Act and RTE for the enforcement authorities to take cognisance of such discrimination of the special needs children.

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The evolution of Vietnam's law on copyright in enhancing the rights of persons with print disabilities

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Abstract

Access to knowledge is a fundamental human right, especially for minorities, who are vulnerable in society, i.e. PwDs in print reading. This is increasingly important in a digital society and the industrial revolution 4.0. In order to enhance the quality of life of PwDs, the amended and supplemented IP law 2022 has made a breakthrough when stipulating: “*people with visual disabilities, PwDs who are unable to read printed words and other PwDs do not have access to works to read in the usual way (hereinafter referred to as PwDs), persons who nurture and care for PwDs and organisations permitted by the government to use works in accordance with Article 25a*”. This regulation is intended to support the reduction of the scarcity of books to increase opportunities for access to health, education, employment or participation in the socio-economic life of PwDs, including people with visual impairments, autism, people with learning difficulties or people with mobility disabilities who cannot hold books and turn the pages of the book. On the other hand, these provisions are well-designed in light of the Marrakesh Treaty. Vietnam aims to reduce the barriers for PwDs to access the print edition. This article aims to provide a comprehensive and holistic view of a humane exemption when the IP law has made an important exception exclusively for PwDs in copyright in balance with the copyright ownerships.

Keywords: copyright exceptions; rights of PwDs; Treaty of Marrakesh; accessible-format book for disabilities; Vietnamese copyright.

Introductions

Globally, at least 2.2 billion people have near or distant vision impairment. In terms of regional differences, the prevalence of distance vision impairment in low- and middle-income regions is estimated to be four times higher than in high-income regions [1]. In Vietnam, there are about 2 million blind and limited visual people [2]. In particular, many people have access to literary, scientific and artistic works to improve people's knowledge and education as well as legitimate cultural and entertainment needs but also face barriers in the legal framework related to the rights of PwDs in reading. The quality of life and improving science and technology require the relevant legal framework to be constantly updated and changed. This article aims to assess the transformation of Vietnamese Intellectual property law (IP law) on copyright exceptions for PwDs in reading in reference to the Marrakesh Treaty.

1. Historical and current legal frameworks on copyrights exceptions for a print unreadable person

The exception is designed to facilitate access to works with disabilities recognised in the Vietnamese legal system for copyright. As the Firstly unified document on copyright in Vietnam, Decree No.142/HDDBT has not provided exceptions of copyright but only includes 8 articles with the main content clarifying the concept of authorship, protected work objects, and basic rights of the author, duration of protection and copyright regime for film, television, video and broadcasting works for production agencies. However, following Decree No. 142/HDDBT, the Ordinance on Copyright

issued by the Standing Committee of the National Assembly in 1994 not only provides more specifically for copyright protection mechanism but also allows individuals and organisations to “transfer works to Braille for the blind” while not having to apply for permission as well as remuneration to the author or copyright owner. Although the application of the exception under the Ordinance is limited to the narrow scope of both accessible and beneficiary forms of work, the recognition reflects lawmakers' concern for the rights of one of the vulnerable groups of society.

The Civil Code of 1995 and the next Civil Code in 2005 devote the sixth section to regulating intellectual property (IP) rights and copyright. With the high legal effect of these documents, the regulations on copyright in Civil Code are an important foundation to gradually improve and unify legal regulations on copyright, meeting the needs of regulating social relations in this field and creating favourable conditions for Vietnam’s international integration and accession to international conventions on copyright.

On 29/11/2005, the Law on Intellectual Property (amended and supplemented in 2009) was promulgated as a specialised law on IP rights. IP law permits restrictions and exceptions related to the right of PwDs to access printed works. **Firstly**, Article 25 of the Law on Intellectual Property and Article 25 of Decree 100/2006/ND-CP stipulate one of the cases in which the published works may be used without permission or pay royalties and remuneration is “transcribing of works into Braille or other languages for visually impaired people”. The regulations were changed in the exception between the Intellectual Property Law and the Copyright Ordinance in 1994. Specifically, the regulations expand the scope of the exception to facilitate persons with print disabilities to access works in Braille and other languages as long as it meets the needs of the visually impaired. However, no specific written legal guidance exists on how “other language” should be understood. Ambiguity in the legal text can make it difficult to convert works to formats other than Braille, such as embossed illustrations, audiobooks, stereo graphics, large print, or electronic formats accessible to people with print disabilities. Beneficiaries who are blind under the 1994 Ordinance are also replaced by visually impaired people under the IP Law. Since visual impairment and blindness are two different conditions, the absence of either beneficiary limits the scope of the exception. In addition, this exception does not apply to architectural, visual, and computer programs. Stemming from the territorial nature of the copyright protection mechanism, this exception is valid only within the territory of Vietnam. **Secondly**, the IP law of Vietnam does not allow the export and import of copies in a format accessible to PwDs without the copyright owner's consent. In other words, the IP Law gives the owner the exclusive right to export and import copies of works across borders. The owner has the right to allow and prohibit other entities from exercising this right. Exceptions for parallel importation of works or copies of copyright-protected works are not provided in Vietnamese IP law [3]. By all those defects, the law should be improved to meet the needs of society.

2. Conformity of the Vietnamese amended intellectual property law on copyright exceptions for the unreadable print person with the Marrakesh Treaty

The Marrakesh Treaty (hereinafter MA) is the standard for the international model for the exceptions on copyright for unreadable print persons, which is applied in many countries worldwide. Therefore, the comparison between the MA and Vietnamese law is necessary: i) Firstly, Vietnam is a member of TRIPS; and ii) secondly, the balance between the legitimate interests of copyright owners and the society is significantly important to archive the goal of copyrights.

2.1 Dedicate to the purpose of humanities

The Marrakesh Treaty was adopted in June 2013 and entered into force in September 2016. The agreement is operated by ratifying or participating countries that regulate copyright laws, convert,

distribute and increase the number of publications in accessible formats, and share accessible materials within and across borders so that blinds and print unreadable persons can access such publications. The need for access to the works of PwDs in Vietnam is significant, and the signing of the MA is necessary and inevitable. However, until August 2022, Vietnam has not joined the treaty. Recognising the importance of the international legal system on informative technology and wishing to develop restrictions and exceptions on information technology to facilitate the access of works by the person with print unreadable disabilities, the MA contains provisions, on the one hand, addressing the need to grant the rights for free access of (copyrighted) works for targeted groups and on the other hand, ensuring that copyright is not illegally violated. Unlike the TRIPS approach, the MA establishes minimum framework provisions on limits and exceptions of the copyright and empowers state parties to decide the content. Through the regulations, while considering the interests of the author/owner of the copyright, the MA also narrows the differences between the legal copyright systems in each country regarding the rights of unreadable persons.

Although not a member of MA, Article 25(1)(m) of the Vietnamese Intellectual Property (IP) Law towards enhancing the rights and power of disabilities has been changed in the final draft that was passed by the National Assembly in 2022 as follows: “People with visual impairments, PwDs who cannot read the print and other PwDs who cannot access works to read in the normal way (hereinafter referred to as PwDs), nurturers, caregivers for PwDs, organisations that meet the conditions prescribed by the Government to use works as prescribed in Article 25a of this Law”. The change of law in the direction of not only regulating exceptions cases of copyrights but also adding another Article to regulate in detail the exceptions for PwDs in Article 25a has proved the effort of legal transplantation and harmonisation of the domestic law of Vietnam and international standards. The gap between the IP Law of Vietnam and the MA should be well-studied for a clearer view of applying for this exemption.

2.2 Harmonisation of Vietnamese law copyrights and Marrakesh Treaty on the exceptions of an unreadable print person

The MA is the Firstly international treaty to recognise the specific exception of the copyright for a disadvantaged group in society, namely the unreadable print persons. The following aspects express the comparison between the MA and Vietnam law on copyrights: i) the scope of application; ii) regulations that facilitate access to works for print unreadable persons; and iii) the legal framework towards the guarantee of copyrights.

2.2.1 Beneficiaries

The beneficiaries of the MA are controversial because the wider the range of beneficiaries, the greater the impact on the rights of the authors and owners. This could violate the “Three-step test” the MA sets to ensure the copyrights. While the African countries’ draft approaches the beneficiary concept with a broad scope that includes all those who suffer from visual or physical, mental, sensory, and cognitive disabilities [4], the US [5] and the European Union [6] narrowing and excluding deaf and hard of hearing from the range of beneficiaries. The concept of “beneficiary” enshrined in Article 3 of the MA results from reconciling views between developed countries with a strong desire to protect economic development and developing countries with a desire to expand the possibility of applying exceptions and restrictions. On the one hand, the MA satisfies the concerns of copyright owners by excluding deaf and hard-of-hearing persons from the scope of regulation and limiting those who must be under certain circumstances to become beneficiaries under the agreement. On the other hand, by using general concepts and leaving it open to national legislation to concretise the types of defects and disabilities provided for in the agreement, the MA has been making room for self-arranging for

the member states. The three groups of beneficiaries specified in Article 3 include:

- Blind and visually impaired.
- People who do not have visual function disabilities, perpetual and reading disabilities that prevent the brain from absorbing information from sight.
- These defects and disabilities must make it substantially impossible for PwDs to read and absorb information compared to persons without disabilities.
- People with other physical disabilities result in an inability to hold a book or focus their eyes on the point of view.

In the context of debates on the causes of many diseases that cause the inability to read and absorb information, Marrakesh's approach in these three directions reduces the omission of beneficiaries and facilitates countries to internalise flexibly but remain within the framework set forth by the MA. Blind people, visually impaired people, or PwDs who are unable to read and absorb the prints are collectively referred to by authors as print-unreadable people. In addition, Article 3 notes that the negotiating parties agree that the term "cannot be improved" provided for in Article 3(b) does not require the use of all possible treatments. This consensus reduces the burden on print unreadable persons and avoids the abuse of loopholes that result in regulations that may not be applied in some countries based on rapidly developing medicine. In other words, this regulation is intended to avoid exclusion from the beneficiaries of non-readable persons who cannot afford to pay for treatments despite guaranteed medical conditions.

In comparison with Vietnam IP law, the beneficiaries of the copyright exception include:

- People with visual impairments.
- PwDs who cannot read the print.
- Other PwDs who cannot access works to read in the normal way.

The beneficiaries in Vietnam IP law, therefore, have well-transplanted the objects of the MA in a wider range of print non-readable disabilities without changing the scope of the MA. However, the MA has transparently covered a group of non-visual disabilities but having difficulties in reading "People who do not have visual function disabilities, perpetual and reading disabilities that prevent the brain from absorbing information from sight". These groups of persons should also be added to the exception of copyright in Vietnam, although they could be seen as non-disabilities.

2.2.2 Empowered subjects

One of the key issues in creating the exceptions and limits in question is which entities are empowered to make copies and distribute accessible formats. This issue should be mentioned in the drafts of the African countries, Brazil, Ecuador and Paraguay. In contrast, the US and EU drafts are highly restrictive as they are the actors who have the power and ability to make and distribute accessible versions of the format. For the US, the draft requires the subject to have a legal personality [7], but the legal status of each country defines differently. The EU requires the subject to be approved [8] and the consent of both the right holder and the unreadable persons. The procedure will be lengthy and cumbersome regardless of whom this consent belongs to and how this consent is expressed. The concept of empowered subjects is formally stipulated in Article 2(c) of the MA. The agreement specifies three conditions that an organisation must satisfy in order to become an empowered entity, including (1) it must be authorised or recognised by the government to provide education, vocational training, reading, and information services, instructional training, adaptive reading or information access; (2) serve unreadable persons; (3) operate on a non-profit basis.

The MA extends the element of the status of the empowered subject compared to the US and EU

drafts that it is subject to be awarded. Accordingly, the MA requires permission or recognition from the government and does not refer to the legal status of the subject to avoid differences between the legal systems. In this regard, the agreement also suggests brief procedural clarity when member states internalise. The subject is empowered only to need the permission or recognition of the government if it is a social organisation not under the direct management of the government. Accepting copyright owners and unreadable persons outlined in the EU draft is unnecessary. This limitation and exception aim to facilitate unreadable persons because there is no difference between the consent and the permission of the owner of the publisher, which both pose many obstacles, as mentioned in the previous sections.

In general, the IP law in Vietnam, Article 25a (2) regulates that: “An organisation that meets the conditions prescribed by the Government has the right to copy, distribute, perform or transmit the work in the format of an accessible copy of the work when it has lawful access to the original or copies of works and works for non-profit purposes”. As the government prescribes, the regulation of organisations also operates as a non-profit unit. It serves unreadable persons for education, vocational training, reading, information services, instructional training, adaptive reading or information access. The MA is designated that works as subjects to be converted into an accessible format (works) to comply with Article 2(1) of the Berne Convention. Article 2(1) gives an open definition to explain the concept of literary and artistic works by enumerating and allowing any form and mode to be expressed otherwise. However, the MA is not as open-minded as the Berne convention, rather it limits the form of such works in Article 2(a) to (1) text; (2) notes, notations; (3) or/and illustrate related illustrations; (4) audio works such as audiobooks. Therefore, audio-visual works such as films and musicals do not fall under the limits and exceptions set by the MA, which greatly limits an unreadable person's ability to enjoy spiritual and cultural treasures. The MA, however, does not limit the ways these works are brought to the public or published by any means of communication.

Pursuant to Article 25(1)(m) of Vietnam IP law, we could understand that the applicable work must be in the form of print to grant the exceptions for the print non-readable person “who cannot read the print and other PwDs who cannot access works to read in the normal way”. As a result, the audio-visual works could not be counted as the exception. As for now, the law has not been explained in detail, but the applicable works have to be similar to that of the MA, including text, notes, notations, illustrate-related illustrations and audio works.

2.2.3 Accessible copy format

Article 2(b) of the MA defines what constitutes an accessible format copy, namely: (1) being a copy in another alternative form of work; (2) a copy of the work that is freely accessible to the unreadable print persons; (3) a copy of the accessible format used exclusively by beneficiary persons specified in the MA; (4) this accessible format must respect the original work in consideration of the changes needed to make the work accessible as well as the accessibility needs of unreadable persons.

The objective of the MA is to create a legal framework to facilitate access to the work of unreadable persons through an accessible format. This legal framework is based on the limitations and exceptions of the law on copyright for beneficiaries who are unreadable persons and subjects who are accessible format copies. States need to internalise restrictions and exceptions to ensure this goal and follow the MA's legal corridor. The limits and exceptions set out in Article 4 of the MA establish the most common and minimum legal framework states must follow. In addition, the agreement also provides for model provisions on limits and exceptions for member states to refer to when internalising regulations into national laws.

Article 25a(1) of Vietnam IP law has been transplanted in a manner that is very close to the MA: “a

copy in an accessible format is a copy of a work rendered in an alternative format or format for PwDs; may only be used for personal use by PwDs and may be subject to appropriate technical adjustments necessary to enable PwDs to access the work". The accessible format is very important for disabilities since they cannot access it normally. The transformation of format, on the other hand, may violate copyright. As a result, the requirements on forms of accessible format should be regulated by applying the exceptions for copyright.

On the other hand, Article 4(a) of the MA requires member states to develop restrictions, and exceptions on copyright apply to the right to copy, the right to distribution and the right to publish works under the WIPO Copyrights Treaty (WCT). The WCT is said to be one of the internet treaties when one of the causes of the agreement was to introduce new international laws and explain existing provisions. To solve new problems such as culture, economy, and religion. Especially the significant influence of informative technological development creates and uses literary and artistic works to serve society. Therefore, the analysis of exceptions and restrictions on copyright under Article 4(a), namely the right to copy, the right to distribute, and the right to publish works, might be interpreted in the light of the WCT. Because Vietnam still needs to join WCT, the related issues must be applied as domestic law.

2.2.4 Cross-border exchange of accessible format copies

In addition to recognising the restrictions and exceptions in copyright protection laws in countries, the Marrakesh Agreement also provides a cross-border exchange mechanism to ensure that copies of works are accessible to persons with print disabilities on a global, regional scale or at least between two different countries. Producing copies in an accessible format of protected work requires significant financial resources. In fact, with high financial demands, production capacity and economic efficiency have been wasted when different countries have similar needs for copies in the accessible format of the same work but must carry out production independently of each other and limit circulation within the most national scope. Conversely, once a legal framework allowing the cross-border exchange of copies in an accessible format for PwDs is operated, it can boost economic growth by forming new industries in copy production. The demand for similar copies will also reduce production costs as large copies can be brought to market. However, exporting and importing copies of protected works in an accessible format is not automatically recognised as an exception to copyright before adopting the MA.

Firstly, stemming from the principle of equality of sovereignty and respect for national sovereignty, States have the right to decide the exclusive scope of the author/copyright owner and exceptions for the distribution and production of copies accessible to PwDs. However, these provisions apply only and are valid within the country without affecting copyright protection in other countries [9]. In other words, export activities are governed by the country's laws where copies are produced. In contrast, the importation activity is regulated by the laws of the country where the copy was imported [10]. Since then, access to the work of PwDs has depended almost entirely on the country in which they live.

Secondly, international treaties on copyright do not specify exceptions for copyright in general and cross-border exchanges but only establish a minimum condition – the three-step test principle – that each member must meet to apply any exceptions. In the absence of a uniform way to regulate cross-border exchanges, the rule of choice of law in the conflict norm in Article 5.2 of the Berne Convention indicates that the content of the copyright exception shall be entirely provided for by the laws of the publishing country protecting the work. Although the purpose of Article 5.2 is aimed at resolving conflicts of law, the law itself continues to lead to the legal status of the importing and exporting

country. The discrepancy between national laws and international treaties has made the exportation and importation of copies in accessible formats for the benefit of PwDs always at risk of being seen as an infringement of copyright, thereby limiting access to the work of PwDs.

Recognising the cross-border exchange exception in the MA is a big step forward, contributing to eliminating the second barrier of copyright protection – the difference between legal copyright systems. The above analysis also happens the same way in Vietnam, and Article 25a (3) also allows for cross-border exchange with the main target of the future position as a member state of MA: “An organisation that meets the conditions prescribed by the Government has the right to distribute or communicate copies in an accessible format of the work to the respective organisation in accordance with the international treaties to which the Socialist Republic of Vietnam is a member without the permission of the copyright holder”.

2.2.5 Export copies

The legal systems of different countries have different rules about whether to allow the export of copies in an accessible format to another country. Some countries give exclusive rights to copyright holders to decide on the export of copies of protected works. The other countries do not allow the export of copies of works through regulations prohibiting distribution if the copy is produced based on a copyright exception without the permission of the rights owner. Some other legal systems may allow copies to be exported in cases where it is for personal use.

Export copies in the accessible format specified in Article 5 of the Marrakesh Agreement. Article 5 requires the State Party to ensure that the empowered entity in this State Party can distribute or make available copies accessible to beneficiaries or vested persons in another State Party without the copyright owner's consent if this copy is legally produced under restrictions or exceptions or national law. The language in Article 5 of the Agreement binds the obligation of the member state to establish a legal basis for the cross-border export of accessible copies. According to the Agreement, export subjects are empowered organisations, and importers can be either empowered organisations or beneficiaries (individuals). The original draft proposed by the European Union limited cross-border exchanges to be conducted only between the empowered entity in one member state and the empowered entity in another member state or (1) based on a licensing contract; or (2) although a license contract does not exist, there are restrictions and exceptions in the importing country for the rights of PwDs. The distribution directly to the beneficiaries is later officially recognised in the agreement. Considering that direct distribution to the beneficiary is necessary to facilitate the beneficiary's access to the copy in an accessible format even if the empowered organisation has not been established in that member state.

On the other hand, in order to balance the mechanism of cross-border exchange and the exercise of the rights of copyright owners, as well as to ensure that the purpose of supporting PwDs in prints is not subject to profiteering, Article 5 recognises several conditions that must be met when exporting copies of works under this agreement. **Firstly**, the last paragraph of paragraph 2.A, Article 5 of the Marrakesh Agreement stipulates that the mechanism of cross-border exchange must satisfy that *“prior to distribution or publication, the empowered entity in the exporting country did not know or had no reasonable basis to know that the accessible copy would be used by entities other than the beneficiary”*. The empowered entity in the exporting country may adopt certain means of determining whether the beneficiary is a beneficiary under the treaty's provisions if a copy of the work is distributed directly to the beneficiary without going through an intermediary of the authorised subject on the importing country. **Secondly**, similar to other restrictions and exceptions in the agreement, the agreement's implementation does not conflict with the rights of the author/copyright owner in other

international treaties [11]. In other words, cross-border exchanges must also meet the three-step test principle. However, it is of concern that three of the signatories to the agreement are not bound by any International Treaty on Copyright. That means these countries are not bound by any obligations based on the principle of the transparent three-step test when implementing restrictions and exceptions under the MA. Differences in enforcement obligations are fixed in Article 5(4) of the Marrakesh Agreement. In particular, Article 5(4) states that no obligation arising from Article 9(2) of the Berne Convention shall ensure that copies of accessible works are distributed or available only to beneficiaries; at the same time, copies may not be exported from one State Party to another in accordance with Article 5 of this Agreement. **Thirdly**, the agreement affirms that any content (including Article 5) shall not be construed as reducing or expanding the scope of exclusivity enshrined in any other international treaty.

The spirit of MA also be transplanted in Vietnam IP law into Article 25a(4): “An organisation that meets the conditions prescribed by the Government has the right to distribute or communicate copies in an accessible format to PwDs abroad in accordance with the provisions of international treaties to which the Socialist Republic of Vietnam is a member without the permission of the copyright owner provided that prior to distribution or transmission, the organisation does not know or has no basis to know the copy under the copyright in the easier accessible format will be used by anyone other than PwDs”.

2.2.6 Import copies

Before the issue of importing copies of works without the copyright owner's consent was noted in the MA, the IP legal system also had an exception for parallel imports and imports. Parallel importation allows the work to enter the foreign territory without the rights owner's consent. However, this import mechanism also does not create an effective legal tool to support people with printed disabilities to access works, stemming from the fact that most national laws, as well as international legal documents, only open the opportunity to import parallel works or copies of works that are available on the market. The legality herein is that the owner or licensee puts the product on the market. Copies produced, distributed, and circulated based on exceptions are likely only to apply a parallel import mechanism for circulation into the territory of another country. Therefore, besides parallel imports, the explicit recognition of the exception for imports of accessible copies in the Marrakesh Agreement is essential.

Article 6 of the Agreement provides that States Parties whose laws allow beneficiaries or representatives or organisations empowered to produce accessible copies of the format must also allow them to import copies of accessible formats for the benefit of the beneficiaries without having to seek permission from the copyright owner. An important success of the negotiation process was the recognition of the import clause's mandatory nature, which requires member states' laws to internalise the contents of regulations into the national legal system. Paragraph 2 of Article 6 refers to the flexibilities noted in Article 4 of the MA. Accordingly, on the one hand, Article 6 obliges members to internalise the provision on the importation of copies. On the other hand, open nodes can harmonise the existing legal system by recognising an entirely new provision. Based on Article 4, the state party has the right to use some flexibility to decide several issues, such as who is allowed to produce copies in an accessible format, whether the right to public performance is excluded, or whether commercial availability and remuneration should apply.

Not differing from MA, the IP law of Vietnam in Article 25a(4) also provides that: “PwDs or those who foster and care for PwDs or organisations that meet the conditions prescribed by the Government have the right to import an accessible format copy of the work from the respective organisation in

accordance with regulations of international treaties to which the Socialist Republic of Vietnam is a contracting party for the benefit of PwDs without the permission of the copyright holders”. The above regulation could be considered the most important purpose of Vietnam IP law for importing a copy of work to serve the purposes of education, entertainment and others for improving the quality of life of unreadable print persons shortly.

3. Conclusion

From the above analysis, we can see that the Vietnamese law on copyright has adopted international standards. In particular, the regulations of Article 25a (3,4 and 5) have provided the appropriate legal framework for Vietnam to connect with the MA quickly. If this is done soon, it will greatly benefit the print-disabled community in Vietnam. However, to ensure compatibility with the Vietnamese legal framework, the author has some specific suggestions and recommendations:

- 1) Article 25(1)(m) should be compatible with beneficiaries under MA. The regulation: “People with visual impairments, PwDs who cannot read print and other PwDs who cannot access works to read in the usual way” will make it difficult to determine whether a subject “can access a work to read in a normal way” is too general. It could create unfairness for the right holder when the exceptions could be abused for non-beneficiaries or alike.
- 2) The IP law should provide that organisations that may make copies, distribute, export and import work for PwDs in print must be for non-commercial purposes and in connection with their activities, including education, training and coaching. The concretisation of the above provisions by the guiding documents of the government is necessary but should be accompanied by the above statutory conditions. The organisation, as the empowered subject, would play the main role in operating the golden goal of the legal issue.
- 3) Last but most important, it is necessary to join the MA as soon as possible so that the new provisions of Vietnam’s intellectual property law can promote their full effect. The future of many students, learners and trainees is based on how effective the framework is given by exceptions of IP law for accessing the library and sources of information that they could have from other countries. This is the Firstly step for moving forward in the industry 4.0 of disabilities in print unreadable persons.

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Provisions on social assistance for persons with disabilities in Vietnam – situation and solutions

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Abstract:

Over the years, with the efforts and determination of the Party, State and social community towards PwDs, social assistance policies have contributed to taking care of, ensuring the rights and promoting the role of PwDs, which advances the progress of society and sustainable development.

By identifying the position and role of social assistance policies for PwDs, the article focuses on assessing the current legal provisions on social assistance for PwDs and proposing basic solutions. The document aims at supplementing and completing the provisions of the law on social assistance for PwDs to meet the rights and promote the capacity of PwDs in Vietnam.

Keywords: legal provisions; social assistance; Vietnamese PwDs.

1. Overview of social support for PwDs

According to the Cambridge Dictionary, “assistance” is “help, especially money or resources that are given to people, countries, when they have experienced a difficult situation“ [1]. According to the United Nations Children's Fund (UNICEF): Social assistance or social protection includes a range of policies and necessary programs to reduce the lifelong consequences of poverty and exclusion, such as donating money to help children with school meals, developing life skills and especially helping to connect families with quality health care, nutritious food and quality education to give all children in fair chance in life [2].

In Vietnam, social assistance is one of the five basic components of the social security system, meaning an activity of the state and society to assist all members of society in coping with socio-economic risks that reduce or lose income or because of other objective reasons since then fall into poverty or impoverishment and provide health care services to the community to prevent or overcome risks, help them avoid threats, overcome difficulties, stabilise their lives and integrate into the community. Social support for PwDs is the help and support of the state and the social community for PwDs who have difficult circumstances that they cannot overcome by themselves in order to improve their quality of life; ensure the legal rights of PwDs and encourage them to prove their ability to contribute to society.

Social assistance policies for PwDs are integral to the social security system. PwDs are one of eight social protection beneficiaries entitled to the state's social assistance policies and one of society's most disadvantaged groups. They lived in every community and were born with living background-related impairments that result in difficulties in functions, such as seeing, walking, communicating, and self-care. A variety of barriers limit their ability to function normally in daily life, access social services (such as education and health care), and participate in society. Thus, the extent to which PwDs can function and participate in society depends on the level of an inclusive and equal society. Compared with other social security policies, social assistance is essential, especially in emergencies, to help handicapped people avoid risks and poverty hazards and even create favourable conditions for PwDs to promote their abilities and contribute to society.

According to the report of the National Committee for PwDs in Vietnam, there are about 6.2 million PwDs, accounting for 7.06% of the population aged 2 years and older, of which people with severe and especially severe disabilities make up about 28.9%, 58% of this group are women, 28.3% of

PwDs are children, and 10% of PwDs are from poor households, mainly living in rural areas with very poor living conditions, especially PwDs affected by Agent Orange/Dioxin during the war [3]. Therefore, Vietnam has the highest proportion of PwDs in the region [4]. With the purpose to “well implement social policies, ensure social security and human security, create great changes in social development management, realise social progress and justice, improve quality Vietnamese people's living standards and happiness index” [5], Vietnam has built a relatively synchronous legal system of social assistance for PwDs and achieved practical results.

So far, the state has promulgated a system of legal documents to create a legal basis for the management entity to promote its effectiveness in receiving, managing, caring for and nurturing PwDs, helping PwDs develop holistically. Specifically, the Law on PwDs 2010, Decision No. 1190/QĐ-TTg of the Prime Minister approving the Program to assist PwDs in the period of 2021 - 2030, Decree No. 20/2021/ND-CP dated March 15, 2021, on regulations on social assistance policies for beneficiaries of social protection, Decision No. 524/QĐ-TT dated April 20, 2015, approving the scheme on strengthening and developing the network of social protection services for the period 2016 - 2025... The regulations, especially the new ones in Decree No. 20/2021/ND-CP, have more effectively supported social assistance with better care for PwDs. The object of children with disabilities in the scope of social assistance is increasingly expanded; the standard social support and treatment policy for PwDs is increasing, reducing administrative procedures to receive regular social benefits. However, compared with the actual requirements of PwDs, the provisions of the law on social assistance for PwDs need to continue to be supplemented and clarified.

2. Current status of legal provisions on social assistance for PwDs.

2.1. Strengths

2.1.1. Regular social support in the community for PwDs

According to Clause 6, Article 5 of Decree 20/2021/ND-CP, people with severe disabilities and particularly severe disabilities, according to the law on PwDs, are eligible for monthly social allowances. Regarding the level of support, from July 1, 2021, the standard level of social assistance will increase to VND 360.000/month, an increase of VND 90.000/month (nearly 30%) compared to VND 270.000/month as prescribed in Clause 1, Article 1 of this Article. 4, Decree No. 136/2013/ND-CP. This increase in the standard of social assistance is very significant because it is “the basis for determining the level of social allowance, the level of fostering care allowance at social protection establishments, social houses, and the level of care funding support and other levels of social assistance” for PwDs. According to Article 6 of Decree 20, PwDs are entitled to a monthly social allowance as follows: 720.000 VND for people with profound disabilities; 900.000 VND for children with profound disabilities or the elderly who are profound disabilities; 540.000 VND for people with severe disabilities; VND 720.000 for children with severe disabilities or elderly people with severe disabilities. The increased social assistance funding standard brings about a higher monthly cash allowance for PwDs. The cost of living needs of families with PwDs is always higher than that of families without PwDs, especially in families with people with severe and particularly severe disabilities [6]. This is the joint effort of the Party and State in the context of socio-economic difficulties, bringing both material and spiritual values to PwDs.

In addition, in some cases of single parents in poor households raising children with disabilities, the monthly social allowance coefficient and funding support for raising and caring for people with profound disabilities are 1.0 for each child [7]. This is a rather positive point of the policy to support the poor single parent, especially PwDs. Similarly, the coefficient of support for care funding for households who are directly nurturing and taking care of people with profound disabilities is 01 for

each person with profound disabilities [8]; the coefficient of support of care costs for households and individuals receiving care and fostering people with especially severe disabilities is 1.5 for each person with profound disabilities.

This method of calculation is able to limit the unreasonable point, which is the “flattening” method of Decree 28/2012/ND-CP, ensuring the interests of families who take care of and nurture relatives who are more than two people with certain disabilities, severe or more severe, which is quite common in practice. Particularly when raising children with profound disabilities, the coefficient is 2.5 [9], nearly twice the coefficient for caring for persons with profound disabilities who are not children.

To PwDs (severe, especially severe), the period of receiving monthly social allowances for PwDs is counted from the month that person receives the Certificate of disability level or the time for adjustment of monthly social allowance from the month the subjects are eligible for adjustment [10]. Thus, if the period for making decisions on the implementation/adjustment of the social allowance is longer than the prescribed period (for any reason), the benefits of policy beneficiaries will not be affected, especially for PwDs. In addition, eliminating the model of the “Social assistance review board” and shortening the processing time of procedures is also significant for beneficiaries of social protection policies, especially for PwDs.

With changes in the calculation of monthly social allowances and adjustment of the time to receive monthly social allowances for PwDs, Vietnam has removed some barriers in the implementation of the social assistance programs to ensure accessibility for PwDs, make social protection agencies accessible to PwDs, and that benefits are distributed directly to recipients, while also taking into account the specific needs of PwDs. As a result, 4 out of 10 PwDs receive a monthly allowance, one of two people is eligible to buy a health insurance card, and one out of every 3 people is exempted from medical expenses.

2.1.2. Emergency social assistance for PwDs

In the context of a socialist-oriented market economy and international integration, emergency social assistance work for PwDs has changed viewpoints and awareness in planning and implementation with two basic functions: helping to stabilise life temporarily and helping to maintain and develop. Emergency social assistance activities are currently carried out according to the motto of 4 on the spot: on-the-spot force, on-the-spot means, on-the-spot material resources, and on-the-spot command, so they have met the needs of ensuring the safety of PwDs in the emergency or unexpected situations:

The form of emergency assistance is expanded. According to Decree 20/2021/ND-CP, if PwDs who have disadvantaged backgrounds due to natural disasters, fires, epidemics or other force majeure reasons lose their houses and are unable to meet their own basic needs, in addition to food support, they might be supported from mobilised resources or national reserves: tents, drinking water, food, blankets, pots and pans, fuel, motor boats and some other essential items to serve immediate and on-site needs [11].

Increase the level of support for house construction, house repair, and funeral expenses as a result of natural disasters and floods. Accordingly, the level of financial support for housing construction for poor households, near-poor households, and households in difficult circumstances whose houses have collapsed, drifted or burned completely due to natural disasters, fires or other reasons or other force majeure reasons and they do not have a place to live (40 million VND/household) is doubled [12]. The minimum level to support households that have to relocate their houses urgently under decisions of competent agencies due to the risk of landslides, floods, natural disasters, fires, or other force majeure reasons is 30 million, which increases by one and a half times [13]. The level of support for house repair in poor households, near-poor households, and households in difficult circumstances

due to natural disasters, and fires, is 20 million, an increase of 25% [14]. The level of support for funeral expenses for households with dead or missing people due to natural disasters, fires or epidemics, traffic accidents or other force majeure reasons is at least 50 times compared to the standard level of social assistance, 2.5 times higher than that specified in 136/2013/ND-CP [15].

In 2016, nearly 2 out of 10 households with a person with disabilities were poor, and 17.8% of PwDs aged 2 years and older lived in multi-dimensionally poor households [16] across the country. Therefore, supporting PwDs and their families is especially important because they are among the most vulnerable and disadvantaged groups in emergencies such as disasters, floods or fires. From 2010-2018, in response to material damage of about 152.547 billion VND caused by natural disasters, the government supported localities with 195.261 tons of rice for 11.403.756 people [17].

2.1.3. Caring and nurturing in the community for PwDs

Compared to Decree No. 136/2013/ND-CP, Decree No. 20/2021/ND-CP adds children with severe disabilities, emphasising that those receiving care and nurturing in the community, including PwDs, people with particularly severe disabilities, children with severe disabilities, and children with particularly severe disabilities. This partly responds to the fact that children with severe disabilities and children with mild disabilities who do not have a source of support also have their needs to be cared for and nurtured in the community, which is appropriate and, at the same time, suitable for the spirit of the United Nations “*where the immediate family is unable to care for a child with disabilities, the State Party shall undertake every effort to provide alternative care within the child's wider family, and failing that, within the community in a family setting*” [18].

In order to ensure that PwDs are well cared for and nurtured, the law has stipulated the conditions and responsibilities of households adopting persons with profound disabilities, such as full civil act capacity; good health, experience and skills in taking care of PwDs; stable accommodation for PwDs; economic conditions [19]. People in charge of caring and nurturing may not continue to give care and nurture PwDs when they behave badly towards PwDs, take advantage of taking care and nurturing for personal gain, economic status or other reasons leading to the inability to guarantee the care and upbringing of PwDs; seriously violating the rights of the person receiving care and nurture. At the same time, the responsibility of households adopting children with profound disabilities and severe children with disabilities is to ensure conditions for children to go to school, take care of their health, play and entertain; ensure safe and hygienic accommodation for children; equal treatment of children. The law also stipulates that PwDs who receive care and nurture in the community are entitled to a monthly allowance equal to the level of support for PwDs living in social protection establishments; get a free health insurance card; receive support for education, training and vocational training; supported funeral expenses [20]. The caring and nurturing givers are also supported with monthly care expenses [21].

2.1.4. Care and nurture at the support facility

Since 2008, the management agencies have also been interested in promulgating standards related to the quality of care and nurturing subjects at social assistance facilities. Decision No. 1520/QD-LDTBXH dated October 20, 2015, of the Minister of Labor, War Invalids and Social Affairs approving the planning of the network of social assistance facilities for the period 2016 - 2025 sets out the specific objectives and solutions to serve as a basis to better ensure the rights of PwDs; Decree No. 103/2017/ND-CP dated September 12, 2017, of the Government providing for the establishment, organisation, operation, dissolution and management of social assistance establishments; Circular No. 33/2017/TT-BLDTBXH dated December 29, 2017, of the Ministry of Labour, War Invalids and

Social Affairs guiding the organisational structure, staff norms and procedures, standards for social assistance at the social assistance facilities.

When living in a social assistance facility, PwDs receive a monthly maintenance allowance. The monthly maintenance allowance for PwDs living in social assistance facilities is calculated by multiplying the social assistance standard by the corresponding coefficient. There are two levels of coefficients depending on the degree of disability and age. The coefficient of 5.0 applies to children with special severe disabilities under 04 years old and children with severe disabilities under 04 years old. The coefficient of 4.0 applies to persons with profound disabilities, people with severe disabilities and children with profound disabilities, and children with severe disabilities from 4 years or older. In addition, PwDs are granted health insurance cards; school supplies for handicapped people going to school and other expenses; supported funeral expenses upon death with a minimum level equal to 50 times the standard level of social assistance; supplies for daily living; conventional medicine.

Currently, by December 2018, Vietnam has about 420 social assistance establishments (182 public and 250 non-public), of which 67 specialise in nurturing and caring for PwDs, with 14,500 officials and employees (average of 36 staff members / 1 establishment); nurture and take care of 41,434 social protection subjects (average 103/1 facility). Of these, the total number of PwDs fostered in social assistance establishments is about 20,000 people, including children with severe disabilities, the elderly with severe disabilities, and people with mental and intellectual disabilities [22].

The state encourages individuals and organisations nationally and internationally to establish social assistance establishments to meet the needs of caring for and assisting social protection beneficiaries in the Vietnamese territory. When individuals and organisations invest in building facilities, they are entitled to policies to encourage socialisation as prescribed by law [23]. Currently, most of the non-public social assistance establishments are founded by social organisations. Some institutions established by religious organisations (Bo De Pagoda - Hanoi city, Ky Quang Pagoda - Ho Chi Minh City, Tay Ninh Cao Dai Sanctuary) are also involved in providing social care services. A small number of privately established social assistance establishments operate for charitable purposes or of a service nature.

2.2. Drawbacks

Although there has been an improvement in the standard level of social support, it is still quite low compared to the common ground and the support needs of people with severe and especially severe disabilities. In terms of correlation, the new standard of social assistance (360.000 VND) is still only 24% of the current base salary [24] and also 24% of the per capita income of poor rural households and 18% of the average income of urban poor households according to the multi-dimensional poverty line for the period of 2021 - 2025. At the same time, the adjustments in emergency social assistance for PwDs have yet to be ensured for PwDs and their families. PwDs actively respond to risks and shocks. In emergencies, PwDs and their families need to spend more. They are forced to respond by borrowing with high-interest rates; reducing spending on daily meals, education and health care; working away from home to earn money to pay off debt, and no longer having time to take care of their children.

Children with disabilities have little access to other social services. Only 10% of children have access to social support, and poor children account for 36.7% [25]. The gap between the age-appropriate enrolment rate and the overall school attendance rate of children with disabilities is larger than that of children without disabilities (table 1). That means many PwDs beyond primary school age are still attending primary school. This is the same for the secondary school level. In particular, this gap at the high school level is very large. Nearly two-thirds of children without disabilities attend high

school, but only about one-third of children with disabilities attend this level of education. There are many reasons for this, probably because schools are far from home and difficult to access, do not meet the needs of children [26], or because parents feel a higher level of education is not important for children with disabilities... These obstacles make it even more difficult for PwDs to find good jobs (see Table 1).

The proportion of PwDs receiving vocational training is modest, accounting for only 7.25% compared to 21.93% of persons without impairment. This directly affects the employment and quality of life of PwDs. About 50% of PwDs are of working age and still able to work, but only 40% have relatively stable jobs. The following charts 1, 2, and 3 describe in more detail the level of education and employment of PwDs.

3. Some solutions to supplement and complete the legal provisions on social assistance for PwDs

Firstly, it is necessary to continue to adjust the standard level of social assistance funding towards a higher direction than the current one, consistent with the spirit of Directive 39/CT-TW as well as the very principles of this Decree mentioned in Clause 2, Article 4 of the Decree [27]. The Ministry of Labour, Invalids and Social Affairs need to organise a preliminary assessment and summary of the 3-year implementation of Decree 20/2021/ND-CP on the basis of extensive consultation of the society and a survey of the needs of PwDs. So, proposing timely adjustments to social assistance policies, especially the standard of social assistance funding for PwDs. Learning from previous experiences, it took nearly 8 years to issue a new Decree 20/2021/ND-CP to replace Decree 136/2013/ND-CP. The delay in policy adjustment, including the standard level of social support, has significantly affected the lives of many social protection beneficiaries, especially people with severe and especially severe disabilities, in localities that need social assistance from the central budget [28].

Secondly, establish the special social assistance programs (or special sponsorship packages within mainstream assistance programs) in a way that is focused on the specific needs of groups of PwDs, especially children with disabilities. Pay more attention to social assistance policies, especially emergency social assistance policies for PwDs who are able to work, so that they can not only be guaranteed a minimum standard of living but also enhance their capacity to respond to risks, creating opportunities for them to integrate into the community, contributing to ensuring social stability and equity. This is done by helping PwDs, and their families reduce poverty and ensuring that people have the opportunities to reach their full potential.

Thirdly, in order to create consistency with Decree No. 20/2021/ND-CP, the Law on PwDs, 2010 should add children with disabilities who are subject to monthly social allowance and who are fostered in social support facilities. Thereby setting a basis for Decree No. 28/2012/ND-CP stipulating the coefficient of monthly social allowance and the coefficient of the level of support for nurturing people with severe disabilities and children with mild disabilities.

In order to ensure the rights of children with disabilities, in accordance with the International CRPD, Article 18 of Decree No. 28/2012/ND-CP needs to continue to expand the recipients of community-based care to include children with disabilities in addition to children with particularly severe disabilities, and children with severe disabilities.

Fourth, it is necessary to clarify regulations on responsibilities and requirements for people caring for and nurturing PwDs, as well as the responsibilities of staff directly taking care of PwDs at disability care facilities, to ensure that PwDs, especially children with disabilities, are respected, enjoy basic human rights on an equal basis, promote their skills and qualities, and to recognise their contributions to society. Medical staff or care and nurturing givers of PwDs must be able to use sign language, have Braille documents to communicate with blind people, and have experience communicating with people with difficulties in perception or behaviour.

Fifth, promote the socialisation of non-public social assistance, diversify types of social assistance, create a legal corridor, and perfect support mechanisms and policies to encourage organisations, domestic and foreign individuals participating in the provision of social care services in the community strictly comply with the provisions of Vietnamese law. Expand cooperation and exchanges to attract support from the World Health Organisation (WHO), United Nations Children's Fund (UNICEF), and NGOs to mobilise finance and management experience in social assistance for PwDs and children with disabilities.

Thus, the state's latest regulations have better met the requirements of social assistance and care and nurturing of PwDs, including children with disabilities. However, for PwDs to have easier access to resources and opportunities than persons without impairment, regulations on social assistance for PwDs must continue to be developed to promote the responsibility of the state and the social community widely, creating a favourable environment for PwDs to develop their capacities.

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- [6] PwDs have to pay a higher cost of living. Additional costs such as medical expenses, personal support or assistive devices, travel, construction costs of a house designed to suit the needs of PwDs (or the need for housing in a particularly accessible area may be more expensive)..., according to the 2016 Vietnam National Survey of PwDs, General Statistics Office/PwDs have to pay a higher cost of living. Additional such as medical expenses, personal support or assistive devices, travel, construction costs of a house designed to suit the needs of PwDs (or the need for housing in a particularly accessible area may be more expensive)..., according to the 2016 Vietnam National Survey of PwDs, the General Statistics Office.
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- [8] Point c, Clause 2, Article 20 of Decree No. 20/2021/ND-CP.
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- [10] Clause 1, Article 8, Decree No. 20/2021/ND-CP
- [11] Clause 2, Article 12 of Decree No. 20/2021/ND-CP.
- [12] According to the provisions of Clause 1, Article 15 of Decree No. 136/2013/ND-CP, these subjects are considered to support housing costs with a maximum level of not more than 20.000.000 VND/household.
- [13] According to the provisions of Clause 2, Article 15 of Decree No. 136/2013/ND-CP, these subjects are considered to support housing relocation expenses with a maximum level of not more than 20.000.000 VND/household.
- [14] According to the provisions of Clause 3, Article 15 of Decree No. 136/2013/ND-CP, these subjects are considered to support housing repair costs with a maximum level of not more than 15,000,000 VND/household.

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[27] Clause 2, Article 4, Decree 20/2021/ND-CP: Depending on the balancing capacity of the budget, the rate of increase in consumer prices and the living situation of the beneficiaries of social protection, the competent authority shall consider, increase the standard of social assistance accordingly; ensure policy correlation with other objects.

[28] In the past eight years, there have been less than 20 provinces that have set the standard level of social assistance higher than the central level, such as Hanoi and Ho Chi Minh City; Hai Phong; Quang Ninh; Vinh Phuc, Ha Giang, Bac Ninh; Da Nang, Khanh Hoa, Quang Nam; Ba Ria Vung Tau...), for the rest of the provinces, the standard level of social assistance is according to the provisions of Decree 136/2013/ND-CP, which is 270,000 VND.

Table 1: School attendance rate of children with disabilities and children without disabilities by school level

(Unit: %)

	Primary		Secondary		High	
	Right age	General	Right age	General	Right age	General
Whole country	95.59	100.45	88.01	93.78	68.01	75.17
PwDs	81.69	88.41	67.43	74.68	33.56	39.35
Persons without impairment	96.01	100.85	88.59	94.32	68.65	75.83

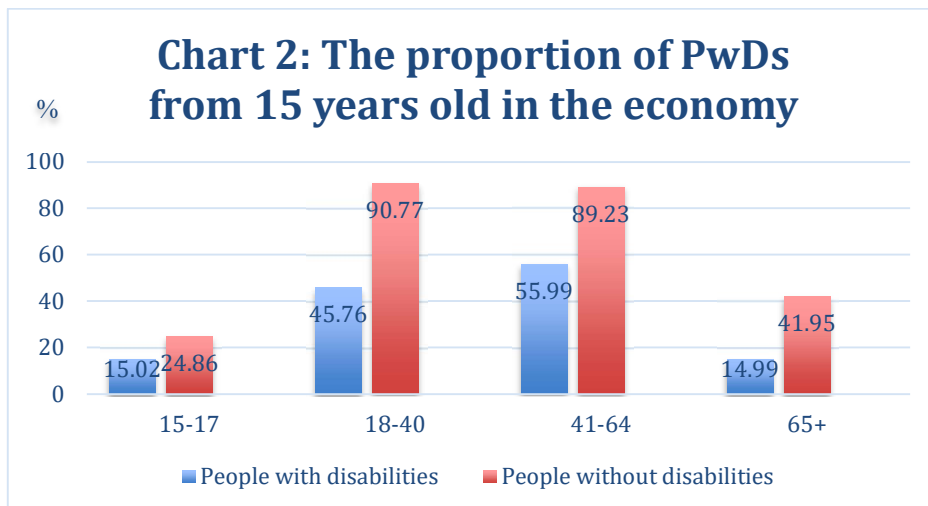
(Source: General Statistics Office: Vietnam National Survey of PwDs, 2016)

(Unit: %)



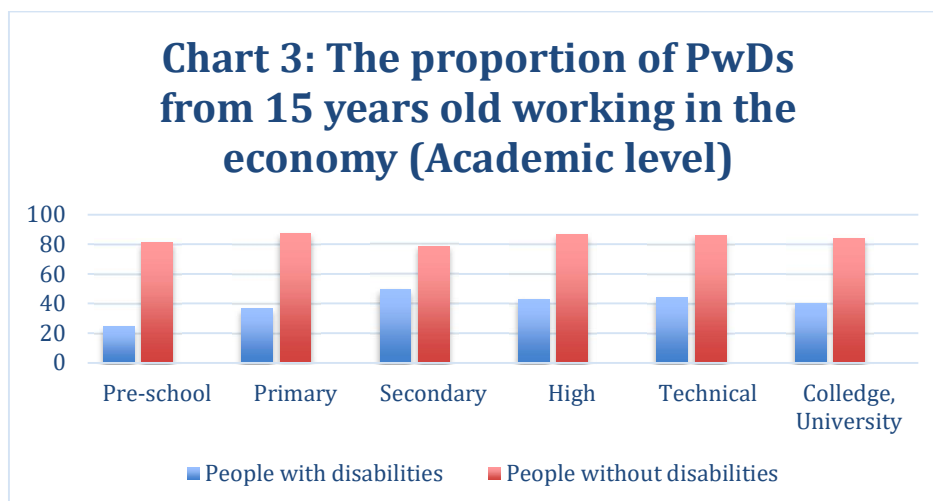
(Source: General Statistics Office: Vietnam National Survey of PwDs, 2016)

(Unit: %)



(Source: General Statistics Office: Vietnam National Survey of PwDs, 2016)

(Unit: %)



(Source: General Statistics Office: Vietnam National Survey of PwDs, 2016)

Promoting the inclusion of patients with disabilities through the professionalisation of social workers' performance at hospitals in Ho Chi Minh City

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Abstract:

This article aims to examine the activities performed by social workers in hospitals in accordance with professional standards to support patients in general and patients with disability in particular within Ho Chi Minh City, based on various state policies that prioritise PwDs. Practical needs, as well as requests from patients with disabilities, pose a challenge for social workers tasked with providing support and intervention in difficult issues concerning medical examination and treatment for PwDs so that patients can overcome their ailments and resume their life. The results indicate that social workers have realised numerous advancements, although some things could still be improved in the process. These drawbacks must be overcome to help patients recover as soon as possible and assimilate into family and society.

Keywords: hospital social work, advantages, limitations, social worker.

Abbreviation: Health Insurance (HI); Social Work (SW)

Introduction

At the Conference of the International Federation of Social Workers held in Montreal, Canada, in July 2000, experts proposed a definition: professional social work is meant to improve society, solve issues regarding human relations, empower and liberate the people so that their lives may become more pleasant and comfortable. By applying theories on human behaviours and social systems, social work shall intermediate at points of interaction between people and their environment. Human rights and equity are the foundational principles of the social work profession.

Decision No. 112/2021/QĐ-TTg issued on January 22, 2021, by the Prime Minister on the promulgation of the Social Work Development Program for the 2021-2030 period details the common goals as continue to promote the development of social work at all governmental branches and levels, in accordance with the country's socio-economic conditions in each period; assure the improvement of societal awareness regarding social work; promote the socialisation of and improve the quality of social work services in all fields, meeting the demands for social work services by the people, and advance toward the goal of more equitable and beneficial social development.

Based on the guidelines for social workers at hospitals published by the Philippines' Ministry of Health [2]: In-hospital social work is a specialised field of social work that focuses on providing support for patients and their family regarding health and medical issues. In-hospital social work should improve the patient's autonomy and contribute to advancing public health and social welfare.

Therefore, in-hospital social work could be perceived as the activities performed by social workers in order to support the patient and their family (hereafter collectively referred to as the patient), as well as on-site medical professionals, in resolving psychological and social issues that may arise during the medical examination process; treating medical ailments will contribute to the fulfilment of urgent needs in healthcare, improve the quality of medical services, and increase the people's satisfaction when using said services.

In-hospital social work is a relatively new field for Vietnam's healthcare system in general and Ho Chi Minh City in particular. As such, implementing and developing a management model and establishing a social work staff in a hospital face multiple difficulties, specifically in staff management and the evaluation of task performance.

1. Some principal policies relevant to the social work profession in hospitals and PwDs

The viewpoint of the Party and the state regarding the support provided to PwDs is as follows: In recent years, the care and support for PwDs have always received special attention from the Party and the government, in particular, the Party requested the satisfactory fulfilment of the following tasks [3]: 1. Raising awareness and responsibilities at all levels of Party-affiliated committees, organisations, agencies, as well as awareness among the people in the implementation of the Party's decrees and the state's policies and laws concerning the support for PwDs; 2. Improving the efficiency and effectiveness of State management in the implementation of policies and laws concerning PwDs; 3. Promoting the socialisation of support activities for PwDs; 4. Promoting the role and responsibilities of the Vietnam Fatherland Front, socio-political organisations, and social organisations with regard to existing organisations for PwDs; 5. Improve the quality and effectiveness of organisations for PwDs.

The Government policies regarding PwDs are as follows [4]: 1. The State allocates a budget for implementing policies beneficial to PwDs annually; 2. Prevent and minimise the rate of congenital disabilities, disabilities caused by accidents, diseases, and other factors that may lead to disability; 3. Increase welfare; assist PwDs in terms of healthcare, education, vocational training, employment, culture, sports, entertainment, access to public constructions as well as access to technology, and participation in transportation; prioritise the implementation of welfare policies and support for PwDs who are children or elderly; 4. Integrate policies benefitting PwDs into socio-economic development policies; 5. Promote the inclusion of PwDs in socio-economic development policies; 6. Train and cultivate people in counselling or care-taking geared toward PwDs; 7. Encourage charitable activities that support PwDs; 8. Promote favourable conditions for organisations of PwDs or organisations for PwDs to operate; 9. Comment on agencies, organisations, and individuals who contribute to assisting PwDs; 10. Strictly reprimand agencies, organisations, and individuals violating the law's provisions on PwDs and other relevant regulations or laws.

When the Ministry of Health issued Circular No. 43/2015/TT-BYT stipulating the duties and forms of organising in-hospital social work, multiple hospitals began implementing this practice. The primary advantage of Circular 43 is the identification of 7 categories of social work in hospitals, particularly: (1). support and provide counselling on social work issues for patients and their families in the medical examination and treatment; (2). Inform, publicise and, disseminate, educate about the laws; (3). Advocate for more sponsorships; (4). Support the medical staff; (5). Train and cultivate; (6). Organise a social work staff for the hospital; (7). Organise charity activities and promote social work within the community (if possible) [5].

2. Current status of in-hospital social workers in Ho Chi Minh City

2.1. A few results concerning patient support performed by in-hospital social workers in Ho Chi Minh City

According to the statistical yearbook of 2013, there are 1.125 hospitals with 215.640 beds across the nation. Of these are 46 central hospitals with 26.756 beds, 447 provincial hospitals with 110,549 beds, 1214 district hospitals with 77.134 beds, and 155 non-public hospitals with 9,501 beds [6]. If a web of social work practices is to be established in the hundreds of hospitals mentioned above, there would be a need for thousands of social workers. Social work activities not only hold the role of helping the patients but also greatly reduce the stress placed on the medical staff and raise the effectiveness of the treatment process.

According to the data published by the Department of Health of Ho Chi Minh City, there are clear results regarding the social workforce's role in support of hospital patients in general and patients with disability in particular, as follows [7]:

- Providing direct consultation for patients when they come in for medical examination and treatment: 38.304.308 times; Providing consultation via telephone: 17.170.976 times; Distributing leaflets about health: over 100.000 leaflets;

- Organising charity activities and receiving sponsorships in order to provide medical fee exemptions/reductions and assist patients from underprivileged backgrounds: 37.177 patients have benefitted from this scheme, with a total of 76.312.720.000 VND in fee exemption; Presenting gift sets to patients: 124.083 sets;

- Providing humanitarian medical examination and treatment for 36.817 patients worth 7.114.424.000 VND; Providing free meals: 1.912.837 meals.

- Building 12 humanitarian houses worth 472.000.000.000 VND; Promoting humanitarian blood donation: 1.940 blood units donated.

2.2. Support practices for patients with disability at hospitals in Ho Chi Minh City

The practical situation has shown that many medical support activities are performed by social workers in order to assist patients, including patients with disability. Moreover, when social worker carries out their tasks well within a hospital, they will better assist in accessing government policies for PwDs, especially in the area of health insurance as covered by the hospital, in addition to benefits in terms of premium rates and reimbursement in accordance with the Law on Health Insurance 2014 and guidelines, as follows:

Eligible subjects for Health Insurance (HI) and levels of insurance [8]:

Persons with severe disability: 100% of HI premiums are covered.

Persons with especially severe disabilities: 100% of HI premiums are covered.

PwDs who do not suffer from a severe disability or especially severe disability but belong to priority groups are still entitled to full support (exemption or reduction) when registering for HI, particularly as follows:

The State and Vietnam Social Security program shall cover 100% of the HI premiums for eligible subjects as specified in Article 12 of the Law Emendation of the Law on Health Insurance in 2014, such as PwDs who are children under 6 years old; PwDs from impoverished households; PwDs who are ethnic minorities living in areas with difficult socio-economic conditions; PwDs who are living in areas with extremely difficult socio-economic conditions; PwDs living in insular communes and districts; PwDs who are subject to social incentives, monthly social protection...

Subjects eligible for reduction or reduction regarding HI premiums by stages: PwDs from near-poor households participating in HI; PwDs who are pupils and students; PwDs from households working in agriculture, forestry, fishery or salt production who have an average standard of living; PwDs in their households that registered for HI for all family members.

Notice: PwDs are not entitled to double support when they are people with severe disability or especially severe disability and belong to another priority group. The reduction or support for HI premiums for each category of subjects is specified in Articles 12 and 13 – Law on Health Insurance.

2.2.1. Rights of PwDs in medical examination and treatment

The rights to medical examination and treatment of PwDs are primarily actualised through beneficial schemes for those with HI and those without registration for HI.

The state ensures that PwDs receive appropriate medical examination and treatment and proper access to medical services and health insurance.

PwDs suffering from psychological conditions and, as such, are in an agitated mood, are depressed, express suicidal ideation or express dangerous behaviours to other people would be eligible for living

expenses, travel expenses, and treatment expenses coverage during the critical treatment period at medical service providers.

The state encourages organisations and individuals to support medical examination and treatment for PwDs.

PwDs with HI cards are entitled to certain benefits during the medical examination and treatment process as outlined in the Law on Health Insurance, Amended and Supplemented in 2014. PwDs who do not possess HI cards are excluded from receiving benefits as per the Law on Health Insurance and are required to pay in full for their medical examination and treatment fees.

In the process of medical examination and treatment at the hospital, patients could face various difficulties and, as a such, wish for support. In some cases, patients have to wait for an extended period before a medical examination due to hospital overloading. Many patients come from impoverished backgrounds or other complicated circumstances. Doctors and medical staff, therefore, have to work under high pressure, which may cause tension between patients and medical staff, and as such, negatively affect the satisfaction of patients and the quality of medical services.

Difficulties faced by patients at the hospital

NO.	Content	Rate
1	Hospitalisation and discharge procedures	30.80%
2	Procedures during the treatment process	25.10%
3	Recovery process at home and within the community	4.60%
4	Hospital fees and living expenses-related problems	9.90%
5	Mental health problems	4.30%
6	Communication problems with medical staff	6.50%
7	Inability to grasp the treatment regimen	9.40%
8	Failure to obtain effective healthcare information	9.40%
Total		100.00%

Source: Statistics from author’s survey at a provincial hospital in HCMC, 2022

When patients come to the hospital for medical examination and treatment, the difficulties that social work activities often encounter might vary: The collected data show that 55.9% of the surveyed patients find it challenging with procedures. 30.8% of the patients reported having problems with hospital admission and discharge procedures, while 25.1% claimed they faced obstacles with the treatment procedures.

2.2.2. Procedure for medical examination and treatment for PwDs [9].

The procedure for medical examination and treatment applies to all patients. However, there is a need for the standardisation of this procedure for PwDs so that they can better enjoy the medical examination and treatment process, which includes the following steps:

Step 1. Welcoming the patient

- PwDs receive a number denoting their turn for medical examination (priority list) and present their HI card, related identification papers and disability certification paper to enjoy the benefits.
- Next, they receive the medical examination file and wait for their turn.

Step 2. Clinical examination and diagnosis

- The patient enters the medical examination room according to their number.

- Receive a form for testing, imaging, or functional inspection (if any).
- Move to the designated place to give their sample, receive an image diagnosis, or receive the functional inspection. The patient must cooperate with the lab technicians and medical doctors.
- Receive the examination results, diagnosis, and treatment from the doctor.

Step 3. Paying hospital fees

- Submit the payment slip (according to the form) and wait in line to make the payment.
- Pay a co-pay (if any) and get the HI card back.

Step 4. Distributing and receiving medicine

- Submit the prescription along with the HI stamp to the drug dispensing counter.
- After receiving the medicine, cross-check and compare the drugs received with the ones in the prescription.
- Get the prescription back, receive the medicine, and sign for receipt.

Notice: PwDs not registered for HI will proceed with the same procedure during the medical examination and treatment process. However, they will not receive any benefits from HI and must pay all the relevant fees in full.

2.2.3. Regarding the rehabilitation process for PwDs

In order to bolster and further develop the network of rehabilitation facilities and enhance service quality, improve disability prevention, early detection and intervention, and increase the quality of life for PwDs so that they could re-integrate into society, the National Plan for Rehabilitation Development for the 2014-2020 period has proposed several specific goals [10]:

To consolidate and develop the rehabilitation network nationwide, to gradually modernise it in order to meet and improve the quality of rehabilitation, specific goals to be accomplished by 2020 include:

- 90% of commune infirmaries must have assigned staff in charge of the rehabilitation process, and the staff must be educated on basic knowledge regarding rehabilitation;
- 90% of district hospitals must have rooms, departments, or teams specialised in rehabilitation. Assigned medical doctors and technicians must be trained in and have specialised knowledge of rehabilitation work;
- 100% of provincial general hospitals must establish a rehabilitation department; 75% of provinces should establish rehabilitation hospitals, and above 50% of specialised hospitals must establish a rehabilitation department;

The main level will develop specialised techniques for rehabilitation, assign full professional titles, and employ techniques to help patients rehabilitate as soon as possible. On that basis, social workers in hospitals, when providing support for PwDs, need to evaluate and propose to hospitals the plan to organise rehabilitation for patients immediately after emergency and hospital admission, combining modern techniques and traditional medicine in the treatment process. Social workers should also promptly report to leaders about their work so that upper-tier hospitals can quickly direct and begin the transfer of expertise to lower-tier hospitals. In addition, relevant parties should promote socialisation in providing services to mobilise resources for better rehabilitation work. As a result, PwDs will receive better support in medical examination, treatment and rehabilitation.

2.3. Fostering professional social work staff in order to meet job requirements in hospitals in Ho Chi Minh City

In order to provide professional training to social work staff: Until now, affiliated hospitals and district hospitals have sent 172 members of their social work department to receive professional training (including 43 officials holding the rank of a professional social worker).

Statistics of social work personnel working in hospitals in Ho Chi Minh City

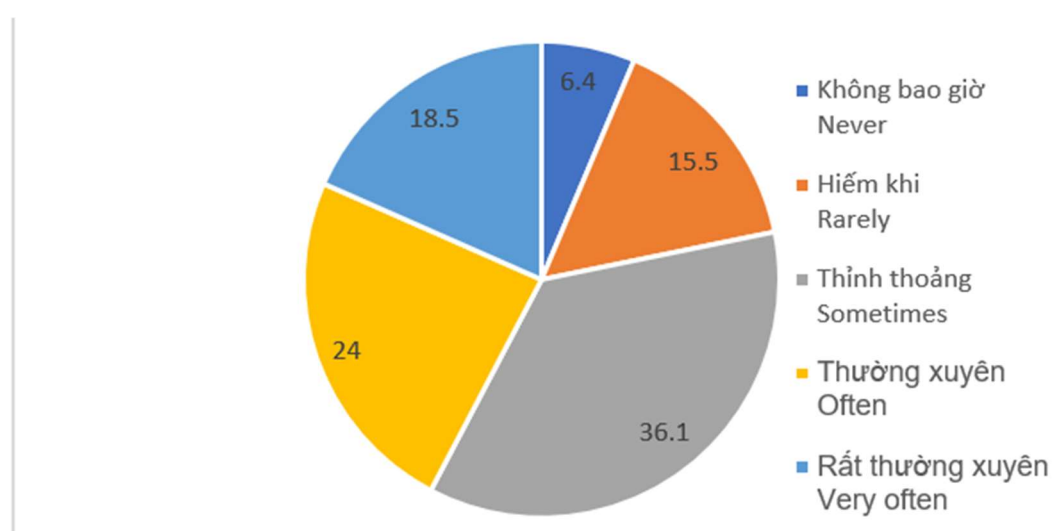
NO.	Survey of personnel in the social work department of hospitals in HCMC	Quantity
1	Total number of social workers	578
2	Number of social workers who have received training in social work	172
3	Number of social workers holding the professional rank	43

Source: Report No. 3390/BC-SYT Results of 10 years of implementation of the Social Work Career Development Program for the 2010 - 2020 period issued on June 16, 2020, by the Department of Health of Ho Chi Minh City.

Based on the above data, the number of social workers with some training in social work accounts for 29.8% of the social work personnel, while the number of social workers holding professional rank only accounts for 0.07%, which is a worrying number that needs to be explained in terms of providing professional training to social workers. Social workers need to intermediate and support patients in their recovery process to attain the best healthcare results. In-hospital social work requires heavy involvement in the patient's life during treatment and post-hospital discharge. Therefore, it demands a team of professional staff with sufficient knowledge and skills to meet the job requirements.

A remarkable mission for the social worker in the hospital is to provide emergency support to patients who are victims of abuse, domestic abuse, gender-based abuse, accidents, and disasters in order to ensure the patient's safety: including psychological and social support, legal support, forensic assessment, forensic psychiatric assessment, and other appropriate services;

Figure 1: Graph depicting emergency support activities for patients who are victims of abuse, domestic abuse, and gender-based violence



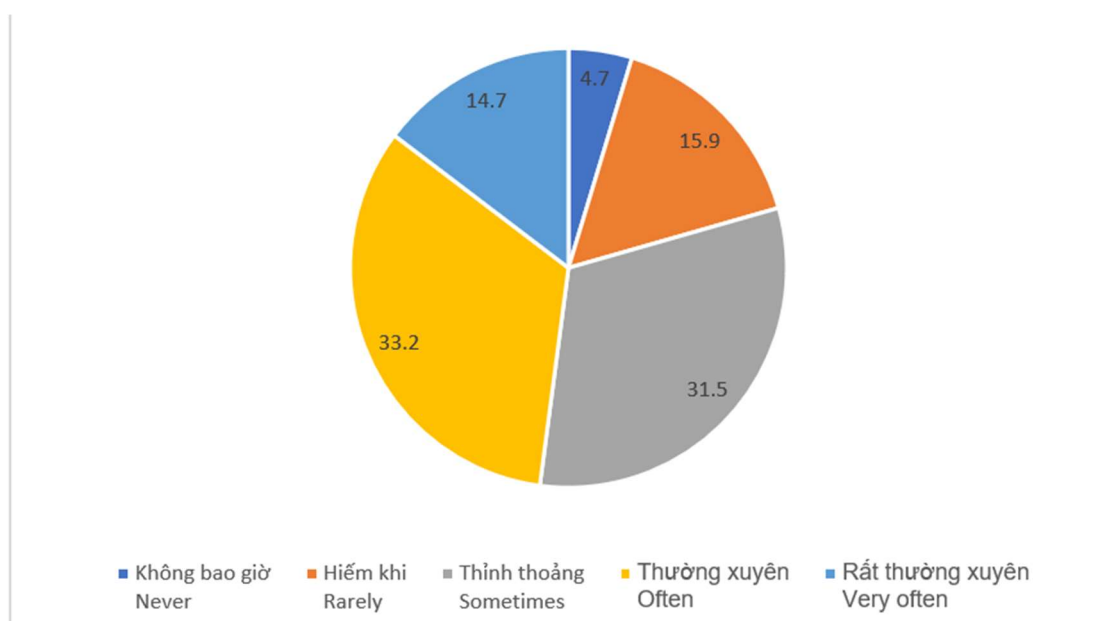
Source: Data surveyed by the author at a provincial hospital in HCMC in 2022

Emergency support activities for patients who are victims of abuse, domestic abuse, gender-based abuse, accidents and disasters in order to ensure the patient's safety: including psychological and social support, legal support, forensic assessment, forensic psychiatric assessment, and other

appropriate services, are at moderate levels. Patients are particularly interested in these activities, as the data show that 36.1% of patients believe that social workers sometimes provide these support activities to victims of abuse, while 24.0% think that social work offices provide these activities relatively regularly.

Regarding the work of supporting and advising patients on their legitimate rights and benefits, their obligations, on social programs and policies concerning health insurance and social subsidies in medical examination and treatment; In order to help patients when a problem arises, each hospital has established kiosks in departments and convenient areas for social workers to directly contact based on close coordination with health insurance and related agencies to explain to the patient promptly.

Figure 2: Graph showing support and advising activities for patients about the patient's legitimate rights and benefits, obligations, social programs, policies concerning health insurance and social subsidies in medical examination and treatment



Source: Data surveyed by the author at a provincial hospital in Ho Chi Minh City in 2022

Recorded data show that these activities are performed frequently by social workers: 33.2% of respondents reported that social workers regularly performed these tasks, which accounts for the largest proportion, while 31.5% of respondents reported that social workers sometimes actively supported the patient and greatly influenced the treatment process.

When it comes to performing social work for PwDs at the hospital, the role of social workers is very important, and flexibility in providing support for patients who are also PwDs is needed. According to Kirk Gallagher Anastasios, supporting PwDs requires a multidisciplinary panel of experts in the US. The roles of the expert panel are shown below[11]:

Panel	Role
Audiologist	Determine the level of hearing
Ophthalmologist	Determine the level of sight
Special education teacher	Program organisation, treatment, and coordination of therapeutic and educational activities.
Specialist doctor	Determine the degree of disability according to the classification framework and develop a treatment plan

Nurse	Implement a healthcare plan
Occupational therapist	Help individuals develop autonomy, ability to play, and life skills
Physical therapist	Improve motor skills and suggest rehabilitation strategies, providing necessary forms of therapy
Psychologist	Describe the strengths and needs of a PwDs person and help the family deal with the stresses of living with a person with a disability in the family
Speech therapist	Develop an assessment plan in order to determine appropriate therapy and provide services depending on the situation
Social worker	Support families and communities in implementing appropriate disability care activities and help them determine necessary services

In providing support for patients with disability, social workers need to have flexible coordination with different professionals to increase the effectiveness during the treatment process. These roles and duties also encompass different aspects in practice, such as [12]:

Provide PwDs and their families with a wide range of support services, from psychological support to developing networks, so clients (patients with disability) can access health and social services or organisations relevant to their needs.

Initial assessment of disability: includes an assessment of strengths, resources and available support, such as past behaviours that helped the client cope successfully with a disability, family support, living arrangements, education level, employment, hobbies, and economic background. Social workers must also understand the client's feelings and perception of their disability and the impact of the disability on the family.

Provide medical staff or healthcare professionals with information about the client's mental state to better support patients with disability.

Provide counselling to PwDs and their families so they can develop a personal plan and maximise the use of available resources in and out of the community.

Help PwDs build the social skills necessary to participate in social activities that benefit their life.

Therefore, enhancing the professionalism of social workers will affect the effectiveness of the intervention and support activities provided, and thereby fulfil their role as an important part of the medical team, with the task of finding out the causes of the disease and providing important information for the medical team to identify appropriate treatment based on the collection of information about the patient's life and psychological state. In addition, social workers will also provide psychological support to patients, such as reassurance, stress relief, and treatment counselling, to help patients recover and re-integrate into the normal life of their families and community. The professionalism of the social workforce in the hospital helps patients in general and patients with disability in particular easily access social resources and services, as well as mental support, with a view to a more comprehensive healthcare process.

3. Advantages and limitations in performing the duties of social workers at the hospital

3.1. Advantages

3.1.1. Leadership, organisation and work arrangement

In hospitals in Ho Chi Minh City, the workplace of social workers is positioned at the centre of the medical examination area, which is easily recognisable and accessible, thereby facilitating the support of patients in need, especially severely ill patients or patients with disability.

Regarding the arrangement of tasks: The Social Work Department is responsible for coordinating with other departments, divisions and units within the hospital to perform assigned tasks. Currently, each hospital department assigns one health worker to be a social work collaborator in the hospital. This network of collaborators will sustain a close relationship with social workers for timely support and advice. As such, the survey results recorded high opinions of patients about their friendly, personal and timely working attitude.

For the operations of the social work office in the hospital to flourish further, the social worker network's involvement is essential to providing social work services to patients, which could act as a bridge between the patient and the patient's family and the medical staff. Social work activities are gradually becoming more professionalised and medicalised, thereby helping the patient's family and medical staff to understand, sympathise and support each other in the medical examination and treatment process; On the basis of providing support to patients, social workers and their network will strengthen relationships so that they could mobilise resources and gain the support of many businesses, organisations and individuals in helping patients in different forms. Social workers will also help doctors and nurses explain the patient's condition to them, understand and sympathise with the patient's hardship, and render support in terms of medical treatment and other social policies.

Sponsors care, trust, and support and always accompany social workers' activities. They understand that patients with a disability require much more help and support than normal patients.

3.1.2. An enthusiastic, active and passionate staff

The social work staff should be enthusiastic, active, and sociable. Staff members are granted opportunities to improve their professional knowledge regarding social work. They should be proactive and committed to their tasks, all in the patient's name.

In recent years, multiple Ministries of different branches have actively developed and issued legal documents related to the growth of the social work profession, which in turn has produced a sense of relief among the social work staff. Notable achievements accomplished by in-hospital social workers include Initiatives to improve wheelchairs to serve patients better; Innovative solutions to increase the quality of services; Excellence in competitions and building a solid trade union; Excellence in health education.

3.2. Limitations

3.2.1. The staff of the social work department

The most notable difficulty at healthcare facilities in Ho Chi Minh City regarding human resources is that the available staff needs to be increased to meet the ever-increasing demands. Moreover, the number of staff with social work knowledge still needs to be increased, which leads to the inadequate completion of tasks.

The patient reception area in hospitals still lacks manpower, while the number of patients coming to the hospital is increasing daily. Limited staffing leads to the deficient classification of patients (body temperature measurement, health declarations) during the epidemic period. It causes poor information communication with patients, such as directing them to the correct medical examination room and borrowing medical equipment like wheelchairs and crutches. All of which results in immense

pressure placed upon the support staff. In some situations, the uncooperative attitude of the patients may affect the quality and effectiveness of social workers' task performance or morale.

3.2.2. *Standardising the operation model of the social work department in hospitals*

The operation model for social work in hospitals still needs to be completed. As such, it is necessary to curate a preliminary trial or a social work department model so that other hospitals can follow. The Department of Health needs to bring the social work profession closer to the people, particularly PwDs, so they can receive support by publishing newspaper columns and websites promoting social work. This will certainly contribute to raising awareness at all levels and sectors, including the people's awareness regarding the role and position of social workers in maintaining social welfare.

The expansion of activities done by social work departments is crucial. In order to expand these activities, there must be solid support from hospital leaders in combination with strong determination from the medical staff in general and social workers in the health sector in particular. Currently, social work departments need to have sufficiently well-trained staff, so hospitals are required to provide more professional social work training to the social work workforce. Additionally, social work staff members need to educate themselves on specialised social work knowledge, specialised medical terminologies, and knowledge about diseases to better their professional performance.

Many patients suffering from difficult economic conditions and terminal illnesses express concerns about receiving or even abandoning treatment completely. Therefore, the treatment of patients and the patient's quality of life do not produce the desired outcomes. Specifically, in the post-COVID-19 era, all productive activities of society have been affected, and a large number of people have fallen into dire circumstances as a result. As such, we cannot deny the possibility of patients facing enormous obstacles in getting medical examinations and treatment at hospitals.

Conclusion

It could be concluded that the tasks performed by social workers at the hospital have greatly contributed to supporting patients in general and patients with disability. The range of social work activities has gradually allowed patients to overcome life difficulties. This is the result of the ability to apply social policies and put professional knowledge into practice.

In order to further improve their professional activities, in-hospital social workers will need to evaluate their performance and realise whether or not they have met the demands of the patients and hospital leaders. Advancing their expertise, professional practices, and problem-solving skills will help social workers grow even more in their profession. From there, social workers could perform self-assessments to see what they do well and improve on what they lack. The social work staff's qualitative and quantitative development is based on applying theories and exercising best practices to meet both legal requirements and the general expectation of society. Thanks to this growth and the resulting increase in efficiency in doing social work, it will greatly benefit patients in general and patients with disability in particular by providing them with even better support in their treatment process.

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CHAPTER 4:

Ensuring the rights of persons with disabilities in Sustainable Development in the economic – labor field

Labour rights and employment of persons with disabilities - From the legislation to practice

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Abstract:

The right to work and employment is a basic and especially important right for PwDs. Labour and employment generate material values to accommodate the needs of PwDs but give a chance for PwDs to access, integrate and equalise with others in the social community. The article studies the provisions of international conventions on labour and employment rights of PwDs to which Vietnam is a contracting party, the provisions of Vietnamese law and the practice of implementing those provisions in Vietnam. On the basis of analysis and evaluation, the article points out the advantages, limitations and inadequacies of the law, thereby proposing a number of solutions to improve the law on labour rights and employment of PwDs towards actualising the provisions of the law on labour rights and employment of PwDs in Vietnam.

Keywords: PwDs, labour rights and employment, law, enterprises, State

1. Introduction

In light of the tradition of “*the leaves protect tattered ones*” and “*when you eat a fruit, remember the source*”, PwDs in Vietnam always grab the State's and society's attention. However, in the past, the issue of PwDs was perceived from a moral perspective as a “*repaying*” for wounded soldiers and people with meritorious services, as a matter of charity, favour, and welfare for other PwDs. Today, the issue of PwDs is viewed from the human rights perspective. PwDs are human beings and citizens, so they have full rights and obligations in different areas of social life. Furthermore, as “*those with long-term physical, mental, intellectual or sensory impairments*” [1], PwDs are classified as disadvantaged people who need special protection from the State and society.

Thanks to awareness and progress on PwDs, Vietnam has ratified international conventions on PwDs and promulgated and perfected the system of national legal documents on PwDs. The following content studies the international conventions on labour and employment rights to which Vietnam is a contracting member, provisions of the national law on labour rights and employment of PwDs and the practice of implementing those provisions in Vietnam in recent years.

2. Contents

2.1. International Convention on Labor and Employment Rights of PwDs

The issue of the rights to work and employment of PwDs is regulated in the CRPD, Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons) (hereinafter referred to as Convention No. 159) and many other international legal documents such as Declaration on the Rights of PwDs 1975; The 1993 Equal Opportunity Rules for PwDs; Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value 1951; Convention No. 111 on Discrimination (Employment and Occupation) 1958. However, the subsequent part only studies the issue of labour and employment rights of PwDs in the CRPD and Convention No. 159 [2].

2.1.1. CRPD

According to the CRPD, the right to work and employment of PwDs is the right to have the opportunity to earn a living by a form of labour that is chosen or accepted by the employee in an open and accessible working environment to PwDs. The convention stipulates that the Member States are obliged to recognise the labour rights of PwDs on an equal basis with others; and protect and promote

the realisation of the right to work, including for PwDs in the work process, by taking appropriate steps, including the passage of legislative measures, to the following purposes :

- Prohibit discrimination on the basis of disability in all employment-related matters, including conditions of employment, career advancement and safe working conditions and ensure health;
- Protect the rights of PwDs to just and favourable working conditions on an equal basis with others, including equal opportunity and equal pay for work of equal value, conditions safe and healthy work, including protection from harassment or abuse;
- Ensure that PwDs can exercise their right to join trade unions and unions on an equal basis with others;
- Enable PwDs to access general technical and vocational programs, employment services, vocational training and continuing training;
- Promote employment opportunities and career advancement for PwDs in the labour market, as well as promote support for job search, retention and return to work;
- Promote opportunities for self-employment, contracting, cooperative development and entrepreneurship;
- Recruit of PwDs in the public sector;
- Promote recruitment of PwDs in the private sector through appropriate policies and measures, including incentives, rewards and other action programs;
- Ensure to create of reasonable conditions for PwDs in the workplace;
- Facilitate PwDs to have work experience in the open labour market;
- Promote vocational rehabilitation, job preservation and return to work programs for PwDs.

In addition, the State Parties must ensure that PwDs are not subject to slavery or servitude and are protected from forced or compulsory labour on an equal basis with others.

Under the CRPD, the State Parties are responsible for recognising and ensuring the exercise of the rights to work and employment of PwDs. In particular, ensuring the labour and employment rights of PwDs is the fulfilment of the responsibility of the State and society in order to enable PwDs to have the opportunity to access and enjoy their labour and employment equally, without discrimination. With this in mind, ensuring the labour and employment rights of PwDs includes both institutional guarantees (policy formulation and promulgation, and legislation) and practical guarantees (implementation of policies) [3].

2.1.2. Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons)

According to Clause 2, Article 1 of Convention No. 159, occupational re-adaptation enables PwDs to find suitable employment, maintain it permanently and advance with it, thereby promoting their integration or reintegration into society. It means that the convention emphasises the importance of occupational rehabilitation in tandem with medical and health rehabilitation for PwDs. Accordingly, if PwDs are given medical and health rehabilitation but cannot find and maintain jobs, their integration or social reintegration can hardly be accomplished.

The provisions of Articles 2 to 5 of Convention No. 159 define Government responsibilities and the policies on occupational and employment re-adaptation. Accordingly, the government is responsible for: developing, implementing and periodically reviewing national policies in the field of occupational rehabilitation and employment for PwDs, which must ensure:

- Promulgating measures to create jobs suitable for PwDs of all types, promoting employment opportunities for PwDs in the open labour market;

- Recognising and ensuring true equality of opportunity and treatment between PwDs and workers in general in employment and community integration, between male employees with disabilities and female employees with disabilities;
- Consulting with organisations representing workers, employers, and representatives of PwDs and for PwDs in implementing policies.

2.2. Vietnam's law on labour rights and employment of PwDs

In Vietnam, the labour and employment rights of PwDs are regulated in important legal documents such as the Constitution, the Labor Code, the Law on PwDs, the Employment Law, the Vocational Training Law, and the Law on Corporate Income Tax, Law on Occupational Safety and Health, and guiding documents. Various contents are related to the labour and employment rights of PwDs mentioned and regulated in national legal documents. To facilitate understanding and monitoring, the following part will study and evaluate the provisions of Vietnamese law on labour rights and employment of PwDs by 04 (four) groups of issues: (i) *regulations affirming the State's policy towards employees with disabilities*; (ii) *regulations on working conditions and health care for employees with disabilities*; (iii) *regulations prohibiting the use of employees with disabilities*; (iv) *regulations to encourage the use of employees with disabilities*.

2.2.1. Regulations affirming the State's policy towards employees with disabilities

The Constitution of the Socialist Republic of Vietnam over the years has asserted that PwDs are citizens with full rights and obligations like all other citizens. In addition, PwDs have the right to be supported by society to exercise their rights and obligations, to participate in social activities actively, as well as to be exempt from some civic obligations [4]. Specifically, Clause 2, Article 59 of the 2013 Constitution stipulates: *“The State creates equal opportunities for citizens to enjoy social welfare, develops the social security system, and adopts policies to assist the elderly, PwDs, the poor and people with other difficult circumstances”*; Clause 3, Article 61 of the 2013 Constitution stipulates, *“The State shall prioritise the development of education in mountainous areas, on islands, in ethnic minority areas, and in areas that have extremely difficult socio-economic conditions; prioritise the employment and development of talented people; and create the conditions for PwDs and poor people to receive education and vocational training”*.

On the foundation of the 2013 Constitution, the Labor Code of 2019 develops the State's policies on labour in general, containing the principle of equality and regimes and policies to defend employees who are subject to protection, such as female workers, elderly workers, juvenile workers, and employees with disabilities [5]. The labour and employment rights of PwDs are recognised by the Labour Code 2019 and sponsored and guaranteed by the State. Moreover, the Labour Code 2019 also specifies policies to encourage and give incentives to employers in creating jobs for and employing PwDs [6]. Apart from the Constitution and the Labor Code, the State's policy towards employees with disabilities is also reflected in the provisions on rights and obligations of PwDs (Article 4), State policies towards PwDs (Article 5) and vocational training and employment issues (from Article 32 to Article 35 of Chapter V) in the Law on PwDs 2010. The rules of the Constitution, the Labor Code and the Law on PwDs confirm that Vietnam's policy towards employees with disabilities is consistent, progressive and coherent with the principles set up by the CRPD and Convention No. 159.

2.2.2. Regulations on working conditions and health care for employees with disabilities

Workers' health must always be a top concern when entering a labour relationship. The State and employers must apply appropriate policies and measures to guarantee working conditions and care for workers' health. For employees who are PwDs, those *“who are defective in one or more body parts or have functional impairment manifested in the form of disabilities causing difficulties in*

working, living and studying” [7], ensuring working conditions and health care are even more crucial. Aware of that, in addition to general regulations on working conditions and health care for employees, Vietnamese law also has different regulations on working conditions and health care for PwDs employees.

The Labor Code 2019 and the Law on PwDs 2010 prescribe that the employer must ensure the working conditions, working tools, occupational safety and hygiene and the working environment suitable for employees with disabilities [8]. In terms of health care, Article 159 of the Labor Code 2019 stipulates that employers must “*organise periodical health check-ups suitable for employees with disabilities*” [9]; Article 21 of the 2013 Law on Occupational Safety and Health provides that “*...employees who do heavy, hazardous, dangerous occupations or jobs, or especially hard, hazardous or dangerous jobs, employees with disabilities, juvenile employees and elderly employees are entitled to a health check-up at least once every 6 months*”.

Identifying the employer’s obligations is also a way to acknowledge and secure the exercise of the rights of employees with disabilities. The above regulations demonstrate humanity, the State’s interest in employees with disabilities, in compliance with the rules of “*assuring health*” and “*guarantee to create reasonable conditions for PwDs in the workplace*” stated in the CRPD.

2.2.3. Prohibited regulations in employing employees with disabilities

The Labour Code 2012 prohibits using PwDs to work overtime at night or do heavy, hazardous or dangerous work[10]. The above regulation is introduced to protect employees with disabilities. However, it is inconsistent with the principle of non-discrimination. The above regulation has unintentionally limited the ability of PwDs to access jobs. Overcoming that limitation, the 2019 Law stipulates that employees with disabilities have the right to decide whether to work overtime, work at night or do heavy, hazardous or dangerous work, and the employer is obliged to provide sufficient information about that job for employees with disabilities to consider and decide[11].

The new provisions in Article 160 of the Labour Code 2019 (compared to the Labour Code of 2012) not only do not overrule the career opportunities of PwDs and the quality assurance in career access opportunities of PwDs but also ensure its compatibility with the CRPD and Convention No. 159.

Aside from the prohibitions when employing PwDs in the Labour Code 2019, the Law on PwDs 2010 also refrains agencies, organisations, enterprises and individuals from refusing to hire PwDs who meet the recruitment criteria employment or setting recruitment standards contrary to the law in order to limit employment opportunities of PwDs [12]. The provisions of the Law on PwDs 2010 are completely consistent with the spirit of “*Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment*” in the CRPD and the rule of “*Recognising that guarantees genuine equality of opportunity and treatment between PwDs and workers in general in employment and community integration*” in Convention No. 159.

2.2.4. Regulations to encourage PwDs to self-employ, create jobs and employ PwDs

With the aim of promoting job opportunities for PwDs, the Labor Code 2019 specifies “*To adopt policies to encourage and provide incentives for employers in creating jobs and employing employees with disabilities in accordance with the provisions of the law on PwDs*”. More specifically, Article 34 of the Law on PwDs 2010 stipulates that production and business establishments which employ PwDs accounting for 30% or more of their total employees may receive support for the improvement of their working conditions and environment suitable to PwDs; 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 [13]. However, in reality, not all production and business establishments can employ 30% or more of the total number of employees who are PwDs to enjoy the above preferences. Therefore, in order to encourage production and business establishments to accept PwDs to work, thereby creating job opportunities for PwDs, Article 10 of Decree No. 28/2012/ND-CP provides that enterprises officially employing 10 or more PwDs are eligible for the incentives on funding for improvement of working conditions and environment and preferential loans for production and business development. Administrative agencies and non-business units employing 10 PwDs to work stably are entitled to the policy of funding to improve working conditions and the environment.

Incentives and support for establishments that employ PwDs are, in nature, support for PwDs, because through that, PwDs have the opportunity to be employed and have stable jobs. This is completely reasonable and consistent with one of the basic principles of the Law on PwDs, which is the principle of practical support and adjustment for PwDs [14]. It is necessary to set conditions to enjoy preferential and supportive policies of the State to prevent business establishments from taking advantage of the State's progressive and humanistic policies to enjoy illegal benefits. However, the survey of the Vietnam National Committee on PwDs in 2018 in 08 provinces and cities (Hanoi, Quang Ninh, Hai Duong, Thai Binh, Vinh Phuc, Thanh Hoa, Thua Thien Hue, Ho Chi Minh City) shows that the number of production and business establishments employing PwDs with a rate of 30% or more of the total number of employees is very small. Meanwhile, there are quite a few production and business establishments that employ PwDs but only reach 30% of the total number of employees who are PwDs, so they cannot access preferential policies of the State. The above situation demonstrates that the provisions of the law have yet to encourage production and business establishments to accept PwDs to work. On the other hand, the gap between 10 employees and 30% of the total number of employees who are PwDs is quite large (for a labour-intensive unit). This is also an issue that needs to be reconsidered to ensure fairness for enterprises employing PwDs and encourage enterprises that employ a lot of PwDs[15].

Particularly for corporate income tax incentives, in addition to the condition of employing at least 30% of the average number of employees in the year who are PwDs, in order to be exempt from corporate income tax, enterprises must also meet the conditions of having an average number of employees in a year from 20 people or more [16]. As analysed, it is essential to set conditions for enterprises and other business establishments to enjoy preferential policies of the State. However, the standards and conditions are too high (difficult to satisfy). In that case, it will not motivate businesses to recruit PwDs (The response status of enterprises to the current regulatory conditions will be analysed in the following section).

Along with regulations to encourage employers to create jobs and accept employees with disabilities to work, Vietnamese law also encompasses articles to incite opportunities for self-employment and career advancement for employees with disabilities in the spirit of the CRPD. Specifically, in order to develop and upgrade the effectiveness of vocational training activities for PwDs, Article 32 of the Law on PwDs in 2010 states, "*The State ensures that PwDs 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*", "*PwDs who are vocational teachers for PwDs are entitled to regimes and policies as prescribed by law*". Regarding self-employment activities of PwDs, Article 33 of the Law on PwDs in 2010 stipulates, "*Self-employed PwDs or households creating jobs for PwDs 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”.

2.3. Practice of law enforcement on labour rights and employment of PwDs in Vietnam

According to the results of the National Survey of PwDs at the end of 2016 and beginning of 2017 conducted by the General Statistics Office, the whole country has more than 6,225,519 PwDs, accounting for more than 7% of the population, including 671,659 children aged 2-17 years old, and 5,553,860 people aged 18 and over. The above data exhibits that employees with disabilities solely account for a significant proportion of the population. Thus, creating jobs for employees with disabilities not only contributes to the goal of leaving no one behind in the development process but also helps PwDs make certain contributions to socio-economic development in general. An ILO study has claimed that Vietnam loses about 3% of its GDP due to not taking advantage of PwDs in the labour market [18].

Bearing in mind that PWDS is the labour force and the human resource of society, job placing for PwDs not only contributes to the liberation and advancement of human resources for society but also supports the country's socio-economic development [19]. In conjunction with the issuance and completion of legal documents, Vietnam has implemented schemes and plans to assist PwDs in accessing job opportunities, such as: Project on vocational training for rural workers up to 2020 (approved under the Prime Minister's Decision No. 1956/QD-TTg dated November 27, 2009); Project on supporting PwDs for the period 2012 - 2020 (approved under the Prime Minister's Decision No. 1019/QD-TTg dated August 5, 2012); Directive of the Ministry of Labour, Invalids and Social Affairs No. 3930/BLDTBXH-TCDN dated October 21, 2014 on improving efficiency and quality in realising the objectives of vocational training and job creation for PwDs; Directive No. 39-CT/TW of the 12th Party Central Committee Secretariat dated November 1, 2019 on strengthening the Party's leadership in the work of PwDs; Decision No. 753/QD-TTg dated June 3, 2020 of the Prime Minister promulgating the Implementation Plan of Directive No. 39-CT/TW dated November 1, 2019 of the 12th Party Central Committee Secretariat on increasing strengthen the Party's leadership in the work of PwDs; Decision No. 1190/QD-TTg dated August 5, 2020 of the Prime Minister approving the Support Program for PwDs in the 2021 - 2030 period. In addition, there are plans to implement the Program to assist PwDs in the 2021 - 2030 period managed by ministries, branches and localities.

Thanks to the proper and timely attention of the State and society, implementing laws on labour and employment rights of PwDs in recent years has achieved certain results. The subsequent section will research and evaluate the practice of law enforcement on labour rights and employment of PwDs on the basis of the Report on research and assessment of the implementation of the provisions of the Labor Code and other relevant documents on labour as PWDS in 2018 of the National Committee on Disabilities of Vietnam and the Firstly Report of Convention No. 15 of the National Committee on PwDs in Vietnam (2021).

2.3.1. Enforcing regulations on vocational training and job counselling, and job brokerage for employees with disabilities

Vocational training and job support for PwDs are of interest to functional agencies, social organisations and local authorities throughout the country. As of 2021, there are 1,912 vocational education institutions nationwide, including 402 colleges, 446 intermediate schools, 1,044 vocational education centres, and 02 specialised vocational training schools for PwDs, and hundreds of establishments participating in vocational training for PwDs, the total number of vocational teachers for PwDs is 3,359 teachers. The Ministry of Labor, War Invalids and Social Affairs guides localities to allocate at least 5% of the target of vocational training support for rural workers from the State

budget each year to organise vocational training and create jobs for PwDs. Up to now, localities have also selected and approved the list and training cost norms for over 950 occupations for the PwDs, with an average of 17,000 to 20,000 PwDs receiving vocational training each year. [20]

Localities have been concerned and actively enforced consulting and job introduction for PwDs. Currently, there are 63 employment service centres nationwide. In addition to consulting, job introduction and regular organisation of employment sessions for employees in general, a number of employment service centres in provinces and cities such as Hanoi, Khanh Hoa and Ho Chi Minh City held job transaction sessions for PwDs. From 2019 to 2020, the system of employment service centres consulted about 5.6 million people and supported successful job connections for about 1.8 million people. During this period, about 10% of employees with disabilities were consulted, introduced and supported to connect with jobs [21].

2.3.2. Implementation of regulations on credit incentives for PwDs and production and business establishments that employ PwDs

The Ministry of Labor, War Invalids and Social Affairs launched a livelihood support model for PwDs from 2012 to 2020 in 25 provinces and cities for 138 communes and 1,320 households with disabilities. Aiming at supporting PwDs in employment, localities have facilitated PwDs, production and business establishments that employ a lot of PwDs to access preferential loans, especially loans from the National Fund on employment through loan programs of the Bank for Social Policies. According to the Bank for Social Policies report, as of June 30, 2021, the total loan capital to support job creation is VND 36,564 billion[22]. The number of PwDs supported by the National Fund for Employment and mobilised sources of the Bank for Social Policies annually is quite large. In the two years 2020 and 2021, despite being greatly affected by the epidemic, the number of PwDs supported to find employment also shows a positive signal (Table 1).

Table 1: *Data of PwDs supported by the National Fund for Employment and Mobilization of the Bank for Social Policies to assist in job creation*

Number of PwDs who were supported per year	2019	2020	Firstly 6 months of 2021
Number of PwDs who get jobs	13,961	10,007	7,099

Source: Firstly Report of Convention No. 15 of the Vietnam National Committee on PwDs (2021)

In addition to the achieved results, the implementation of credit incentives for PwDs and production and business establishments employing PwDs also face certain difficulties and limitations. Firstly, the propaganda and awareness raising about the Party's guidelines and viewpoints, the State's policies and laws on PwDs in general, and the labour and employment rights of PwDs, in particular, have yet to receive attention. Therefore, there are PwDs and production and business establishments employing PwDs who need more information and knowledge about state policies and legal provisions for PwDs, so they cannot access preferential capital.

Secondly, the survey results of the Vietnam National Committee for PwDs in 2018 in 08 provinces and cities (Hanoi, Quang Ninh, Hai Duong, Thai Binh, Vinh Phuc, Thanh Hoa, Thua Thien Hue, Ho Chi Minh City) divulge that the accessibility to preferential loans of production and business establishments that employ PwDs varies among localities. It is likely to be easier in localities with an abundant source of capital, such as Hanoi and Hai Duong. Most of the production and business establishments that employ a lot of PwDs in these two localities have obtained loans from the Bank

for Social Policies. In contrast, in Thanh Hoa, production and business establishments that employ many PwDs needed help approaching preferential capital. On the one hand, these establishments have yet to be recognised as PwDs labour-intensive enterprises. On the other hand, it might be attributed to limited loan resources and credit risks for the banks.

Thirdly, pursuant to a report of the Bank for Social Policies, most credit programs to support job creation for PwDs are entrusted by the Social Policy Bank to socio-political organisations. Loan approval procedures depend on these organisations. Many PwDs loans have fallen into bad debt, uncollectible, frozen, extended, and even debt forgiveness. Therefore, local social organisations must consider this factor when handling the loan application of PwDs.

2.3.3. Implement regulations on corporate income tax exemption for enterprises employing PwDs

Regarding corporate income tax incentives, as analysed above, in order to be exempt from corporate income tax, enterprises must meet two conditions: (1) Employing at least 30% of the average number of employees in the year who are PwDs; (2) Having an average number of PwDs employees in the year of 20 or more. Many businesses, especially small-scale enterprises, meet the first condition but still need to meet the second condition. The regulation on tax exemption for enterprises that employ a lot of PwDs is appropriate and necessary to encourage enterprises to recruit PwDs. However, many cases still need to achieve the purpose desired by the legislator and even induce inequality between businesses.

2.3.4. Implement regulations on ensuring working conditions for PwDs

The survey of the Vietnam National Committee for PwDs in 2018 in 08 provinces and cities (Hanoi, Quang Ninh, Hai Duong, Thai Binh, Vinh Phuc, Thanh Hoa, Thua Thien Hue, Ho Chi Minh City) displays that production and business establishments seriously obey the legal rules on labour safety, trying to ensure working conditions and suitable working tools for PwDs. However, the majority of PwDs work in small-scale production and business establishments, and many PwDs create jobs for themselves and their peers. Due to limited funding sources and inaccessibility to funding to improve the working environment in favour of PwDs [23], they find it challenging to comprehensively comply with the regulations on labour safety in general, working conditions and working tools for employees with disabilities in particular.

2.3.5. Implement regulations on banning the use of PwDs to work overtime, work at night, and do dangerous and heavy jobs

The survey results of the National Committee on PwDs in Vietnam in 2018 in 08 provinces and cities demonstrate that all production and business establishments employing PwDs have strictly observed regulations on prohibited acts when employing PwDs. As mentioned above, the regulations on prohibited acts when employing employees with disabilities in the Labor Code in 2019 have been adjusted to be more flexible and pertinent. Employers are obligated to provide full information, and PwDs have the right to decide whether to accept jobs. This equalises the PwDs in access to jobs and business establishments when receiving and arranging jobs for employees with disabilities.

2.4. Solutions to complete and improve the efficiency of law enforcement on labour rights and employment of PwDs

2.4.1. Solutions to improve the law on labour rights and employment of PwDs

Firstly, the law has already embraced provisions encouraging production and business establishments to receive and employ PwDs. However, to be eligible for the State's preferential policies, production and business establishments must employ 30% of the total number of PwDs or more employees or 10 PwDs to work stably. The rate of 30% is high, and the number of production and business

establishments employing PwDs with a rate of 30% or more of the total number of employees is very rare. Furthermore, the gap between 10 employees and 30% of the total number of employees who are PwDs is quite big (for labour-intensive units), which triggers inequality between units that employ employees with disabilities. Therefore, in order to encourage production and business establishments to accept PwDs to work, the above regulations should be revised in the direction: The State has a mechanism to support all production and business establishments that employ PwDs in different forms and levels of support and incentives based on the rate and number of employees whom are PwDs admitted to work.

Secondly, the law provides for exemption from corporate income tax for enterprises employing 30% of the average number of employees with disabilities and recruiting an average number of employees with disabilities in the year 20 or more. However, the survey of the National Committee on PwDs shows that only a few businesses can meet both of the above conditions. To encourage enterprises to accept employees with disabilities and to ensure equality between enterprises that employ PwDs and those that do not employ PwDs, legislators should come up with a solution to identify different levels of corporate income tax incentives corresponding to different extents of employing PwDs.

2.4.2. Solutions to improve the efficiency of law enforcement on labour rights and employment for PwDs

Firstly, it is necessary to promote propaganda, raising awareness and understanding of the Party's guidelines and policies, the State's policies and laws on PwDs in general and the provisions of the law on labour rights and employment of PwDs in particular.

In the past, dissemination activities, raising awareness about the work of PwDs, policies and laws of the State towards PwDs have attracted attention. That has contributed to changing the concept and awareness of society about PwDs in general and the right to work and employment of PwDs in particular. However, the change in awareness has yet to be widespread in social life. This change has only appeared in the subjects directly making policies, laws, research, and teaching, related to PwDs [24]. Production and business establishments are employing PwDs, but need to be made aware of the provisions of the law on the employment of PwDs. Therefore, in order to improve the efficiency of law enforcement, towards the goal of realising the legal rules on labour rights and employment of PwDs in Vietnam, the advancement of propaganda, dissemination, raising awareness of people and businesses about PwDs, labour rights, and employment of PwDs is indispensable.

Secondly, supplement and allocate preferential credit capital for localities.

As discussed, the source of preferential credit for job creation and self-employment for PwDs is unevenly distributed. That leads to PwDs, and production and business establishments employing PwDs in some localities cannot access preferential capital. In order to encourage PwDs to self-employ and production and business establishments to recruit PwDs, it is recommended to add and allocate preferential credit sources for difficult localities.

Thirdly, the Bank for Social Policies should develop regulations on conditions and processes for granting preferential credits to PwDs.

The Bank for Social Policies often entrusts local socio-political organisations to carry out procedures for granting preferential credits to PwDs. Therefore, loan approval procedures depend on these facilities, in many cases, local socio-political organisations fearing to face credit risks, so they did not approve loans for PwDs. To prevail over the above situation, the Bank for Social Policies needs to develop and standardise regulations on conditions and processes for granting preferential credits to PwDs and regulations on checking and using loans.

Fourthly, provide financial support to improve working conditions and the environment for production and business establishments that employ PwDs.

Vietnamese law has regulations on funding to improve the working environment. However, the survey results of the National Committee for PwDs revealed that no business establishments in the 08 provinces and cities under investigation had access to this funding source. That is a major shortcoming in law enforcement. In order to actualise the legal provisions, competent state agencies should develop and implement a plan to provide financial support for production and business establishments that employ PwDs to improve the working environment, thereby helping employees with disabilities to enjoy better conditions and environment.

3. Conclusion

Labour and employment rights are basic rights of employees, providing income and living sources for employees. For PwDs, labour and employment rights are even more meaningful. Not only generate income and supply living resources, but labour rights and employment also assist PwDs to integrate into the community and become more confident. In recent years, the work of PwDs, especially issues related to labour rights and employment of PwDs in Vietnam, has received due attention. Vietnam has signed and ratified the CRPD and Convention No. 159; Law-making activities were also noticed with the promulgation of the Law on PwDs in 2010 and the revision of regulations related to the labour rights and employment of PwDs in the Labor Code. Generally, the Vietnamese laws on labour rights and employment of PwDs are relatively complete and progressive. More importantly, the provisions of Vietnamese law have similarities with international conventions, of which Vietnam is a member. In addition, the formulation, promulgation and organisation of implementation of PwDs projects and plans have contributed to the realisation of the provisions of the law on PwDs in general and the labour and employment rights of PwDs in particular.

However, the research results also show that, apart from the achievements, Vietnam's laws on labour rights and employment of PwDs still have some limitations and inadequacies. Furthermore, there are shortcomings in law enforcement that need to be adjusted.

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- [4] The 1992 Constitution uses the phrase “disability”, in Resolution No. 51/QH10 amending and supplementing a number of articles of the 1992 Constitution, the phrase “disability” is used instead of the phrase “disability”. “handicapped”
- [5] Clause 7, Article 4 of the Labor Code 2019
- [6] Clause 1, Article 2 of the Law on PwDs 2010
- [7] Clause 1, Article 2 of the Law on PwDs 2010
- [8] Article 159 of the Labor Code in 2019, Article 33 of the Law on PwDs in 2010
- [9] The Labor Code 2012 stipulates “ *regular health care* “. However, disability has many forms with different degrees of disability. PwDs already have health insurance cards for regular health check-ups, so the regulation requires employers to “ *regularly take care of their health.* “ *health* “ for

workers who are PwDs is not necessary. Furthermore, the above regulation creates a burden on employers and may lead to employers' reluctance to accept employees with disabilities, which may lead to discrimination against PwDs. Therefore, the Labor Code in 2019 will be replaced by the regulation “*organising periodical health check-ups suitable for employees with disabilities*”.

[10] Article 78 of the Labor Code 2012

[11] Article 160 of the Labor Code of 2019

[12] Clause 2, Article 33 of the Law on PwDs

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The requirements from the international conventions for protecting employees with disabilities in Vietnam

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Preface:

The research aims to assess how the Vietnamese government and private organisations are ensuring the income security of PwDs. The research is significant as there are more than 6 million people in Vietnam with physical disabilities, and their economic security is one of the key factors of this research.

Abstract:

A literature review has examined the effects of the UN and ILO conventions regarding the employment of PwDs. The study has systematically illuminated this topic based on the Vietnamese perspective. The influence of “Article 27” has also been reflected in this article. The article demands that the state party maintain the “right to work” rules.

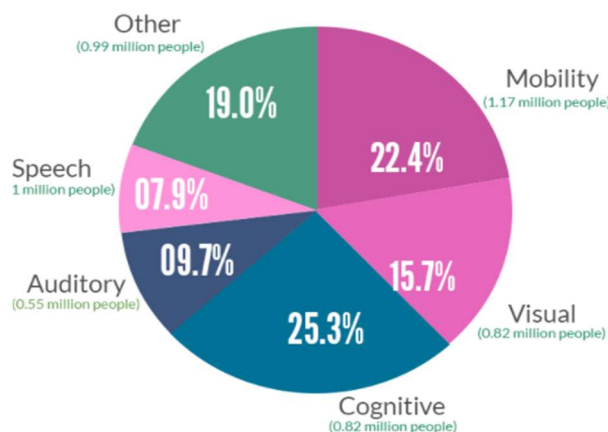
The researchers surveyed to acquire information about this particular viewpoint. To thoroughly grasp the situation, the researchers methodically recruited 55 volunteers in the Vietnamese domain. The questions focus on “human rights conventions for PwDs”, “the ever-changing notion of “Equality under the law” for PwDs”, and “the significance of “Article 27” in Vietnamese society. It successfully aids the study ground in efficiently concluding their study while gaining efficient insight.

Keywords: Vietnam, PwDs, employment, economic development, labour laws, Social security, CRPD, Article 27

Introduction

Employees with disabilities are more likely to have physical, mental, or sensory disabilities than others. As a result, it is necessary to ensure that the rights of these workers are protected and efficiently handled, with no discrimination of rights in labour disputes. International conventions sign treaties with other countries with various choices on various issues. “Conventions of rights for the Persons with disabilities” of the UN effectively assists in protecting the rights of PwDs so that they can grow and overcome the social stigma associated with society. It is essential to mention in this particular scenario that convention plays a major impetus so that the viewing perspective of the specially-abled person can be changed. The image of the “object of charity” associated with PwDs must also be manoeuvred in this process. That is the aim of the United Nations.

Figure 1: Disability type in the domain of Vietnam



(Source: globaldisabilityrightsnow.org, 2021)

According to the recent census report, around eight per cent of the people are specially-abled. It is reported that “Agent Orange” may be the core reason for this high number. It is dioxin that had been employed vehemently during the Vietnam conflict. It systematically influences the life of the Vietnamese people even to this day, as several children suffer from congenital disabilities and neurological deficits. However, the condition is systematically improving. Incorporating the basic principles of CRPD has enabled the specially-abled person to find their feet overcoming their stigma. The study aims to illuminate this topic further (Bogenschutz *et al.* 2021).

The aim of the study

The study aims to give insight into the different international conventions to protect specially-abled workers in the Vietnamese context.

The objective

- To effectively shed light on the “Conventions of rights for the PwDs” by the United Nations
- To examine the influence of CRPD in Vietnamese society effectively

Research Questions

Question 1: What is the influence of CRPD to revolutionise the life of specially-abled employees?

Question 2: How has CRPD impacted the life of Specially-abled people in Vietnam?

Literature Review

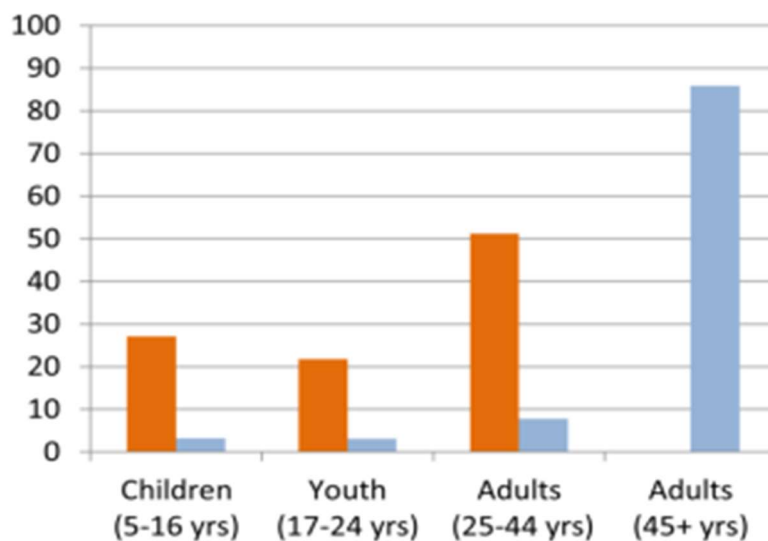
Article 27 UN employment of PwDs

Since Vietnam is one of the countries that are members of the United Nations (UN), they are also signatories to the various laws the UN imposes on their member nations. Article 27 of the UN clause is also one of the articles that Vietnam is a signatory of. Article 27 of the UN is a law that compels the member nations (rather the governments of the member nations to make appropriate jobs available to the PwDs. According to researchers such as Vornholt *et al.* (2018), the people of Vietnam as per the government law, are provided opportunities for work or direct employment in government works and undertakings.

Induction of the PwDs in the workforce

Judging from the perspective of Industry 4.0 that exists today in the era of globalisation, liberalisation and Privatisation, these PwDs would be included. However, the law ensures they get equal opportunities to earn a living. According to Mark *et al.* (2019), there is a place for PwDs in industry 4.0 in various sectors and places. The PwDs are therefore going to benefit from these laws. According to Nguyen (2018), this is important because the people will be able to work in the industrial sectors of Vietnam as Vietnam is a country that is getting increasingly industrialised following the China model of a production-based economy. This is why the government and private institutions promote the Vietnamese PwDs in both private and government sectors.

Figure 2: The number of people in Vietnam that are PwDs as per age group



(Source: Market *et al.* 2019)

International Labour Organization Regulations

The *International Labour Organization* (ILO) regulations are also one of the most prominent organisations that regulate labour laws in the world as a part of the enforced UN regulations, which the member countries are obligated to follow. According to Brégain (2020), the ILO Firstly made the laws considering the Secondly World War, which left many disabled and handicapped. In order to give them a good life of respect, the Firstly labour laws for PwDs were brought. Later these laws became more refined and inclusive, such as the *ILO Vocational Convention- 159*, which ensures employment to PwDs.

Specially-abled oriented entitlements

In this particular scenario, it is essential to mention that people specially abled in the domain of Vietnam can be eligible for entitlements. However, PwDs must undergo the process of evolution of the extent of the severity of their disability. “Disability degree determination council” tend to facilitate this work and manoeuvre this process systematically. It is regarded as one of the decentralised organisations in the domain of Vietnam. It is a part of the “Commune level People's Committee” (Nguyen *et al.* 2017). The DDDC unit was provided with enough authority in this domain, ad they are capable of determining the degree and pattern of the disability simultaneously. They can systematically exercise the authority of Joint-circular “*37/2012/TTLT-BLDTBXH-BYT-BTC-BGDDT*”. They put forward two assessment parameters while using the severity of the disability. It is heavily based on a certain scoring system, and the labours have to perform “eight-core” activities based on which marks would be manoeuvred. The eight activities are “toilet hygiene”, “dressing”, “personal hygiene”, “comprehending conversation”, “communication”, “household works”, “sweeping”, “cooking”, “washing”, “eating”, “drinking” and “walking”. It can be manoeuvred with or without the help of other individuals (Banks *et al.* 2019).

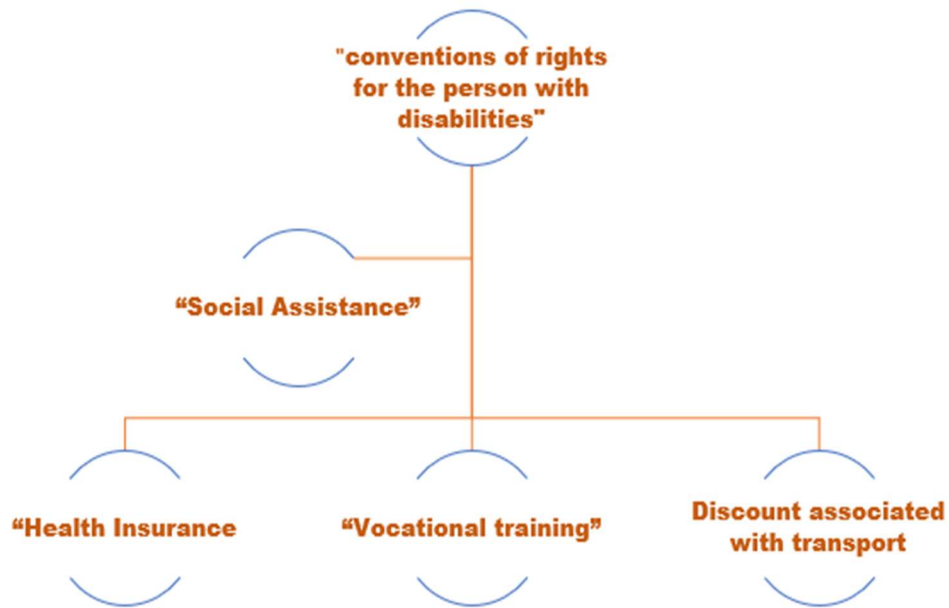


Figure 3: Replication of “conventions of rights for the person with disabilities” in Vietnam

(Source: Self-created)

At the same time, the evolution process includes different interviews, and distinct observatory techniques are employed to examine the severity. Then the labours are referred to the “Medical examination council” (MEC). It is situated in Hanoi and is the “provincial capital” as well. However, the method of MEC differs significantly from DDDC. It employs a functional approach and is evaluated based on medical stability. It is essential to mention in this particular scenario that a “disability degree above 81 per cent” is regarded as “profound”, and “61-80” is regarded as “severe” (Koehler, 2021).

“Entitlements”	“Protection Components”	“Degree of Disability”	“Description”
“Social Assistance”	Section exposed to severe property	“Profound”	Minimum money of 400,000 VND (for the severe disability) and 550,000 (for the profound disability)
“Health Insurance”	“Providing access to basic services”	“Severe” to “profound”	The government tends to pay “health insurance” on their behalf. At the same time, they put forward ninety per cent of the coverage associated with medical costs (Banks <i>et al.</i> 2019).

“Vocational training”	Assures to get decent job opportunities	Any disabilities	“Free vocational training at the influential organisation”, “issuing preferential loan”, and “putting forward high commission for the organisation who has a higher rate to hire specially-abled persons.”
“Discount associated with transport”	“Providing access to basic services”	Any disabilities	“Subsidised public transportation”

*Table 1: Protection provisions for specially-abled labour
(Source: Self-created)*

Research Methodology

The Research Methodology plays an important role in determining the potential of a research article. It is crucial to combine themes and methodologies in a systematic, logical, and efficient manner. It has useful methods that aid in achieving the study's goal promptly. When putting together the study, it assists them in gathering primary and secondary data (Research-methodology.net, 2021). It also aids the research team in efficiently combining primary and secondary data to achieve a successful conclusion. Simultaneously, it directs study groups to combine sophisticated methodologies, facts, statistics, and figures with improving comprehension.

While conducting research, the research methodology efficiently guides research groups to choose the most reliable sources of information. This precise and accurate information assists research organisations in lawfully presenting their inquiry and methodically completing the investigation (Research-methodology.net, 2021). As a result, to accomplish the study's stated aims and objectives, effective use of relevant techniques and processes will be required. The research aims to repeat the most efficient outcome in this industry systematically. It is important to note that the study's potency was effectively raised while its efficiency, validity, and efficacy were all preserved throughout the process.

The researchers have efficiently employed both primary and secondary research (Research-methodology.net, 2021). Primary research would effectively assist the researchers in gathering efficient data that would assist them to shed light on ground reality. Moreover, the authenticity of the data would be preserved systematically. In this particular scenario, it is essential to mention that different sets of perspectives can be assimilated during the process. Additionally, the researchers have put forward secondary sets of information as well. The secondary source of information would enable them to gather enormous amounts of information quickly. Peer-reviewed journals have been utilised to maintain the authenticity of the data.

The researchers have surveyed to gather information regarding this particular perspective. Therefore, 55 specially-abled participants were invited to put their information in this domain. It would give the researchers a broad perspective in this particular domain.

Results

Primary Research

In this particular scenario, it is essential to mention that the researchers have efficiently invited 55 participants in Vietnam with disabilities to gain insight into this matter. The researchers believe they are efficient enough to illuminate this scenario.

Question 1: Do you feel that Vietnam has effectively adopted the “conventions of rights for the persons with disabilities”?

Options provided	Number of survey individuals	Number of responses	Respective percentage
Yes. Due to the free trade agreement, they are trying to whitewash their image	55	20	36
They are trying. However, more reforms are required.	55	15	27
No, not really.	55	15	27
It would take a lot of time as it is a developing nation	55	5	9

Table 2: The influence of “conventions of rights for the person with disabilities” in Vietnam

(Source: Self-created)



Figure 4: The influence of “conventions of rights for the person with disabilities” in Vietnam

(Source: Self-created)

It is essential to mention in this domain that 55 participants with disabilities were invited to participate in this research. The Firstly question dissects the importance of the influence of “conventions of rights for the person with disabilities” in Vietnam. It is not a hidden fact that Vietnam is a developing country, and there are many instances where the provisions of “human rights have been butchered”. However, Vietnam has been part of many “free trade agreements” recently, and they must abide by international norms regarding labour rights. Twenty participants believe that the conditions of Employees with disabilities have improved significantly. However, they also believe the government is just trying to whitewash their image in this domain. Fifteen participants said that the government of Vietnam is trying to match the international standard for specially-abled workers. However, many provisions are required in this particular domain. Another 15 participants do not agree with the crux of the questions as they believe no significant improvement has been put forward regarding this issue. Only five participants believe that as Vietnam is a developing country, it would take significant time to properly incorporate legislation associated with “conventions of rights for the person with disabilities” (Della Fina *et al.* 2017).

Question 2: Can “Conventions of rights for the PwDs” provide specially-abled people with “equality under the law”?

Options provided	Number of survey individuals	Number of responses	Respective percentage
Yes. It can. However, it is partly true.	55	20	40
Developing countries failed to adopt it due to low GDP pull.	55	25	50
No idea	55	10	20

Table 3: The ever-changing perception of “Equality under the law” for PwDs.

(Source: Self-created)

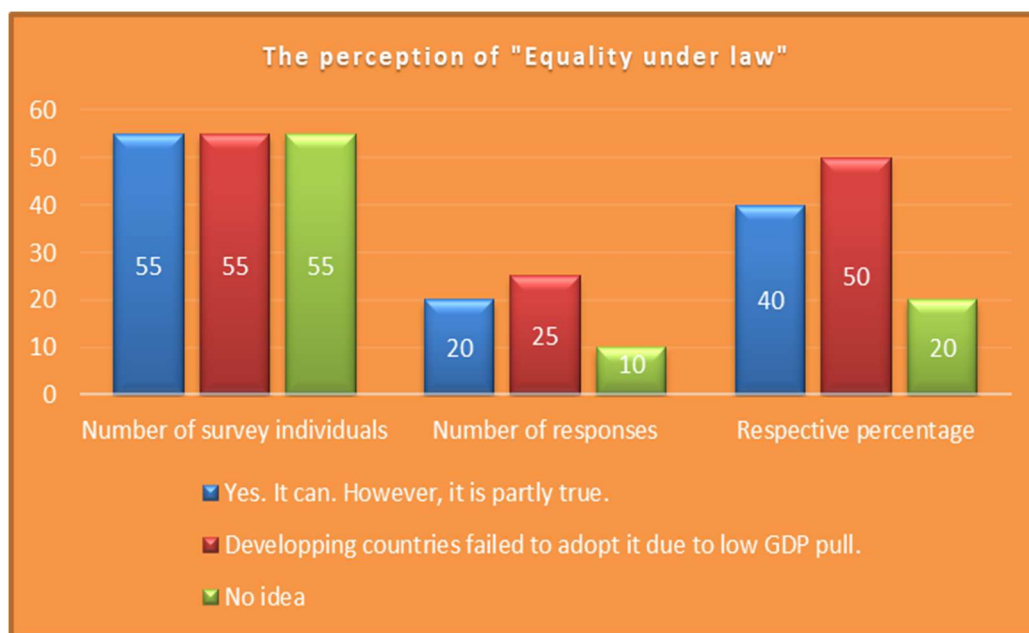


Figure 5: The ever-changing perception of “Equality under the law” for PwDs.

(Source: Self-created)

The second question assesses the topic related to “equality under the law” for PwDs. At the same time, the researchers try to analyse the “*Conventions of rights for the PwDs*” to attain that height. In this domain, around twenty participants agreed with the crux of the question. However, they also believe it is partly true. These particular provisions have been adopted in developed countries. However, developing countries like Vietnam needed to adopt it properly (Szmukler, 2019). Around 25 participants believed this provision is not suited for developing countries. Hence, they do not agree with the crux of the question. They believe the government is bombarded with numerous hurdles and is busy addressing them. At the same time, they believe that several free agreements have made the government put forward efficient provisions for labour with disabilities.

Question 3: What is the importance of “Article 27” regarding Vietnamese society?

Options provided	Number of survey individuals	Number of responses	“Respective percentage”
Yes. It provides equal opportunities to specially-abled people in the labour market.	55	30	60
No, as it does not put forward any clear provision on “trade union rights” for PwDs	55	20	40
Yes. However, Vietnam failed to implement the crux of this article.	55	5	10

Table 4: The importance of “Article 27” in Vietnamese society

(Source: Self-created)

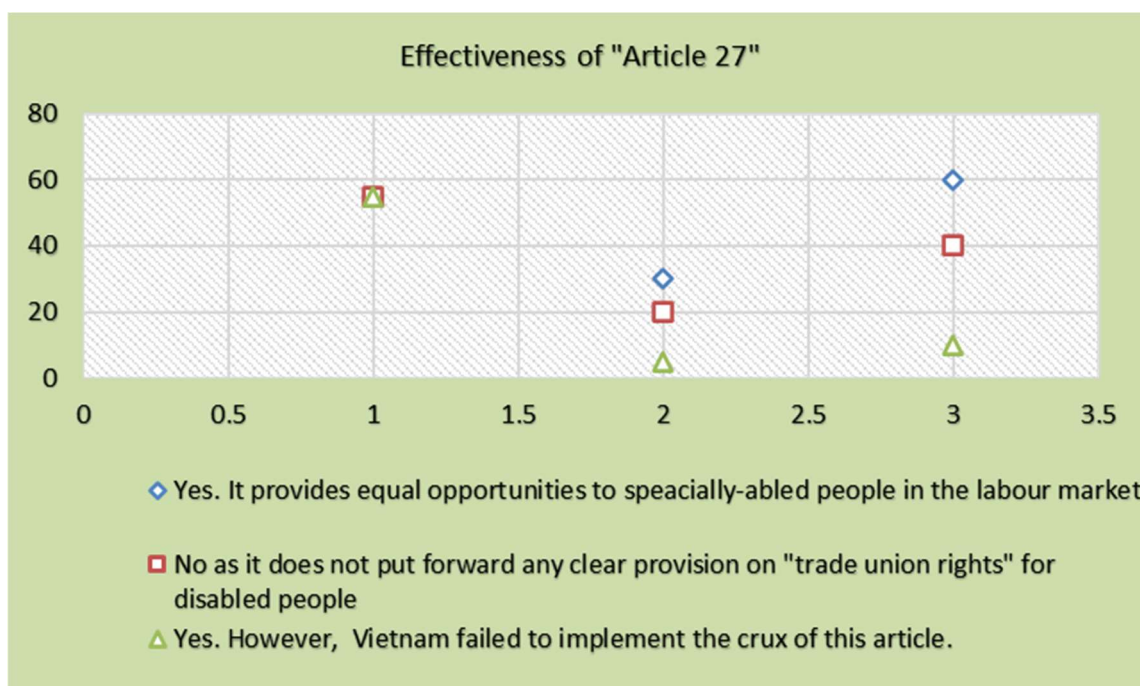


Figure 6: The importance of “Article 27” in Vietnamese society

(Source: Self-created)

The third question assesses the importance of “article 27” in the domain of Vietnam. “Article 27” of the United nation effectively refers to the provisions that comment on the “work and employment” of social PwDs. At the same time, it would ensure the projection of PwDs in the working scenario (Appelbaum, 2019). Even though Vietnam has its own set of laws on “persons with disabilities”, it does not illuminate job opportunities for the specially-abled person. Even though “Article 2” and “Article 4” slightly touch upon it, the core incorporation remains missing. Around twenty participants believe that even though there is no legal incorporation of “Article 27”, the “free trade agreement” enabled Vietnam to put forward “vocational training for PwDs”, and it worked as a boon. However,

20 participants do not agree with the crux of the question as it hardly put forward any provisions on “trade union rights”. Five participants believe that Vietnam needs to manage to implement the crux of the article put forward by the United Nations.

Thematic Analysis

Theme 1: *Vietnam labour laws are supportive of the PwDs*

The Vietnamese labour laws have been observed in many literary sources to support PwDs. PwDs are said to be employed in government undertakings and the Private sector. This indicates the support the PwDs receive from the government, as the Vietnamese government is a Socialist government with control over private institutions and their policies (Ngo & Tarko, 2018). The Primary research has shown that the number of employed PwDs in Vietnam is far greater than the unemployed ones. Also, the government gives preference to PwDs in certain low-level government jobs.

Theme 2: *Vietnam is obligated to follow labour laws as they are signatories to the UN conventions*

One of the more frequent observations made from the works of the previous researchers and their work is that Vietnam as much as the other signatory nations one of the signatories to the ILO as well as the other UN labour conventions that ensure the safety and security of the PwDs (Banks *et al.* 2019). This is one fact, as the Vietnamese government makes constant efforts to make the position of the PwDs better as a part of their domestic policy.

Theme 3: *The PwDs in Vietnam are mostly employed in the production sector than the services sector*

In the secondary research, another recurring observation is that of the work classification employing the maximum number of PwDs. This suggests that the production sector in Vietnam caters to PwDs more than the Services sector. A part of the reason behind this is the rapid growth of the production sector in Vietnam that gets more government support. Since the Vietnamese government has adopted the policies to make the Vietnamese economy a production-based economy, the employment of as many individuals with functional bodies has increased, leading to many otherwise PwDs being absorbed into the workforce.

Theme 4: *Vietnamese social security is constantly improving*

The Vietnam government is ensuring that their social security is improving by the day as they adjust the government policies that make the people more secure in their daily lives (Tri *et al.* (2021). It has been a recurring theme in many of the various previous works that a large focus is given to the PwDs as a part of the government's social security policies. This is the reason behind the various improvements in Vietnamese political, social, and economic security.

Theme 5: *The article “conventions of rights for the person with disabilities” have revolutionised the life of especially-abled people*

Many articles have been enacted to ensure that the values of impaired employee retention and non-discrimination are adhered to. Article 5 addresses the reality of equality and non-discrimination for all personnel working in an organisation. Article 6 is about impaired women's equality and the disability factor's comprehension. Article 8, for example, creates public awareness about the need for non-discrimination against handicapped personnel and ensures they are not subjected to torture or issues. Article 9 is about impaired employees' rights to access their rights and considerations. Article 11 deals with high-risk circumstances and humanitarian crises (Bantekas *et al.* 2018).

Simultaneously, Equal recognition before the government's laws is one of the extra elements. Article 24 identifies the factors and forces that limit the educational prospects of employees with disabilities. Article 25 states that the safety of handicapped personnel must be maintained, that PwDs' health must be safeguarded, and that all applicable rules and regulations must be observed. Article 26 deals with the concept of habilitation and rehabilitation of PwDs. Articles 27 and 28 deal with labour and

employment, article 31 with status and data collection, and article 32 with social projection and the fact of a suitable lifestyle norm (Szmukler, 2017);

Additionally, articles 33 - 39 systematically administer and scrutinise the norms of **“National human rights institution”** (Article 33) and **“Article 34-39”** effectively administer associations and committees for the rights of the especially-abled person. Article 40-50 effectively comments on the **“agreement”**, **“new treaty”**, and assimilation with the **“regional incorporation organisation”**, and at the same time, it comments on amendments of the provisions and conventions as well. **“Article 49”** ensures that **“provisions”** can be obtained efficiently. Whereas **“Article 50”** puts forward illumination regarding the authenticity of the texts of various other countries such as **“Arabic, English, Spanish, Chinese and many other texts (un.org, 2021).**

Theme 6: Vietnam has also enacted their variation of the “law on the person with disabilities”

In this particular scenario, it is essential to mention that the **“law on the person with disabilities”** has been amended with the resolution number **“51/2001/QH10”**. The main of the law is to make the lives of the specially-abled easy while providing them with all the necessary prerequisites to effectively sustain them in the modern scenario

Articles	Demarcation
“Article 1”	“Scope of regulation”
“Article 2”	“Interpretation of the regulations”
“Article 3”	“Degrees of disability”
“Article 4”	“Rights and obligations with individuals that are specially-abled”
“Article 5”	“State policies towards specially-abled persons”
“Article 6”	“Socialisation of specially-abled people”
“Article 7”	“Responsibilities of organisations”
“Article 8”	“Responsibilities of daily”
“Article 9”	“Organisations of the person with disabilities” and “organisations for PwDs”
“Article 10”	“Funds for specially-abled people”
“Article 11”	“Celebration of Vietnamese day of specially-abled individual”
“Article 12”	“International cooperation”
“Article 13”	“Communication, education and information”

Table 5: Vietnamese law on “Person with disabilities”

(Source: ilo.org, 2021)

Discussion

The discussion of the thematic assessment clearly shows that government policies have improved the condition of PwDs by a large margin. Adopting policies that promote products and, more importantly, labour-intensive production has benefited PwDs more. Also, it was noted that international laws had played a great part in making the government take action and adopt policies specifically favouring PwDs and their employment. For example, the employment of PwDs in government undertakings and government activities.

The other thing is that the Vietnamese social security is improving, and the government is indirectly and domestically ensuring that the social security of the PwDs is high. They benefit from government aid and protection that makes their lives more secure and enable them to be more productive. Besides that, labour laws have been noted to be more supportive of PwDs. The Vietnamese government is socialist in nature. Without the aid and guidance of the International labour conventions, they are also more proactive towards labour laws and worker rights that also, directly and indirectly, benefit the PwDs.

In this particular scenario, it is essential to mention that there are eight guiding principles for PwDs. UN association effectively believes they are the “heart and soul of this provision”. They are -

- Respect for the intrinsic specially-abled person
- Individual autonomy for formulating own decisions and choices
- Accessibility
- Gender equality
- Preserving the identity of the specially-abled person
- Non-discrimination
- Comprehending all the patterns of disabilities of the people
- Equal opportunity in the working and realistic setup (un.org, 2021).

Therefore, all developing countries must follow these norms while integrating programmes for specially-abled people.

The researchers systematically gathered 55 participants in the Vietnam domain to understand the scenario properly. The Firstly question assesses the importance of “conventions of rights for the person with disabilities”. The second question efficiently assesses the “Ever-changing perception of “Equality under the law” for PwDs”. Whereas the third question tries to assess “The importance of “Article 27” in Vietnamese society”. It effectively assists the study ground to conclude their study efficiently while gathering efficient insight into this perspective.

Conclusion

“Article 27” of the “CRPD” has systematically revolutionised the stigma associated with specially-abled persons. The article systematically compels the state party to preserve the “right of work” provisions even for specially-abled persons. Moreover, the authority of the article enables it to safeguard the specially-abled labour with “favourable condition of work”, “equal pay for work of equal value”, “protection from harassment”, and many other elements. All the countries, including Vietnam, are putting forward their interpretation of the law associated with PwDs. Vietnam has systematically progressed in manoeuvring its place for safeguarding the specially-abled labour, and the acceptance of CRPD is a core part of this journey. However, it is essential to note that there is much more room for improvement to match the international standard in this domain.

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Appendix

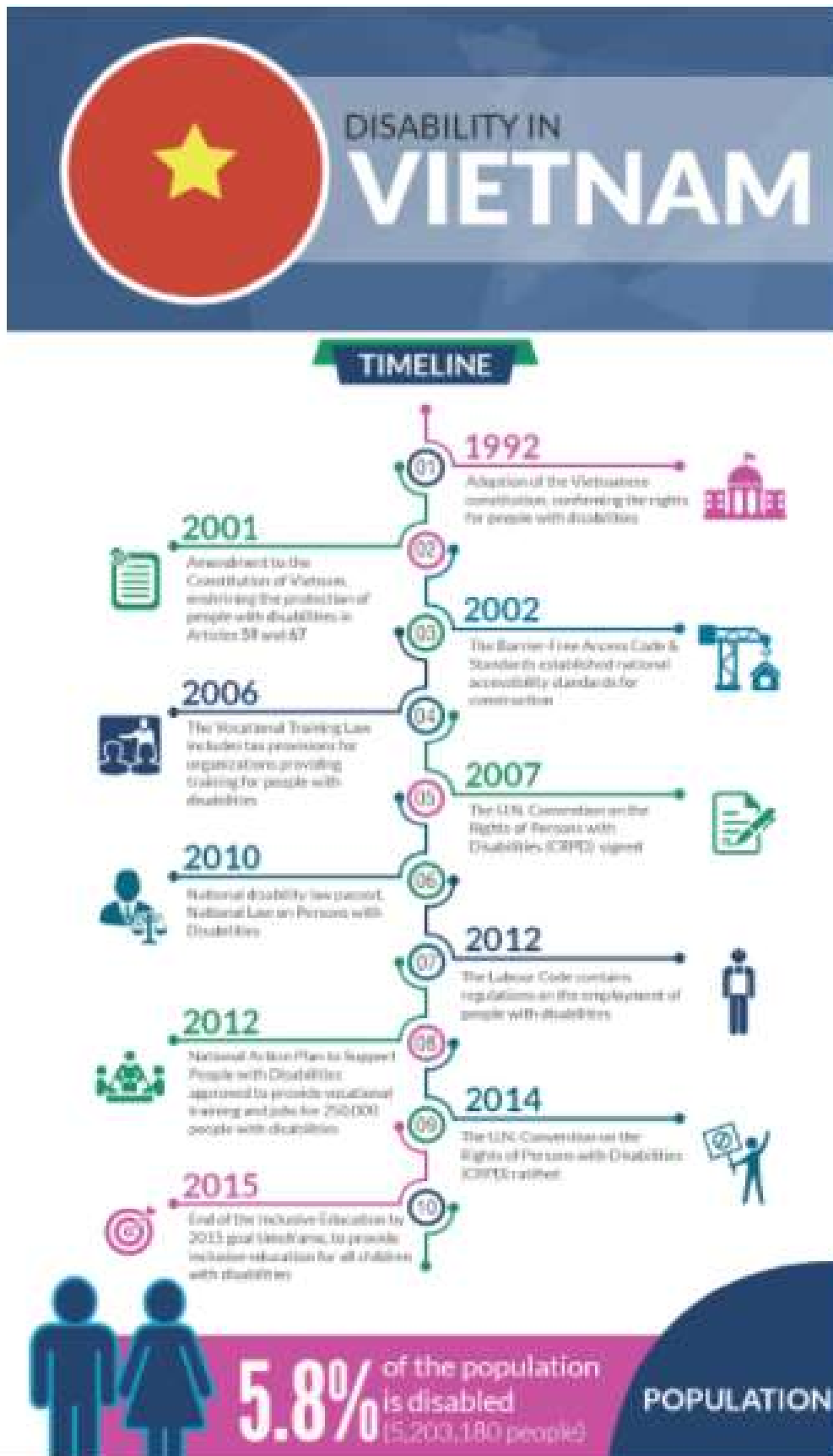


Figure: Disability in Vietnam (Source: globaldisabilityrightsnow.org, 2021)

Equal rights in the labour of persons with disabilities under the law of Vietnam and some other countries

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Abstract

This article analyses a number of theoretical issues on the equality of labour rights of PwDs, the current status of Vietnamese law on equal rights in the employment of PwDs from the perspective of comparison with the laws of some other countries in the world, thereby proposing recommendations to improve the law on equal rights in the labour of PwDs.

Keywords: PwDs; equality; labour relations; ILO; Labour Code 2019.

Introduction

The Law on Persons with Disabilities 2010 shows the state's point of view to give special attention and support to employees with disabilities. Recently, Vietnam has ratified ILO Convention 159 on occupational re-adaptation and employment for PwDs, emphasising Vietnam's commitment to protecting employees with disabilities from discrimination in labour relations, ensuring equal opportunity and responding to the requirements of the 2030 Agenda for Sustainable Development. In addition, the Labour Code 2019 has also introduced amendments and supplements on equal rights and anti-discrimination for employees with disabilities in Vietnam.

However, the actual implementation of policies reveals that support and incentives for employees with disabilities are still very limited. Implementing and issuing enforcement policies still need to be more cohesive and effective. Another problem that employees with disabilities face in Vietnam is the lack of linkages with recruiters, enterprises and other employers [31]. Therefore, their employment opportunities could be much higher, limited to their families, and lack equal opportunities for them to access the outside environment and other social support services. The authors hope that the recognition of the current situation and comparison with other countries' regulations on employees with disabilities will help to improve the existing limitations and further promote the equal rights of this workforce shortly.

1. Some theoretical issues about equal rights in the labour of PwDs

PwDs were once considered an object in the social welfare group when they could not care for their own lives. These objects need the support, help and sharing of society. Also, because of this point of view, they have not considered subjects with their rights and interests. In labour relations, for a long time, PwDs were considered dependents and were subject to many prejudices. They do not enjoy equal rights to employment like other ordinary workers and are discriminated against while participating in labour relations. This situation only began to change when World War II ended, and the ILO aimed to improve equality in employment opportunities. Specifically, the Philadelphia Declaration of 1944 states: "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity". However, initially, the equal employment rights of PwDs needed to be clearly expressed and fully recognised like other ordinary workers.

Accordingly, the rights of PwDs are only mentioned in a number of ILO Conventions, such as Convention 100 on Equal Remuneration of Men and Women Workers for a Work of Equal Value (1951) and Convention 118 on Equal treatment in social safety issues (1962). Some other conventions, such as Convention 111 on Discrimination in Employment and Occupation (1958), do not include PwDs needing protection [15].

In the early 80s of the 20th century, the equality of PwDs was included in the World Program of Action on Disability by the United Nations. Subsequently, the ILO promoted this issue by adopting Convention 159 and Recommendation 168 on occupational and employment re-adaptation of PwDs. The ILO requires the Parties to this convention to develop policies and a legal framework based on the principles of fairness, equality of employment opportunities for employees with disabilities, respect and non-discrimination in labour relations, taking measures to implement these principles effectively [14]. At the same time, the convention recognises that PwDs are entitled to full benefits in the employment relationship based on the determination of rehabilitation associated with employment: “enable a person with disabilities to secure, retain and advance in suitable employment and thereby to further such person's integration or reintegration into society.” (Clause 2, Article 1) [16]. With this recognition, the ILO has adopted a series of programs and conventions on the equality of PwDs in industrial relations, including Convention 168 (1988) on the Promotion of Employment and Combating Unemployment (Clause 1, Article 6), ILO Declaration on Fundamental Principles and Rights at Work (1998) and Code of Practice on managing disability in the workplace (2002). By the 21st century, the equal rights of PwDs in labour and other fields are increasingly promoted. Between 2004 and 2005, two resolutions on the fundamental rights of PwDs were issued by the United Nations Human Rights Commission, aimed at motivating members to prevent all forms of discrimination and to ensure the equality of PwDs in social relations. In March 2007, the United Nations General Assembly adopted the CRPD, marking a comprehensive development in the recognition and respect of equality and full enjoyment of the rights of this group of people.

Currently, member states are in the process of implementing UN and ILO commitments by promulgating enforcement policies and internalising labour laws. The common goal is to maximise the benefits of PwDs and to ensure equality and non-discrimination in labour relations. In general, countries' approach is based on two core principles: the principle of non-discrimination and the principle of equality. These are two principles that are closely related and interact with each other.

With the principle of non-discrimination, PwDs are defined as equals compared with other subjects even though they have physical and mental disabilities when participating in labour relations [21]. This equality is expressed by the fact that PwDs must be treated favourably and fairly when looking for work, performing labour contracts and terminating labour contracts. They must be facilitated to participate effectively and fully in all labour relations. Therefore, when developing labour policies and legislation, countries should consider the following three aspects:

Firstly, it is forbidden to discriminate (directly or indirectly) in labour relations. For example, the Americans with Disabilities Act (1990) defines that employers must provide appropriate conditions for PwDs, and must not engage in the following behaviours: making hiring decisions based on general information about the disability status; applying different pay scales, benefits programs, or advancement opportunities to a protected individual or group; negotiating and contracting with other companies may have the effect of discriminating against individuals or groups on the basis of disability; discriminating against any employee with regard to working conditions because a family member or friend is protected under this law; discrimination against protected individuals or groups

through pre-employment health checks, pre-employment inquiries about physical abilities, job descriptions and qualifications, drop out of school and work safety [8].

Secondly, identify issues that need to be regulated to treat PwDs equally to other ordinary workers. For example, point b, clause 1, Article 113 of Vietnam's Labour Code 2019 stipulates that employees with disabilities who work for a full year are entitled to 14 days/year compared to 12 days/year of leave of ordinary workers. This allows PwDs to be assured of their health and have a long enough rest period, which is not less favourable than ordinary workers.

Thirdly, the scope of application of anti-discrimination regulations in labour relations. For example, in Clause 1, Article 10 of Korea's Anti-Discrimination Act 2011 on PwDs, employers must not engage in discriminatory practices against PwDs, including in the areas of recruitment, salary and benefits, vocational training, changing job positions, retirement, resignation or be subject to labour discipline [9]. According to Article 38 of China's Law on Protection of PwDs, amended and supplemented in 2008, discrimination must not be made against PwDs in recruitment, promotion, determination of professional titles, salary, rest, leave, or social insurance.[11].

The principle of equality establishes that all people are equally worthy, respected, and protected despite differences of mind, body or other factors [21]. Employees with disabilities often face barriers to work participation due to physical or mental defects. For this group of people to be cared for and enjoy equal rights with others, employees with disabilities need to be compensated and treated separately through reasonable adjustment and support in policies and laws. According to the ILO, there are three levels of decentralisation in terms of the principle of equality: formal equality, equality of opportunity and equality of results [14]. However, only the equality of opportunity perspective is appropriate in applying the current policy development and legal framework. This is because this perspective recognises the differences and realises the barriers employees with disabilities will likely face in their labour relations. Normally, these barriers stem from social prejudices that prevent employees with disabilities from accessing equal conditions when participating in society. That is the main cause and the basis for countries to pay attention to through policies and laws so that this group of people can integrate into society, not their disability. For example, according to Clause 2, Article 36 of the Employment Promotion Act of PwDs 1960 (amended and supplemented 2013) of Japan, at the request of PwDs, employers must take measures to arrange reasonable accommodation when recruiting and employing workers to improve situations that prevent equal opportunities for PwDs and non-PwDs [10]. This means that employees with disabilities will be compensated for disadvantages and obstacles to ensure they can participate in labour relations like ordinary workers [7]. Meanwhile, formal equality and equality of results are inappropriate in applying policy development and legal framework for employees with disabilities. Formal equality does not take into account the disparities, differences and disadvantages of certain individuals and the circumstances under which they are affected. Therefore, this position does not allow for differential treatment between people or require reasonable accommodation and assistance if necessary. Equality of results is the similarity and equality of outcomes for all subjects. From this perspective, this view still recognises the differences between employees with disabilities, from which employers must consider paying more for Employees with disabilities for other costs such as medicine and transportation costs. Nevertheless, this view does not clearly show which entity will be responsible for ensuring the requirements of equal rights for employees with disabilities [14].

2. Current status of Vietnamese law on equal rights in the labour of PwDs, comparison with the laws of some other countries and directions for improvement

2.1. Employment opportunities for employees with disabilities

As mentioned above, the ILO offers three levels of decentralisation of human rights at work, including the right to equal opportunity. Equality in access to employment is an element of equality of opportunity. This is also a right officially recognised by the ILO in Convention 159 (1983) on vocational rehabilitation and employment (PwDs). Pursuant to Article 4 of this Convention, the right to equal opportunity to access employment is understood as the equal opportunity of PwDs and workers in general in terms of access to work in all conditions and circumstances. After ratifying the CRPD, Vietnam has concretised the right to access employment of employees with disabilities in two important legal documents, namely the Law on PwDs 2010 and the Labour Code 2019. Policies aimed at enforcing equal rights of employment opportunities for PwDs affect two main objects: (i) PwDs when they create their jobs and (ii) employers when hiring PwDs.

If employees with disabilities are self-employed, they have the right to participate in short-term vocational training courses; receive vocational training support based on training budget norms and actual training time (Article 32 of the Law on PwDs). At the same time, they are also supported to borrow loans with preferential interest rates for production and business (Clause 6, Article 33 of the Law on PwDs), provided with information on vocational training and technology transfer, and supported to sell products (Clause 5, Article 33 of the Law on PwDs).

In case an employee is a person with disabilities who signs a labour contract, the state has the policy to encourage the employer by supporting the improvement of suitable working conditions and environment for PwDs; enterprise income tax exemption for production and business establishments employing 30% or more of the total number of employees who are PwDs (Article 34 of the Law on PwDs). This is similar to the subsidy policies for enterprises employing PwDs in Europe. In Sweden, the allowance can reach 80% of the monthly salary of PwDs and be paid within 4 years [28]. The state also takes measures to increase the feasibility of the above regulations, such as the compulsory establishment of Employment Funds for PwDs in the locality to help workers recover their functions and create jobs, providing initial facilities, tax exemption and low-interest loans for vocational training institutions, production and business establishments exclusively for PwDs.

The above provisions seem to have created a fairly complete legal framework for ensuring equal rights in access to employment of employees with disabilities in Vietnam. However, the actual survey data could be better. Specifically, according to a survey by the General Statistics Office in 2016 - 2017, published in January 2019, when asked for opinions on hiring PwDs to work; 54.8% of employers did not hire them; 24.4% of employers want to hire; 1.4% of employers prefer to hire PwDs; 19.4% of employers refused to answer. Also, in 2019, Vietnam spent VND 786.2 billion to support 17,970 employees with disabilities in production and business. This number compared to 2016, 2017, and 2018 tends to increase [18], but the total number of PwDs who found a job in 2019 has signs of decreasing compared to 2018 [18]. Another ILO report during this period also indicated that Vietnam lost about 3% of its GDP due to not employing PwDs in the labour market[19].

Besides the main social causes, such as fear of health and physical problems of employees with disabilities that may affect the quality of work, the legal causes of the above situation cannot be ignored. Compared with the provisions of the Ordinance on PwDs 1998 and guiding documents, the Law on Disabilities only encourages enterprises to recruit employees with disabilities, but it is not compulsory as before. Decree 12/2022/ND-CP also removes the provision on fines ranging from 5,000,000 VND to 10,000,000 VND for discriminating acts of PwDs. Instead, Decree 12 only

sanctions the following acts: not consulting PwDs related to their rights and interests; employing PwDs who work overtime, work at night and do heavy and hazardous work. This is quite different from the trend of other developing and developed countries. Some countries often set a minimum quota that private or state enterprises need to recruit employees with disabilities. For example, in European countries such as Germany, employers with 20 or more employees are obliged to employ 5% of the total number of employees who are PwDs [29]. In non-compliance, the employer can be fined from 105 to 260 euros per month for one case. In France, employers are required to have a similar requirement at a higher rate of 6% and penalties for non-compliance will apply under Act No. 2005-102 on equal rights and opportunities [29]. In Asia, China forces state agencies to arrange recruitment quotas for employees with disabilities, or Korea applies a fine to employers equivalent to 60% of the salary of the number of PwDs recruited and publicises the name of enterprises on the mass media. Similarly, Thailand has also introduced a separate tax collection policy for businesses that do not want to employ PwDs [20].

To ensure full equality of employees with disabilities in terms of employment opportunities, it is thought that the National Assembly and Government need to issue stronger coercive regulations. Facilitating and accepting employees with disabilities must be a mandatory obligation of employers and, simultaneously, lower the conditions for employees with disabilities to access the state's production and business support sources. In addition, it is necessary to issue sanctions to apply to employers who violate the equal employment rights of employees with disabilities.

2.2. Performance of labour contracts for employees with disabilities

Implementation of labour contracts for employees with disabilities is a legal act of the parties in order to realise the committed rights and obligations. This is when the employer determines whether the purpose of using his labour is achieved. This directly affects the legitimate rights and interests of employees with disabilities. In the performance of labour contracts, employees who are PwDs have full rights and obligations like other ordinary employees. However, given the special nature of employees with disabilities, the exercise of rights of employers will also have certain differences to either meet the needs of their employers or ensure equality, fight against discrimination against employees with disabilities and realise the Corporate Social Responsibility (CSR) of the employer.

Firstly, regarding the transfer of employees with disabilities to a job other than the labour contract.

In order to protect employers in labour arrangements to improve efficiency and productivity, the law allows employers to have the right to transfer employees with disabilities to work other than the labour contract in certain cases, such as unexpected difficulties due to natural disasters, fires, dangerous epidemics, application of measures to prevent and remedy occupational accidents, occupational diseases, electricity and water problems or due to production and business needs (Article 29 of the Labour Code 2019). The time for transferring employees as PwDs to do other jobs than the labour contracts must not exceed 60 cumulative working days in 01 year unless the employee with disabilities agrees in writing and must specify this in the labour rules and notice in advance about the time limit and the content that applies to them. At the same time, employers must also comply with regulations on salary payment for employees with disabilities (on the basis of comparing old and new wages at a commensurate level).

However, exercising this right of employers towards employees with disabilities is very challenging because employers still have to depend on specific conditions to arrange work, ensure suitable working conditions and environment for PwDs, and ensure working tools, occupational safety and hygiene. At the same time, employers are strictly prohibited from using PwDs to do heavy, hazardous and dangerous jobs according to the list promulgated by the Ministry of Labour, Invalids and Social

Affairs without the consent of PwDs after they have been fully provided by the Employer information about that job (Clause 2, Article 160 of the Labour Code 2019). Agencies, organisations, enterprises and individuals that employ PwDs must fully comply with the provisions of the law on labour for employees with disabilities (Clause 1, Article 59 of the Labour Code 2019, Clauses 3 and 4, Article 33 of the Law on PwDs 2010). In particular, according to Clause 2, Article 159 of the Labour Code 2019, before deciding to transfer an employee to a job other than the labour contract, the employer must consult with the employee (who is a PwD). This complies with the specificity of employees with disabilities and proves the CSR of the employers. However, from the perspective of the actual use of labour, the above regulation is the main barrier for employers to accept PwDs to work for them, although the consultation in the above case is only for “reference”.

The current law also does not stipulate the employer's responsibility when transferring employees who are PwDs to other jobs illegally. If this situation occurs, the employer is only obliged to transfer the employee back to the old job and does not incur other legal obligations. This, in terms of employees with disabilities in particular and ordinary workers in general, is a “disadvantage”. Vietnamese law should have provisions on legal consequences in this case. Specifically: If the transfer of employees to work other than the labour contract is illegal, causing damage to the employee, the employer must compensate the employee in accordance with the provisions of civil law.

Secondly, about suspending the implementation of labour contracts with employees who are PwDs

This is a regulation to help protect employees with disabilities when they fall into special cases (such as PwDs being held in custody or temporary detention; becoming pregnant; having to comply with the decision to apply the measure of sending to reformatories, compulsory detoxification establishments or compulsory educational establishments). The parties will postpone the performance of their rights and obligations agreed upon in the labour contract for a certain time. The period of postponement of the labour contract performance will be compensated for later.

The above regulation shows the protection of employees with disabilities when participating in labour relations. However, the reality of the application reveals that employers who employ employees with disabilities will face many difficulties when they have to arrange replacement personnel (because the replacement is only temporary), and job duties are easily disturbed. With a weaker physical condition than other common workers, for example, a PwD is a pregnant female employee and prescribed by a doctor to take a break (several times) to ensure the health of the pregnant woman without determining the length of the time of delaying the performance of the labour contract, this triggers great difficulties for the employer. Employers cannot be proactive in production and business activities and inevitably have the opposite effect on society. Only when operating effectively can the employer create values to contribute to the sustainable development of society. Regulations on the suspension of labour contracts for employees with disabilities are indispensable. However, there must be a time limit to protect and balance the parties' interests in this relationship.

Thirdly, regarding the consultation of employees with disabilities when the employer decides on issues related to the rights and interests of employees with disabilities

This specific regulation is recognised in Clause 2, Article 159 of the Labour Code 2019 to protect employees with disabilities during the implementation of labour contracts. Accordingly, employers must consult employees with disabilities when deciding on issues related to their rights and interests, such as transferring employees with disabilities to work other than those in the labour contract, working hours, and working hours, rest time, wages, labour discipline, determination of material responsibility of employees with disabilities. Employers who violate the above provisions will be fined from 5,000,000 VND to 10,000,000 VND (Article 31 Decree 12/2022/ND-CP). However, the

employee's opinion is that PwDs, in this case, is for reference only, and the decision-making power still belongs to the employer based on compliance with the provisions of the labour law. This regulation is appropriate to protect employees who are PwDs while still ensuring that employers can exercise their right to be proactive in their labour use because this directly affects their production and business activities. According to the Americans with Disabilities Act ADA, there is no specific provision for consultation with employees with disabilities. Most of these cases are recorded in different case precedents heard by the State Courts. However, an employer's decision regarding the rights and interests of employees with disabilities needs to be negotiated. In EEOC case law v. AT&T Mobility Servs. LLC, the court has ruled that the AT&T store manager has multiple sclerosis, so she cannot work overtime in the evenings and weekends; her health is not guaranteed, so she cannot properly perform her job and thinks that the company has arranged unreasonable work for her after she applied for leave. The court also noted that AT&T was engaged in good faith in negotiating with the plaintiff to adjust her disability. AT&T allowed the plaintiff to use a wheelchair at the physician's request and did not waive the 40-hour limit for the management position. AT&T even agreed that the plaintiff had 30 days to find another suitable position within the company. However, the plaintiff did not accept this negotiation [13]. In Japan, according to the Employment Promotion Act of PwDs 1960 (amended and supplemented 2013), when providing reasonable work, employers must fully respect the wishes of PwDs (point 1, clause 4, Article 36). They must prepare a critical system to meet the requirements through consultation with workers who are PwDs (point 1, clause 4, Article 36) [10].

Fourthly, about working time and rest time of employees with disabilities.

As for working hours, the Labour Code 2019 does not have separate regulations for the working hours of employees with disabilities. Therefore, working hours for them are applied like other regular employees. However, Clause 1, Article 160 of the Labour Code 2019 prohibits using employees who are mildly PwDs with a working capacity decrease of 51% or more, severe or particularly severe disabilities, to work overtime or at night unless the employee with disabilities agrees. Employers who violate the above regulations will be fined from 5,000,000 VND to 10,000,000 VND (Article 31 of Decree 12/2022/ND-CP).

As for rest time, the labour law has recognised regulations exclusive to employees with disabilities. Specifically: An employee who is a PwDs who has worked for an employer for the full 12 months is entitled to 14 working days off (for those who do the job under normal conditions, 12 working days). Employers must organise periodical health check-ups suitable for employees who are PwDs (at least once every 6 months - Clause 1, Article 21 of the Law on Occupational Safety and Health 2015). The above regulations are aimed at protecting the health of employees with disabilities, ensuring that they have enough time to regenerate their working capacity, as well as preventing the possibility of employers from putting pressure on or forcing employees with disabilities to work overtime or work at night. In the UK, under the Equity Act 2010, in addition to annual sick leave and annual leave, a person with a disability can request an employer's permission to apply for disability Leave if the Labour Court recognises them. The number of leave days will be based on the parties' agreement in consultation with the occupational safety agency. Employers may be penalised for discriminatory behaviour if they do not reach an agreement with PwDs upon request [27].

However, there are still many cases in which, for livelihood or production and business activities, overtime or night work is needed for employers and employees with disabilities. However, because it is “prohibited”, even though the law allows the use of employees with disabilities with their consent, employers are still hesitant. Therefore, setting strict and restrictive regulations when using this type of labour will make employers want to avoid accepting PwDs to work despite many encouraging

policies [23]. If employees are PwDs agree to work overtime or work at night, the conditions and value of their motivation, in this case, are not better than other ordinary employees working overtime or at night. On the other hand, point a, clause 2, Article 107 of the Labour Code 2019 stipulates that one of the conditions for using overtime is “must have the consent of the employee (generally)”. Hence, the above provision of clause 1 Article 160 of the Labour Code 2019 becomes “redundant”. The author believes that Clause 1, Article 160 of the Labour Code 2019, instead of being “prohibited”, should be amended to mean that employers are allowed to “employ employees who are persons with mild disabilities with a working capacity decrease of 51% or more, or with severe disability or profound disability to work overtime and work at night”, provided that the salary for overtime work and night work must be increased for them compared to regular employees who also work overtime or work at night with a certain percentage (say 20%, 30%...) [30].

Fifthly, about the vocational training of employees with disabilities to work for the employer

This issue is regulated in Article 61 of the Labour Code 2019. Accordingly, an apprenticeship is an employer’s recruitment of PwDs to guide job practice and job training according to job positions at the workplace. The vocational training period shall be at most 3 months. The author believes it is inappropriate to limit the training period for employees with disabilities like other ordinary employees (“no more than 3 months”). Because in reality, there are many PwDs because of their health conditions (defects in body parts), because of their family circumstances, they are illiterate, and their ability to learn and receive knowledge is slow (e.g., knowledge of information technology, machinery), so the training period of no more than 03 months is not enough, leading to low skill level [23]. Then the possibility for the employer to accept them to work after the end of the vocational training period is also shrunk. Clause 2, Article 61 of the Labour Code 2019 needs to supplement regulations for employees with disabilities in that the training period for employees with disabilities is not more than 06 months to be suitable for using this special type of labour. Meanwhile, in European countries, vocational training for PwDs is mainly played by organisations managed by the Government's specialised labour agency. Employers are solely responsible for recruiting, creating favourable conditions and supporting employees with disabilities to perform their jobs. In the UK, the Government manages a range of apprenticeship and vocational training programs for PwDs and consultants to support PwDs [12].

2.3. Termination of labour contracts for employees with disabilities

The termination of the labour contract between the employer and the employee being PwDs can occur in many cases, such as the labour contract between the parties is automatically terminated, unilaterally terminates the labour contract (from the employer or the employee is PwDs), or terminates due to changes in structure, technology, economic reasons or merger, consolidation or separation of enterprises or cooperatives. It can be said that terminating labour contracts, in any case, will greatly impact employees with disabilities, putting them in a passive position. The greatest impact on employees with disabilities is still the case where the employer unilaterally terminates the labour contract. Because for an ordinary employee, finding a new job can be challenging. This becomes even harder for an employee with a disability due to health reasons and strict legal regulations when using this type of worker. Therefore, the current Vietnamese law stipulating the employer's right to terminate the labour contract for employees with disabilities unilaterally is very strict regarding the employer's grounds, procedures and responsibilities. When exercising this unilateral right, the employer can protect his/her legitimate rights and interests but still have to perform social responsibility. Specifically: When an employer unilaterally terminates a labour contract with an employee who is a PwDs, (i) there must be a statutory reason, and (ii) a certain period of advance

notice must be given to the employee being a PwDs unless the employer is not a person with a disability (Article 36 of the Labour Code 2019). In addition, Article 37 of the Labour Code 2019 also provides for cases where the employer is not allowed to exercise the right to terminate the labour contract unilaterally.

Meanwhile, in order to unilaterally terminate a labour contract with an employer, with all types of labour contracts, employees with disabilities only have to give notice in advance for a certain period (45 days, 30 days, 03 working days, for some specific industries, occupations and jobs, the notice period shall comply with the Government's regulations - Clause 2, Article 35 of the Labour Code 2019), except for some cases where no prior notice is required (Article 35 of the Labour Code 2019) without specifying the reason for termination.

In addition, compared to the case where an employee with disabilities unilaterally terminates a labour contract illegally (Article 40 of the Labour Code 2019), when the employer unilaterally terminates the labour contract illegally, the employer must bear a “heavier” legal responsibility (Article 41 of the Labour Code 2019), because even if the labour contract is terminated, the employer still has responsibilities to society.

Given the limited health situation, it can be said that creating an active mechanism for employees with disabilities to exercise their right to terminate labour contracts, as above, unilaterally provides maximum protection for employees with disabilities. However, the above regulation will greatly impact enterprises specialising in employing PwDs. The majority of enterprises that are members of the Vietnam Business Association for PwDs are small or very small enterprises with fewer than 50 employees with diverse, low-skilled and low-profit activities such as handicrafts, mushroom growing, and garment. Many enterprises need to gain better management skills, operate with old equipment, and have few opportunities for funding or vocational training to improve their business [19]. In this situation, such a simple mechanism of unilateral termination of labour contracts may push the employer into a difficult situation in finding replacement workers and stabilising their production and business activities.

Therefore, the author believes that it is necessary to consider amending the above regulations in the direction that in order to terminate the labour contract with the employer unilaterally, the PwDs employee must also (i) have statutory reasons (specify the number of reasons), which focuses on specific regulations on reasons related to the health of employees with disabilities as a basis for unilateral termination of labour contracts and (ii) prior notice (depending on different reasons and types of labour contracts), except in some cases without prior notice) [24]. This will contribute to ensuring the balance and harmonisation of the rights and interests of employers and employees with disabilities, thereby promoting the sustainability of this relationship. In addition, to ensure equal rights of PwDs in labour relations, it is necessary to promote legal education and propaganda, raise social awareness about the right to work for PwDs, and intensify inspection and supervision of work to comply with the provisions of the law on this matter.

3. Conclusion

Statistics show that Vietnam is one of the countries with PwDs accounting for a large proportion of the population with nearly 6.2 million PwDs, of which more than 2 million people are working age. [31]. However, this group of people are mainly concentrated in rural areas, working in low-income, unstable jobs and with low professional qualifications. That leads to limited understanding and accessibility of specialised policies for employees with disabilities and ineffective application of equal rights in labour, causing waste of human resources.

Creating reasonable conditions for PwDs to participate in the labour market is essential and in line with the world trend on human rights. Ensuring equal and sustainable employment opportunities for PwDs must be a central task in formulating laws and policies of the state. Vietnam should draw lessons from other countries in developing and implementing the legal framework and considering the social situation to make appropriate amendments and gradually fulfil the international commitments of the UN and ILO on equal rights of employees with disabilities.

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Integration of the implementation of the International Convention on the Rights of Persons with Disabilities in the plan for social-economic development towards sustainable development

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Abstract:

This article makes an in-depth study on the meaning of the International CRPD (CRPD) and the requirements to ensure socio-economic development in the implementation of CRPD. The article focuses on researching solutions to ensure the implementation of CRPD in the country's socio-economic development plan to ensure sustainable development.

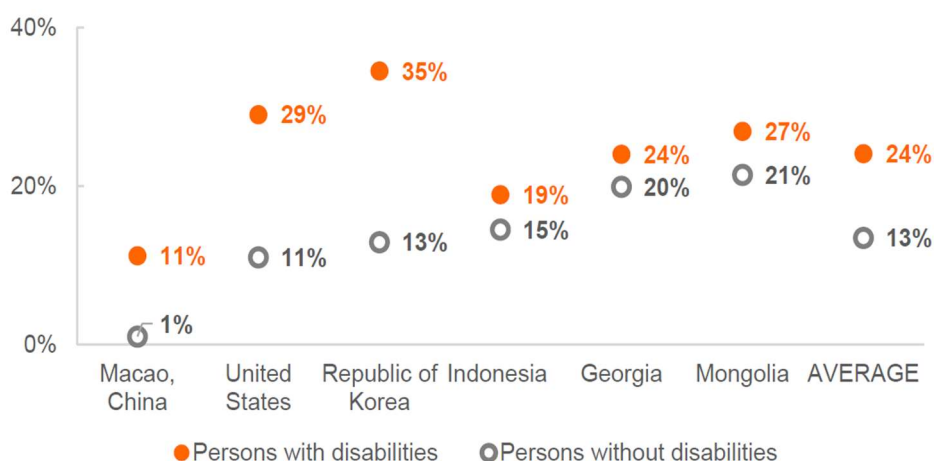
Keywords: Integration, CRPD, socio-economic development plan

Our state always pays due attention to policies and laws for socio-economic development, ensuring national governance in the direction of modernity and science. In the current context, many new factors are appearing, such as climate change, the Covid-19 pandemic and many other issues that need to be prioritised and urgently solved. Integrating the implementation of the CRPD in the socio-economic development plan towards methodology, scientificness, inheritability and development in thinking, theory, science, crystallisation of intelligence, and creativity are problems posed in the current context.

1. The relationship between the International CRPD and the Sustainable Development Goals

PwDs include long-term physical, mental, thinking, or sensory impairments. When interacting with various social barriers, those impairments may limit their full and effective participation in social activities on an equal basis with others [1]. A 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, causing difficulties in work, daily life and study [2].

PwDs are estimated at about 15% of the world's population, equivalent to more than 1 billion people living with at least one form of disability [3]. PwDs have lower development indicators than persons without impairment [4]. About 80% of PwDs live in developing countries, and most do not have access to the achievements of the millennium development [5]. Therefore, PwDs face certain barriers in exercising their economic, cultural, political, social, employment, health, and education rights in their daily lives compared to those without disabilities.



Percentage of PwDs in a number of countries in the world in the period 2011 - 2016 [6]

As of 2016, Vietnam has about 6.2 million PwDs aged 2 and over, accounting for 7.06 per cent of the population. Movement disability represents 29.41%; hearing disability 9.32%; visual disability 13.84%; neurological and mental disabilities 16.83%; intellectual disability 6.52% and other disabilities 24.08%. Nearly 80% of PwDs live in rural areas, and more than 20% live in cities. Over 60% of PwDs are working-age, 54% are women with disabilities, and 46% are men with disabilities [7]. Therefore, Governments should develop appropriate policies to improve the socio-economic life of PwDs comprehensively.

CRPD is an important legal instrument to protect the rights of PwDs, adopted by the United Nations in 2007. This is a human rights instrument that is legally binding on countries. Eighty-two countries signed the convention, 44 signed the Optional Protocol, and 1 country ratified the convention. This is the largest number of signatories in history to a United Nations Convention on its opening day. The convention follows decades of UN work to change attitudes and approaches towards PwDs. The convention marks a paradigm shift in attitudes and approaches to PwDs. It represents the movement from viewing PwDs as “objects” of charity, medical treatment and social protection towards viewing PwDs as “subjects” with rights which are capable of making decisions and being active members of society [8].

Everyone (with disabilities or without impairment) depends on social support at some point (especially in youth or old age) to make freedom and choice a reality. This basic fact is more evident in the case of PwDs (though not for all of them). If one looks for tangible evidence of the interconnectedness of both rights groups [i.e. civil and political on the one hand, economic, social and cultural on the other], disability is a clear example. It is not enough to enact anti-discrimination laws to break down arbitrary barriers. It is also necessary to assist people in overcoming those barriers” [9]. Currently, the Commission consists of 18 specialists supervising the implementation of CRPD by periodically reviewing the national report submitted by the Members [10].

The Sustainable Development Goals (SDGs), also known as the Global Goals, were adopted by the United Nations in 2015 as a joint call to action to eradicate poverty, protect the planet and ensure that by 2030 everyone enjoys peace and prosperity. The 17 SDGs are integrated. They recognise that action in one area affects outcomes in others and that development must balance social, economic and environmental sustainability [11]. CRPD is one of the global international conventions to ensure sustainable development goals.

SDGs	CRPD
Goal 1: No poverty	All Articles on CRPD
Goal 2: Zero hunger	Article 28: Adequate standard of living and social protection
Goal 3: Good health and well-being	Article 10 - Right to life Article 11 - Situations of risk and humanitarian emergencies Article 23 - Respect for home and the family Article 25 - Health Article 26 - Habilitation and rehabilitation
Goal 4: Quality education	Article 24- Education

Goal 5: Gender equality	All Articles on CRPD
Goal 6: Clean water and sanitation	Article 28 - Adequate standard of living and social protection
Goal 7: Affordable and Clean Energy	Article 28 - Adequate standard of living and social protection
Goal 8: Decent work and economic growth	Article 27 - Work and employment
Goal 9: Industry, innovation and infrastructure	Article 9 - Accessibility Article 20 - Personal mobility Article 21 - Freedom of expression, opinion, and access to information
Goal 10: Reduce inequalities	Article 5. Equality and non-discrimination
Goal 11: Sustainable cities and communities	Article 9 - Accessibility Article 11- Situations of risk and humanitarian emergencies Article 19- Live independently and be included in the community Article 29 – Participation in political and public life Article 30 – Participation in cultural life, recreation, leisure and sport
Goal 12: Responsible consumption and production	Not available
Goal 13: Climate action	Article 21 - Freedom of expression, opinion, and access to information Article 25- Health
Goal 14: Life below water	Not available
Goal 15: Life on land	Not available
Goal 16: Peace, justice and strong institutions	Article 4 - General obligation Article 10 - Right to life Article 13 - Access to justice Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment Article 16 - Freedom from exploitation, violence and abuse Article 18 - Liberty of movement and nationality Article 29 - Participation in political and public life
Goal 17: Partnership for the goals	Article 32 - International Cooperation

Table 1. Relationship between SDGs and CRPD [12]

The 2013 Constitution contains an important new point, which is to uphold human rights and citizens' rights, including the promotion, respect and protection of the rights of PwDs in the implementation of the CRPD for sustainable development. Implementing the 2013 Constitution, the Law on PwDs 2010 encompasses specific provisions for ensuring the rights of PwDs. Vietnam acceded to the CRPD in 2014, in which our state did not reserve any of these provisions of the convention, thereby proving that Vietnam makes strong commitments to ensuring the rights of PwDs and having an enforcement agency to oversee the implementation of the CRPD, which is the National Committee on PwDs.

2. Socio-economic development planning and the integration of CRPD implementation in socio-economic development planning to ensure sustainable development goals

A socio-economic development plan is a tool of economic management of the state by objectives, which are expressed by the goals and the socio-economic development-oriented goals that must be achieved in a certain period (annual, every 5 years) of a country or a locality and solutions and policies to achieve the set objectives in the most effective and highest manner [13]. Integrating the implementation of CRPD in national and local socio-economic development plans is the application of principles and contents on the rights of PwDs to the formulation, management, implementation, monitoring and evaluation. The assessment of the rights of PwDs is one of the central issues to be considered in the planning process.

The State entities with authority to develop socio-economic development plans should apply principles and methods to guarantee the approach to the rights of PwDs in forming socio-economic development plans. In nature, integrating CRPD into local socio-economic development planning should promote priority solutions to ensure the rights of PwDs in socio-economic development at the central and local levels.

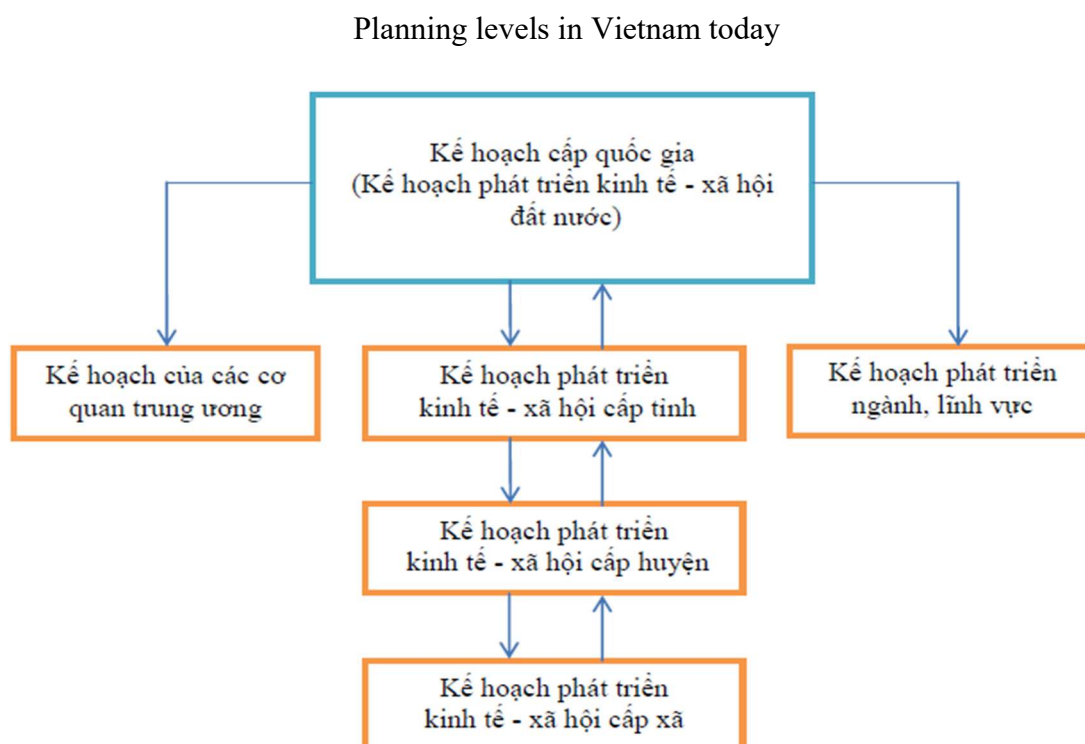


Figure 1: Planners at all levels [14]

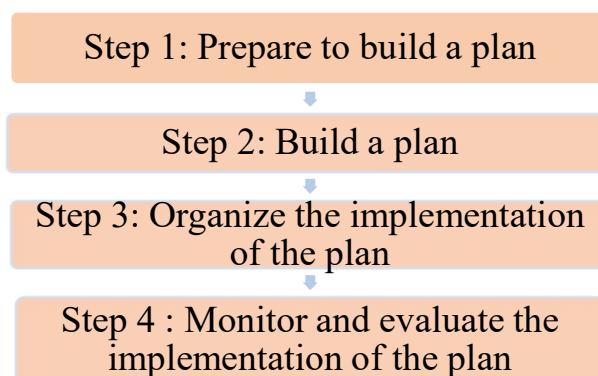
As a rule, many actors plan socio-economic development at the central and local levels. State and local competent state agencies have made great efforts to implement socio-economic development plans of the country, province, district and commune in a high-quality and efficient manner and

towards integrating CRPD implementation into the planning process. The People's Committees of the centrally-run cities have focused on directing the appraisal of socio-economic development planning and plans. Based on the city's socio-economic development planning and plans, the lower-level authorities have developed local socio-economic development master plans and plans while reviewing the approved planning in accordance with the provisions of the law on planning appraisal. The appraisal of socio-economic development planning and plans has contributed to improving the quality, ensuring that plans and plans are compatible with reality [15]. There are many national and local socio-economic development plans, including long-term, medium-term, and short-term plans. In which, the 5-year socio-economic development plan is a synthesis of the national socio-economic development objectives, orientations, policies and measures in a certain area. There are 4 levels: national, province/central city, district, and commune/ward, a socio-economic development plan, which three later levels are usually local socio-economic development plans. The scope of the sectoral plan includes sectors such as Agriculture, Forestry and Fisheries; construction industry; service; social fields (health, education, labour, culture); the fields of order, social safety, and national security, which are divided into specific sub-sectors (according to the system of sub-sectors of the national economy) [16].

The entire people and army have successfully implemented many guidelines, goals and tasks in the Resolution of the 12th Party Congress; The country has achieved great achievements of historical significance. The country's scale and level of economic and social development have been raised. Macro-economy is stable; inflation is controlled at a low level; the economy's potentiality, scale and competitiveness are raised [17]. Ensure fast and sustainable economic growth on the basis of macroeconomic stability, scientific, technological development and innovation; strive for an economic growth rate higher than the average rate of the five years 2016 - 2020, by 2025 to be a developing country with modern industry, surpassing the low-middle income level. Improve

productivity, efficiency and competitiveness of the economy; implement solutions to overcome the impact of the Covid-19 pandemic and quickly recover the economy. Strongly promote the cultural values of Vietnamese people and the creativity of each individual. Gradually build an orderly, disciplined, safe, healthy, democratic, fair and civilised society; ensure the people's happy life. Improve people's living standards and ensure social security. Focus on environmental protection and effectively respond to climate change. Strengthen national defence and security; resolutely and persistently struggle to protect national independence, sovereignty, unification and territorial integrity and maintain a peaceful and stable environment for national development. Improve the efficiency of foreign affairs, proactively integrate into the world and the position and prestige of Vietnam in the international arena [18].

During socio-economic development planning, it is necessary to ensure the correct planning processes, initiative, flexibility, and creativity and to ensure sustainable development goals.



Planning Process [19]

The integration of CRPD into national and local socio-economic development planning needs to be carried out carefully. Each process of planning must ensure sustainable development goals.

Step 1: Prepare to build a plan:

The integration of CRPD implementation into the planning process, the issuance of guiding documents for the implementation of the plan, and the formulation of national and local socio-economic development plans.

Step 2: Build a plan

Integrating CRPD implementation in formulating socio-economic development plans of sectors and localities and ensuring the assessment of advantages and limitations. Thereby integrating the assurance of the rights of PwDs in sustainable development. Our state encourages actors to participate in national and local socio-economic development planning.

Step 3: Organise the implementation of the plan

Integrating CRPD implementation in formulating socio-economic development plans of sectors and localities, ensuring the identification of options, mechanisms, policies and solutions to implement the socio-economic development plan. Identify resources to ensure the realisation of the rights of PwDs in the socio-economic development of the country, sector, field and locality. Mobilise the participation of the community to ensure the implementation of CRPD in the process of socio-economic development of the locality.

Step 4: Monitor and evaluate the implementation of the plan

Integrating CRPD implementation in the formulation of socio-economic development plans of central and local governments to ensure measures to evaluate the implementation of the plan. Identify indicators to evaluate the implementation of the CRPD during socio-economic development at the central and local levels, ensuring the rights of PwDs.

3. Challenges and some solutions to integrate CRPD implementation in socio-economic development planning to ensure sustainable development goals

3.1. The challenge of integrating CRPD implementation in socio-economic development planning to ensure sustainable development goals

Firstly, there is still thinking “bite off more than one can chew” when planning for socio-economic development

The plans are egalitarian and do not distinguish the specific socio-economic development conditions of the central and local governments. Due to the diversity of the content of the socio-economic development plan, the decentralisation in the plan is the combination of decentralisation in most

related fields, i.e., economic development to education, science and technology, health care, land, and environment. Thus, the determination of decentralisation in socio-economic development planning depends a lot on the functions and tasks of the authorities in the centrally-run cities. These functions and tasks are defined in the Law on Organization of Local Government 2015 and guiding documents. However, these documents are still generic and need to identify the specific tasks of each level, so the decentralisation in socio-economic development planning is still at a modest level. This fact has led to very high “similarity” in the content of the socio-economic development plan between the centrally-run cities and the localities [20].

Secondly, the plans heavily focus on quantitative growth without paying due attention to the quality of sustainable growth

The national socio-economic development planning still heavily concentrates on quantitative indicators of growth. *In economic terms*, the average gross domestic product (GDP) growth rate in 5 years is about 6.5 - 7%. *In social terms*, the proportion of agricultural labourers out of total social labour by 2025 is about 25%. The rate of trained labourers by 2025 will be 70%, including the rate of labourers with qualified degrees and certificates, 28-30%. The unemployment rate in urban areas is less than 4%, and the multi-dimensional poverty rate decreases by 1-1.5% annually. The health insurance participation rate reaches 95% of the population. Regarding the environment, the urban population's rate of using clean and hygienic water in 2025 is 95 - 100% and 93 - 95% of the rural population [21]. However, the problem is currently posed in the policies and laws of our country and the socio-economic development plan according to the sustainable development goals of the United Nations and the CRPD. Specifically, how to integrate and solve the issues of PwDs in the socio-economic development plan, such as the economy, society and environment.

Thirdly, there needs to be a reasonable budget investment in ensuring the rights of PwDs - the most vulnerable group among the vulnerable ones

In spite of the synchronous implementation of multi-dimensional, sustainable and inclusive poverty reduction solutions, especially in ethnic minority areas, there are no basic resources to invest in disadvantaged groups such as PwDs. Standing Deputy Prime Minister Pham Binh Minh signed Decision No. 1719/QĐ-TTg approving the National target program for socio-economic development in ethnic minority and mountainous areas in the 2021 - 2030 period, with phase I ranging from 2021 to 2025. The program aims to increase the average income of ethnic minorities by more than 2 times compared to 2020, reduce the rate of poor households among ethnic minorities by over 3% each year, and strive for 50% of communes and villages to move out of the list of extremely difficult areas. The rate of 5-year-old kindergarten students attending school is over 98%, students of primary school age are over 97%, lower secondary school students are over 95%, and upper secondary school students are over 60%; People aged 15 and over can read and write Vietnamese fluently are over 90% [22].

The Ministry of Finance has issued Circular No. 15/2022/TT-BTC on regulations on the management and use of non-business funds to implement the national target program for socio-economic development in ethnic minority and mountainous areas for 2021-2030, phase I: from 2021 to 2025. Ten projects fall under the National Target Program for Socio-Economic Development in ethnic minority and mountainous areas in the 2021 period -2030, phase I: from 2021 to 2025. Specifically: Project 1: Solve the shortage of residential land, housing, production land, and domestic water; Project 2: Planning, arranging and stabilising population in necessary places. To arrange and stabilise the population in extremely difficult areas, border areas, ethnic minority households who still maintain nomadic lifestyle and who are free migrants and in other necessary places; Project 3: Developing agricultural and forestry production, developing the potentials and strengths of regions

to produce goods in the value chain; Project 4: Investing in essential infrastructure, serving production and life in ethnic minority and mountainous areas and public service units of the ethnic sector; Project 5: Developing education and training to improve the quality of human resources; Project 6: Preservation and promotion of traditional cultural values of ethnic minorities associated with tourism development; Project 7: Taking care of people's health, improving the health and stature of ethnic minorities; child malnutrition prevention; Project 8: Realising gender equality and solving urgent problems for women and children; Project 9: Investment to create livelihoods, economic development of minor and difficult ethnic groups; Project 10: Communication, propaganda and advocacy in ethnic minority and mountainous areas. Check, monitor and evaluate the implementation of the program.

Our state has issued specific preferential policies for vulnerable groups, which are ethnic minorities, through national and local socio-economic development plans and specific policies of sectors, localities and allocating resources, especially in terms of budget, to implement socio-economic development of ethnic minority groups. Our state has integrated policies for the group of PwDs into the general indicators of socio-economic development and indicators of sustainable poverty reduction. However, at present, our state still needs to prioritise resources, especially has not allocated a separate state budget for the sustainable development of this group.

Fourthly, there has yet to be a common approach to sustainable development goals in developing socio-economic development plans

It should be based on assessing the potentials and challenges of the present, the relationship between inputs and outputs with the results and social impacts of the actors in the decision-making process. Our state has enacted a number of socio-economic development policies for PwDs, such as labour, employment, and education. However, many gaps still need to be filled to ensure the rights of PwDs in sustainable development in light of CRPD.

3.2. Some solutions to integrate CRPD implementation in socio-economic development planning to ensure sustainable development goals

Firstly, raise awareness

Having an “open” mindset in selecting policy tools is necessary. It requires the full participation of policy actors through a bottom-up approach to choosing appropriate policy tools, especially tools for policy implementation [23]. It is necessary to raise the national and local visions to help the socio-economic development planning subjects grasp the comparative advantages and development trends of the times to give the right orientations of socio-economic development.

Local leaders need a systematic and open mindset to synchronise CRPD implementation into socio-economic development plans. In addition, it is necessary to raise awareness of PwDs, so they no longer feel prejudices, guilt, and low self-esteem. They know how to strive to rise in life and integrate into the general development of the community, contributing to the development and implementation of socio-economic development planning of the country, sector, field and locality.

Secondly, innovate the planning process

Implement integrated planning of sectors and fields to ensure the synchronisation and consistency between the plannings and overcome the overlap in planning, lack of synchronisation between sectoral planning and territorial planning, between central and local planning; ensure long-term vision in planning, and create space for sustainable development [24]. It is necessary to develop scenarios and options in the national, sectoral, regional and local socio-economic development planning to integrate CRPD into the planning phase.

It is necessary to anticipate unexpected situations in the socio-economic development process to come up with effective solutions to reduce shocks effectively.

It is necessary to ensure synchronous implementation of sustainable development goals in integrating CRPD implementation in national, sectoral, regional and local socio-economic development planning for PwDs.

It is necessary to strengthen resources for socio-economic development implementation and planning, especially with the appropriate budget allocation that is at least equal to some vulnerable groups, such as ethnic minorities.

Thirdly, improve the quality of human resources in planning socio-economic development

Keeping a central position in the development strategy, cultural and human development is both the goal and the driving force of the renovation process [25]. Forming a team of experts on socio-economic development planning for centrally-run cities; improving the capacity of the public cadres and civil servants in the state management of planning; forming a management team on socio-economic development planning and plans in centrally-run cities [26]. One of the typical models is the China case. China has emphasised an effective talent management strategy in its national socio-economic development plan.

China will develop more world-class strategic talents and leading figures in science and technology and innovation teams in accordance with the law of personnel development and research activities. We will also improve systems related to wages and benefits, child education, social security and tax incentives to create an internationally competitive and attractive environment for foreign scientists working in China. We will implement a more open talent policy and build an innovation research centre to attract excellent domestic and foreign personnel. We will improve the policies for foreign highly qualified personnel and experts staying or residing in China to work, study and exchange, improve the permanent residence system for foreigners in China, and explore establishing a skilled migration system [27].

Fourthly, mobilise the participation of the parties

In the process of planning the socio-economic development of the country, sectors, fields and localities, it is necessary to foster the participation of parties such as the Party, State, Fatherland Front and political organisations - society, individuals, organisations, experts, scientists and the Vietnam Federation of PwDs, and the Associations of PwDs of localities throughout the country. Integration of CRPD implementation in socio-economic development planning to ensure sustainable development goals should be enhanced by the control of competent state agencies, individuals, agencies and organisations of and for the PwDs in planning socio-economic development of the country, sector, field and locality.

Conclusion

In the past, competent state agencies have tried to integrate CRPD implementation in socio-economic development planning to ensure sustainable development goals to guarantee national and country interests. Based on the basic principles of the Charter of the United Nations, international treaties, international law and national law, our state has made efforts to develop socio-economic development plans for the country, sectors and localities to ensure the rights of PwDs in terms of sustainable development and leave no one behind./.

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The welfare of persons with disabilities: Scope of international and Indian legal framework

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1. Introduction

Disabilities make certain activities or interactions with the world around them more difficult (either socially or economically). According to WHO, over 1 billion people have some form of disability. 80% of PwDs live in developing countries [1]. Disability is considered one of the major socio-economic problems around the world. Therefore, countries worldwide have developed several measures, including legislative frameworks, for ensuring the welfare of PwDs. At the international level, different human rights instruments included provisions in favour of PwDs and subsequently adopted specific human rights instruments for the welfare of PwDs.

In India, about 26.8 million persons are living with some form of disability which accounts for about 2.21 % of the country's total population. Of these 26.8 million PwDs, 69 % of persons live in rural areas, and the remaining 31% are settled in urban areas. Like in any other country, in India, PwDs were faced with different forms of discrimination and maltreatment. To ameliorate the conditions of PwDs, the Indian Government has developed several measures, including adopting specific legislation. Though there are specific and general human rights frameworks at the international and domestic levels, the realisation of the appropriate welfare of PwDs is still a mirage.

2. Objectives

This paper aims to examine the existing international human rights framework and Indian laws for the welfare of PwDs and provide possible suggestions for its improvement. The following are the specific objectives:

- To identify the concept and meaning of persons with disability at the international and national framework.
- To examine the scope of the international legal framework available for the protection and welfare of PwDs.
- To evaluate the scope of the Indian national framework available for the protection and welfare of PwDs.
- To provide pragmatic suggestions for improving the existing framework, thereby ensuring an appropriate framework for the welfare of PwDs.

3. Persons with Disability: Concept and Meaning

In every country, a large number of people live with some form of disability, and there are different legislations also for the welfare of PwDs, yet there is no comprehensive and uniform definition for the term PwDs. A uniform definition is absent due to prejudices against persons with certain limitations and conditions. Therefore each society will consider persons with such restrictions or conditions in accordance with their stereotypes and prejudices. The popular notion of the term disability is that a “condition that makes it more difficult for an individual to accomplish certain tasks or interact with the world around them (socially or materially) effectively is referred to as a disability [2]”. In the words of WHO, “Disability is any restriction or lack (resulting from an impairment) of

ability to perform an activity in the manner or within the range considered normal for a human being [3]”.

The British Council defines disability as “the disadvantage or restriction of activity caused by a society which takes little or no account of people who have impairments and thus excludes them from mainstream activities” [4]. The Centre for Disease Control and Prevention defines disability as “any condition of the body or mind (impairment) that makes it more difficult for the person with the condition to do certain activities (activity limitation) and interact with the world around them (participation restrictions)” [5]. Such a disability affects capacities such as vision; movement; thinking; memory; learning; communication; hearing; physical & mental health; etc. A PwDs can be a person with limitations or conditions relating to any of these or multiple capacities.

The CRPD, 2006 provides one of the widely accepted definitions for PwDs. Article 1 of the Convention states, “PwDs 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”. In India, the Rights of PwDs Act, 2016 under Section 2 (s) defines a person with a disability, as “a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others”. Thus, the Indian legal framework also defines the term PwDs in tune with the international human rights instrument. A review of the existing definitions for PwDs shows that the disability can be three-dimensional: physical impairment, movement/activity limitations, and participation restrictions. Thus, PwDs can be defined as a person with physical, mental or participatory impairments.

4. PwDs and International Human Rights Law: Historical Development

PwDs have long been discriminated against, neglected, and maltreated. A person with disabilities can be discriminated against in many ways, such as limiting their educational opportunities or segregating them from others due to physical and social barriers. In countries all over the world, the PwDs were faced with several discrimination, neglect and maltreatment. However, the global movements toward ensuring the welfare of PwDs gained momentum only in the 1970s. One of the Firstly measures at the international level to deal with the issues of PwDs was the adoption of the Declaration on the Rights of the Mentally Retarded Persons, 1971. It was developed by UN General Assembly, which declared that “mentally retarded persons have the same rights as other human beings” [6]. In 1975, UN General Assembly proclaimed the Declaration on the Rights of PwDs. This Declaration reiterates that “PwDs are entitled to have all human rights without discrimination”. It also emphasised that adequate measures must be taken to assist PwDs, “to develop their abilities in the most varied fields of activities and of promoting their integration as far as possible in normal life” [7]. This Declaration is considered an important step in establishing a human rights framework for the betterment of PwDs as it encouraged the adoption of various resolutions for the welfare of PwDs by the UN.

The UN realised the need to create awareness about the issues of PwDs and designated 1981 as the International Year of PwDs (IYDP) [8]. As part of this, the international community was requested to create an appropriate plan of action at international, regional and national levels for rehabilitation, equalising opportunities and preventing disabilities. As an outcome of IYDP, the UN developed a World Programme of Action Concerning PwDs in 1982 [9]. The objective of this document was “to promote effective measures for prevention of disability, rehabilitation and the realisation of the goals of full participation of PwDs in social life and development, and of equality” [10]. Hence, this Programme of Action suggested several measures for the welfare of PwDs and mandated the countries to develop such measures in their national jurisdictions. In order to enable the countries to

incorporate appropriate measures in their domestic frameworks, the UN declared 1982-1993 as the United Nations Decade of PwDs [11]. During this decade international community has taken several measures to develop an international human rights framework for the welfare of PwDs at international and domestic levels. The UN General Assembly attempted to create a binding international treaty to protect PwDs in 1987. However, it was a failure.

In 1991, the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care was adopted by UN General Assembly. This Principle emphasised that “these Principles shall be applied without discrimination of any kind such as on the grounds of disability, race, colour, sex, language, religion, political or other opinions, national, ethnic or social origin, legal or social status, age, property or birth” [12]. It also obliged the state parties to implement the Principles with appropriate legislative, judicial, administrative, educational and other measures [13]. In 1992, the UN General Assembly, through its resolution, declared the observance of the International Day of PwDs on December 3 of every year [14]. The purpose of such an observance is to increase awareness and support for the dignity, rights, and well-being of PwDs.

In 1993, at the end of the United Nations Decade of PwDs, the UN General Assembly formulated Standard Rules on the Equalization of Opportunities for PwDs. These rules reaffirmed the objective of the World Programme of Action and highlighted the need for developing measures for the prevention of disability, rehabilitation and equalisation of opportunities established in the World Programme of Action. In 1994, General Comment No. 5 of the International Covenant on Social, Economic and Cultural Rights, 1966, interpreted several rights of the Covenant and thereby added PwDs within its scope [15]. In 2001, UN General Assembly created an Ad Hoc Committee to develop a comprehensive Convention protecting PwDs. In 2006, the Committee adopted a draft Convention, and the said draft was adopted by UN General Assembly in 2006 as the CRPD along with an Optional Protocol.

In 2015, the world community, under the leadership of the UN, created the Sustainable Development Goals (SDG) 2030 Agenda. These five goals and seven targets directly refer to the issues relating to PwDs. Along with these developments at the international level, several other agencies also developed certain measures for the welfare and protection of PwDs. Some of the major instruments include: the Sandburg Declaration on Actions and Strategies for Education, Prevention and Integration, adopted by the UNESCO World Conference on Actions and Strategies for Education, Prevention and Integration, 1981; ILO Convention concerning Vocational Rehabilitation and Employment (PwDs), 1983; Convention on the Rights of the Child, 1989 [16]; Tallinn Guidelines for Action on Human Resources Development in the Field of Disability, 1990; Salamanca Statement and Framework for Action on Special Needs Education, adopted by the UNESCO World Conference on Special Needs Education: Access and Quality, 1994; ILO Recommendation concerning Vocational Rehabilitation and Employment (PwDs), 1995; The Sendai Framework for Disaster Risk Reduction 2015-2030; The Charter on Inclusion of PwDs in Humanitarian Action, 2016; etc.

At the regional level, several human rights instruments also included explicit provisions for the welfare of PwDs. It includes the European Social Charter, 1961 [17]; African Charter of Human and People's Rights, 1981 [18]; Protocol of San Salvador (Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights), 1988 [19]; the African Charter on the Rights and Welfare of the Child, 1990 [20]; Inter-American Convention on the Elimination of All Forms of Discrimination against PwDs, 1999; etc. Thus it can be seen that at the international level, a well-established human rights framework was developed for the protection and welfare of PwDs.

5. CRPD, 2006 and the Optional Protocol

The most important binding international human rights instrument which specifically deals with the welfare of PwDs is the CRPD, 2006. The purpose of this convention is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all PwDs, and to promote respect for their inherent dignity” [21]. CRPD consists of 50 articles, wherein Articles 5-30 provide different substantive rights, and the remaining provisions deal with enforcing and monitoring such rights. The CRPD declares several principles that should be considered while taking measures for the welfare of PwDs. They are: (a) Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons; (b) Non-discrimination; (c) Full and effective participation and inclusion in society; (d) Respect for difference and acceptance of PwDs as part of human diversity and humanity; (e) Equality of opportunity; (f) Accessibility; (g) Equality between men and women; (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities [22].

The convention does not create any new specific rights for PwDs rather, it clarifies that PwDs are entitled to all human rights without any discrimination, and it is the state's duty to ensure the same. So also, the convention expands the existing human rights in such a manner as to include PwDs in its scope. The CRPD mandates that the States Parties establish focal points in their domestic system to coordinate the activities of implementation of the provisions of this convention. There is a 12-member committee to supervise and enforce the rights guaranteed under this convention. The State parties are supposed to submit reports about the level of implementation every 4 years.

Along with this Convention, an Optional Protocol was also adopted. This Protocol recognises the competence of the Committee on the Rights of PwDs to receive and consider individual communications regarding the violations of rights guaranteed under the convention. Being one of the most important binding human rights instruments, this instrument has received ratification by 185 states till April 2022. The countries that belong to monism consider CRPD as a part of the law of the land, whereas in dualist countries, the CRPD has a persuasive value. However, in tune with CRPD, several countries have adopted specific legislation and modified their existing legislation.

6. The welfare of PwDs: Indian Legal Framework

India, being one of the largest democratic countries committed to the protection and promotion of human rights, is a party to almost all major international human rights instruments. Like many other countries having a written Constitution, in India, also Constitution of India is the supreme law of the land. The Indian Constitution, though not explicitly referring to PwDs, all the provisions equally apply to PwDs. Some of the important rights are: Right to equality before the law and equal protection to all (including PwDs); the right against discrimination (on the ground of disability); the right to equality for public employment; fundamental freedoms to all including PwDs; right to life and personal liberty; etc. Thus it can be seen that all the fundamental rights guaranteed in the Indian Constitution equally apply to PwDs and the state's duty to protect those rights.

The observance of the International Year for the PwDs and the UN Decade for PwDs significantly impacted India. As a result, several programmes were organised throughout the country to raise awareness about the welfare of PwDs and their protection. The Firstly specific legislation dealing with the issue of PwDs was the Mental Health Act of 1987. This act contained provisions for the guardianship of PwDs and not directly with the rights of such persons. Under the Indian legal framework, various legislations contain provisions dealing with the issues relating to PwDs. They are: Indian Penal Code, 1860; Employees Compensation Act, 1923; Employees State Insurance Act,

1948; The Apprentices Act, 1961; The Income Tax Act, 1961; Criminal Procedure Code, 1973; The Motor Vehicles Act, 1988; etc. Among the various legislations, the Acts such as the Rehabilitation Council of India Act, 1992; PwDs (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999; and the Mental Health Act, 2017 are the specific legislations deals with the welfare of PwDs.

Rehabilitation Council of India Act, 1992: This Act was enacted to constitute the Rehabilitation Council of India to regulate and monitor the training of rehabilitation professionals and personnel, promote research in rehabilitation and special education, and the maintenance of a Central Rehabilitation Register. The major functions of this Council include the recognition of qualifications granted by the University in India for rehabilitation professionals [23]; and the recognition of qualifications by Institutions outside India [24]; etc.

PwDs (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995: This Act was enacted to implement the provisions of the Proclamation on the Full Participation and Equality of PwDs in the Asian and Pacific Region developed by the Economic and Social Commission for Asia and Pacific in 1992. This act reaffirms the state's responsibility for ensuring the welfare of the PwDs and ensuring a barrier-free environment and other environments for the welfare of PwDs. The act contains provisions for preventing and early detection of disabilities; education; employment; affirmative action; non-discrimination; research and development of manpower; social security; and grievance redressal. The scope of these provisions is as follows:

a) *Prevention and Early Detection of Disabilities:* Under this Chapter, the provisions provide that the appropriate Governments and the local authorities, to prevent the occurrence of disabilities, shall:

- Conduct surveys, investigations, and research shall be conducted to ascertain the cause of the occurrence of disabilities.
- To promote measures to prevent disabilities. Screen all the children at least once a year to identify “at-risk” cases;
- To provide facilities for training to the staff at the primary health centres
- To sponsor or cause to be sponsored awareness campaigns
- To take measures for pre-natal, perinatal and post-natal care of mother and child
- To educate the public
- To create awareness amongst the masses [25]

b) *Education:* Under this Chapter, The appropriate Governments and the local authorities shall:

- Ensure that every child with a disability has access to free education
- To promote the integration of students with disabilities into the normal schools
- To promote the setting up of special schools
- To equip special schools for children with disabilities with vocational training facilities [26].
- To make schemes and programmes for non-formal education, etc. [27]
- To initiate research for designing and developing new assistive devices, teaching aids, etc. [28]
- To set up teachers’ training institutions to develop trained manpower for schools for children with disabilities [29].

- To prepare a comprehensive education scheme providing transport facilities, supply of books, etc. [30]
- Educational institutions should provide amanuensis to students with visual handicaps [31]

c) *Employment*: In this Chapter, the provisions state that the appropriate governments shall:

- Identify posts which can be reserved for PwDs [32]
- To reserve posts [33]
- To establish Special Employment Exchange [34]
- To formulate schemes for ensuring the employment of PwDs [35]

d) *Affirmative Action*: The provisions state that the appropriate Governments shall, by notification, make schemes:

- To provide aids and appliances to PwDs [36].
- For preferential allotment of land for certain purposes [37]

e) *Non-Discrimination*: Under this Chapter, the provisions provide for:

- Non-discrimination in transport [38]
- Non-discrimination on the road [39]
- Non-discrimination in the built environment [40]
- Non-discrimination in Government employment [41]

f) *Research and Manpower Development*: The provision states that the appropriate Governments and local authorities shall promote and sponsor research in areas such as prevention of disability; rehabilitation including community-based rehabilitation; development of assistive devices including their psycho-social aspects; job identification; and site modifications in offices and factories.

g) *Social Security*: The Act provides provisions for:

- Financial assistance to the non-government organisation for rehabilitation of PwDs [42].
- Insurance coverage for the benefit of government employees with disabilities [43]
- Unemployment allowance to PwDs [44]

h) *Grievance Redressal*: In case of any violations of the rights guaranteed under this act, the aggrieved party can approach:

- Commissioner for PwDs in the States [45]
- Chief Commissioner for PwDs in the Centre [46]

The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, was enacted to constitute a National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities. The objects of this Trust are:

- To enable and empower persons with disability to live as independently and as fully as possible within and as close to the community to which they belong;
- To strengthen facilities to provide support to persons with disability to live within their own families;
- To extend support to registered organisations to provide need-based services during the period of crisis in the family of persons with disability;
- To deal with problems of persons with disability who do not have family support;

- To promote measures for the care and protection of persons with disability in the event of the death of their parents or guardians;
- To evolve the procedure for the appointment of guardians and trustees for persons with a disability requiring such protection;
- To facilitate the realisation of equal opportunities, protection of rights and full participation of persons with disability; and
- To do other activities incidental to the objects described above [47].

The general superintendence, direction and management of the affairs and business of the Trust has vested in a Board constituted under the Act [48]. The Board can constitute local-level committees for its effective functioning [49].

Mental Health Act, 2017: The major objective of this act is to provide mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons while delivering mental healthcare and services [50]. The act contains provisions dealing with the determination of mental illness [51]; advance directive [52]; appointment and revocation of nominated representative [53]; right to access mental health care [54]; right to community living [55]; right to protection from cruel, inhuman and degrading treatment [56]; right to equality and non-discrimination [57]; right to information [58]; right to confidentiality [59]; right to access medical records [60]; right to personal contacts and communication [61]; right to legal aid [62]; right to make complaints about deficiencies in the provision of services [63]. The act imposes certain duties, such as promoting mental health and preventive programmes [64], creating awareness about mental health and illness and reducing the stigma associated with mental illness [65]. The act obligates the appropriate governments to establish Central Mental Health Authority, State Mental Health Authority, and Mental Health Review Boards [66] to deal with various issues related to persons with mental illness. Further, the act provides comprehensive provisions to regulate the registration of mental health establishments [67]; admission, treatment and discharge of persons with mental illness [68] and the responsibilities of other agencies like Police, Magistrates, etc. [69] The Act also contains provisions relating to offences and penalties [70] to deal with the violations and non-observance of different provisions of the act.

Other Measures in India

In India, a specific department, i.e. **Department of Empowerment of PwDs (Divyangjan) (DEPwDs)**, is working under the Ministry of Social Justice & Empowerment for the welfare of PwDs. The Government of India runs 8 National Institutes (NIs) dealing with different types of disabilities; 20 Composite Regional Centers (CRCs) for rehabilitation services. The Government of India also established a National Handicapped Finance & Development Corporation (NHFD) to provide loans at concession interest rates to PwDs for self-employment. The different State governments have also established several rehabilitation centres and other institutions for the welfare of PwDs. One of the important Schemes developed by the Government of India is Deendayal Disabled Rehabilitation Scheme [71]. The major objective of this Scheme is to provide grants to non-governmental organisations for projects involving the rehabilitation of PwDs, and related activities.

The Central Government also formulated a National Policy for PwDs in 2006 to deal with prevention, rehabilitation and other welfare activities related to PwDs. The policy recognises that PwDs are a valuable human resource for the country. It seeks to create an environment that provides equal opportunities, protection of their rights and full participation in society. The focus of the policy shall be on the following: Prevention of Disabilities; Rehabilitation Measures; Women with disabilities;

Children with disabilities; Barrier-free environment for PwDs; Issue of Disability Certificates; Social Security; Promotion of Non-Governmental Organizations; Collection of regular information on PwDs; Research; Sports, Recreation and Cultural life; Education of PwDs; and Human Resource Development [72].

Recently, the Department of Empowerment of PwDs introduced the Unique Disability ID. This project aims to “build a holistic end-to-end integrated system for Issuance of Universal ID & Disability Certificates for Person with Disabilities with their identification and disability details” [73]. “The project aims to encourage transparency, efficiency and ease of delivering the government benefits to the person with disabilities, but also ensure uniformity. The project will also help streamline the tracking of the physical and financial progress of beneficiary at all levels of the implementation hierarchy - from village level, block level, District level, State level and National level” [74].

Conclusion & Suggestions

Persons with disability are persons with all human rights which are available to other persons. However, disability restricts the ability to enjoy those rights and participate in society on an equal footing due to discrimination and other barriers. Therefore, countries have formulated different legal instruments and measures for enabling PwDs to enjoy different human rights at the international and domestic levels. The CRPD, 2006 is the leading law at the international level, which influenced several countries to develop domestic laws for the protection and welfare of PwDs. In India, the Government of India and other States have developed several measures and implemented the provisions of different legislations, including the PwDs (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, for the welfare of PwDs. A review of different kinds of literature analysing the scope and implementation of international and Indian frameworks reveals a comprehensive framework for the protection and welfare of PwDs. However, there needs to be more clarity regarding the proper implementation and reaching out benefits to needy persons. Hence, it is necessary that the countries should give prime consideration to the issues of PwDs and ensure that the different benefits envisaged in different schemes are reaching out to the concerned persons. Some of the suggestions for the better implementation of the provisions and schemes relating to the welfare of PwDs are: to sensitise the PwDs and their guardians about the provisions and schemes, to train the guardians of PwDs, and to conduct the periodic review with the help of NGOs and civil society.

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[42] S.66

[43] S.67

[44] S.68

[45] S.62

[46] S.59

[47] S.10

[48] S.3

[49] S.13

[50] This act replaces the Mental Health Act, 1987 (S. 126 of Mental Health Act, 2017)

[51] S.3

[52] S.4

[53] S.14

[54] S.18

[55] S.19

[56] S.20

[57] S.21

[58] S.22

[59] S.23

[60] S.25

[61] S.26

[62] S.27

[63] S.28

[64] S.29

[65] S.30

[66] Chapter XI

[67] Chapter X

[68] Chapter XII

[69] Chapter XIII

[70] Chapter XV

[71] It was originally introduced in 2003 as Scheme to Promote Voluntary Action for PwDs.

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Developing a sustainable livelihood model for persons with disabilities – a typical case of organisation for the support and education of disadvantaged children of Vietnam - Ho Chi Minh office (OSEDV VN-VP2)

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1. Introduction

CRPD was adopted by the United Nations General Assembly on March 13 2007, which “Emphasises the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development; Recognises also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person.” This humane convention emphasises the rights of PwDs, including the right to inclusion and respect for diversity. [1] With a view to stressing the ability to integrate into life, including the ability to work, gain a living by work freely chosen, and eradicate poverty, Article 27 of the Convention states that the State Parties of the Convention must create conditions for PwDs to access general technical and vocational guidance programs, placement services, vocational and continuing training; Promote employment opportunities and career advancement for PwDs in the labour market, as well as support for job search, retention and return to work.

In Vietnam, in addition to the Law on PwDs stipulating the rights of PwDs, on November 1, 2019, the Secretariat issued Directive No. 39-CT/TW on strengthening the party's leadership in works for PwDs, which highlights the effective implementation of programs to assist PwDs; encouraging PwDs who have the ability to study and work to overcome difficulties, strive for independent living, integrate into society, contribute to socio-economic development and help other PwDs; Developing standards of essential infrastructure suitable for the lives of PwDs, and creating equal opportunities for them.

According to statistics, by the beginning of 2018, there were about 6.2 million PwDs aged 5 and over nationwide, accounting for 6.5% of the population [2]. The fraction of PwDs participating in the labour market is quite small. Support PwDs to develop their abilities to meet their own needs; create conditions for PwDs to rise to participate equally in socio-economic activities, thereby contributing to the community and social development.

PwDs are seen as a vulnerable group. Disability and social prejudices are, in some cases, barriers for PwDs to exercise their human rights, integrate, actively have stable jobs, and earn income. One of the proper methods to create a livelihood for PwDs is to train and practice music so that PwDs can perform to generate income for themselves. The field of art music is appropriate for PwDs because it does not require strength and mobility [3]. Organisation for the Support and Education of Disadvantaged Children of Vietnam – Office 2 in Ho Chi Minh - directly cares for PwDs (visual disabilities, physical disabilities) and teaches them music (basic music theory, ethnic musical instruments, and modern musical instruments). From 2016 until now, the performing arts and music model has become more sustainable and replicated. Generations of students have been trained and graduated from defeating their fate and supporting their peers to integrate into life.

2. Content

2.1. *The Party's viewpoint and the state's law and policy on PwDs*

In addition to the Directive No. 39-CT/TW of the Secretariat on strengthening the party's leadership in the work of PwDs, there is also the Prime Minister's Decision 1190/QĐ-TTg on approving the assistance program for PwDs for the period 2021 - 2030. Both have a common goal of promoting the implementation of the United Nations CRPD and the Law on PwDs to improve the quality of life of PwDs, create conditions for PwDs to participate equally in social activities, build a barrier-free environment that ensures the legal rights of PwDs and supports them to reach their full potential". [4] Furthermore, there is a range of the state's policies to support PwDs, some of which are: (1) *Assistance in the field of justice*, legal aid is one of the preeminent policies in assisting in the field of justice for PwDs. The right to legal aid for PwDs has been recognised since the Law on Legal Aid 2006 (which provides for helpless PwDs to receive legal aid). It continues to be inherited in Legal Aid Law 2017 (which stipulates that people with financial difficulties are entitled to legal aid). According to Decree No. 144/2017/ND-CP dated December 15, 2017, detailing a number of articles of the Law on Legal aid, the financial difficulties of legal aid beneficiaries mean that they come from near-poor households or are receiving monthly social allowances as prescribed by law. Thus, PwDs who belong to near-poor households or receive monthly social allowances are entitled to legal aid; (2) *Medical assistance*: The Law on PwDs 2010 regulates health care for PwDs. Accordingly, Article 21 to Article 26 of the Law on PwDs stipulate preferences in health care for PwDs. The residential Commune-level health infirmary is responsible for primary health care for PwDs. They will be provided with the following services by the commune-level health stations: a) To be propagated, educated and disseminated general knowledge about health care, disability prevention and reduction; b) To be instructed on methods of disease prevention, self-care and functional rehabilitation; c) To be created records for health monitoring and management; d) To receive medical examination and treatment in accordance with the scope of expertise of the commune-level health station. (3) *Social allowance*: PwDs are entitled to monthly social allowances constituting: a) Persons with profound disabilities (except for Persons with profound disabilities who are helpless and unable to take care of themselves who are admitted to foster care at social protection establishments); b) People with severe disabilities. PwDs receiving monthly social allowances are supported with funeral expenses upon death. (4) *Educational assistance*: On December 31, 2013, the Ministry of Education and Training, the Ministry of Labor, War Invalids and Social Affairs, and the Ministry of Finance issued joint circular No. 42/2013/TTLT-BGDĐT-MOLISA-BTC regulating education policies for PwDs. The Circular prescribes policies on education for PwDs, including priority admission and enrollment; exemption or reduction of a number of subjects in the educational program; assessment of educational outcomes; tuition fee policy; policies on scholarships and support for means and learning materials that are applicable to PwDs learning in educational institutions for PwDs and centres supporting the development of inclusive education (hereinafter collectively referred to as educational institutions), other related organisations and individuals. (5) *Support for vocational education, job creation and livelihood support*: Policies to support vocational training and employment are implemented universally, ensuring that all PwDs are supported. Vietnam has also ratified the CRPD and the International Labor Organization's (ILO) Convention No. 159 on occupational and employment re-adaptation for PwDs. The 2006 Law on Vocational Training has devoted the entire Chapter VII to regulating vocational training for PwDs, with the goal of helping qualified subjects to practice occupations in accordance with their working capacity to create jobs or find jobs on their own to stabilise their lives. At the same time, the state also affirms and provides financial support and other preferential policies for vocational training institutions for PwDs in order to foster vocational training for PwDs. (6) *Assistance in*

accessing construction works: The Ministry of Construction has issued QCVN10:2014/BXD on “Building works to ensure accessibility for PwDs”. This regulation prescribes technical requirements that must be complied with when building new or renovating construction works to guarantee accessibility for PwDs, consisting of: (i) apartment buildings; (ii) public works including: offices of State agencies; medical facility; educational and vocational institutions; cultural, physical training and sports works; hotel, commercial and service works; (iii) railway stations, piers, bus stations, roads, sidewalks, pedestrian tunnels, overpasses, other technical infrastructure and urban facilities (funeral houses, cemeteries, public toilets), bus stops, automatic teller machines, public internet access points, etc.). (7). *Assistance in accessing and participating in traffic*: PwDs are supported to access and participate in traffic specified in the Law on PwDs and Circular No. 39/2012/TT-BGTVT guiding the implementation of national technical standards of transport infrastructure, support tools and priority policies for PwDs to participate in public transport [5] .

2.2. The model of creating livelihoods for PwDs through training and music performance at the Organization for the Support and Education of Disadvantaged Children of Vietnam, Ho Chi Minh office (OSEDVN -VP2)

2.2.1. About the Organization for the Support and Education of Disadvantaged Children of Vietnam, Ho Chi Minh office

Organisation for the Support and Education of Disadvantaged Children of Vietnam – Office 2, located in Ho Chi Minh City, was established under Decision No. 03/QD9-GDTE dated 24/01/1999, directed by Mr. Nguyen Van Nghia. OSEDVN - VP2 determines its vision of building a community that loves, respects differences, and serves everyone, especially children with disabilities, poor and abandoned children, and its mission of awakening and building *compassion* in individuals and communities to help individuals and communities; with the following objectives: Raising and improving the cultural level, creating opportunities to access and create jobs for PwDs. Forming and developing a support and education system for disadvantaged children in localities, especially in remote areas.

Activities of OSEDVN - VP2: Directly raising and teaching music (basic music theory, ethnic musical instruments, modern musical instruments) for PwDs (visually impaired, mobility impaired); Community education: universalising education for poor students (from 1st grade to 12th grade), teaching English, Vovinam martial arts and computer skills, etc.; organising free medical examination and treatment, and distributing free medicines at the central office; Giving gifts to poor people and disadvantaged children.

OSEDVN VP2 Disability Orchestra, established in 2006, has participated in exchanges and performances of ethnic musical instruments for students, associations, and organisations. The images of children with disabilities performing music and musical instruments inspire the will to live and educate the spirit of “Beyond Yourself” for children in general and students in particular while preserving and promoting the traditional, but no less modern, cultural and artistic identity.

2.2.2. Music training and performance model of Organization for the Support and Education of Disadvantaged Children of Vietnam, Ho Chi Minh office

Training model to create livelihoods for PwDs at **OSEDVN – VP2**: (1) Identify key musical instruments in the orchestra; (2) Human resources and determine the perceptive ability of each member; (3) Training process; (4) Performance cooperation activities;

(1) Identify key instruments in an orchestra

An orchestra or musical group/musical team is a group of people who work together to perform musical acts. The goal of OSEDVN VP2 is to be both traditional and modern, so the orchestra has selected instruments in 2 performance styles to suit each environment and each situation and serve

the audience's needs. In a performing orchestra, there are usually 3 basic sets: percussion, wind, and strings [6]. Based on the goals and cultural characteristics of the Southern people, the structure of a traditional orchestra includes the following basic instruments [7] :

Table 1: *Structure of the Orchestra of Organization for the Support and Education of Disadvantaged Children of Vietnam, Ho Chi Minh office*

The set	Modern Orchestra	Traditional Orchestra
Percussion	Organs, drums, drums	Rock lute, Trung, mu, beat, money-making, song loan, all kinds of drums
String set	Lead guitar, accordion guitar - bass, violin	Three hexagons, zither, zither, dan bau
Gas set	Flute (Flute), pepper (Piccolo), trumpet	Flute, pepper, trumpet
Main singer	Modern songs	Traditional singing tunes

Determining the necessary positions in the orchestra is very important to invest in purchasing sound equipment, musical instruments and human resources to play the above instruments.

(2) Human resources and determining the perceptive ability of each member

On the basis of the key instruments, it requires at least 5 members to perform, harmonise and arrange an orchestra performance. Moreover, due to the requirement of mobility in performance, each member must be able to use both traditional and modern instruments, so each member will practice in such a way that they can use at least 2 or more instruments. Experienced members can use 3 or even 4, or 5 instruments.

The demand for multiple musical instruments requires identifying the members' musical abilities. Giftedness is a collection of innate qualities, characteristics and specific properties that serve as an innate premise for competence [8].

The ability to perceive and suit the music of PwDs is classified on the following criteria:

Like listening to music: The success of a job depends greatly on the love for the nature of the job.

Have a good pair of hands: The brain of people with musical aptitude is often delicate, skillfully controlling the body's activities, especially the hands. Thereby, they use their fingers flexibly and skillfully to do normal work, thus, learning instruments will also be quick.

Have a good acoustic memory: individuals can repeat a musical melody with precision in pitch and duration. Or be able to retype the same rhythm, despite its complicatedness. The process of practising musical instruments requires students to have a high memory ability to harmonise with other members of the orchestra.

Perceive the Instrument and its Sound: Each individual has stimuli for different types of sounds. Therefore, it is necessary for PwDs to feel the shape, nature and sound of each instrument so that they can choose appropriate instruments.

Suitable for health and specific disability characteristics: PwDs have many different forms, so depending on their health and disability characteristics, it is necessary to choose appropriate musical instruments.

Persistence: Practicing music requires learners, in general, and PwDs, in particular, to have a certain persistence and not be discouraged by difficulties in the practice process [9].

Training process

The process of practising music is a difficult process for ordinary people and even more difficult for PwDs. The process of practising music for PwDs through the following basic processes:

Stage 1: Duration from 4-8 weeks. Content: Mastering basic musical theory. Accordingly, music usually has four characteristics: Pitch (high-low); Longitude (short-length); intensity (slightly strong); timbre (turbidity, light and dark). And get used to the sounds emitted by the instruments.

Stage 2: Duration: 4-8 weeks. Content: Listening, reading, taking notes and memorising simple music. Practising on instruments by hands: right hand, left hand, both hands; by songs: each paragraph, then the whole song; by the harmonisation process: each instrument harmonises in a song under the teacher's guidance.

Stage 3: Duration: 4-8 weeks. Content: Practice difficult exercises requiring high practice and mastery.

Stage 4: Duration: 3-5 weeks. Content: Listen to any piece of music that can detect each type of instrument sound and follow it without the help of a teacher.

The musical practice of PwDs encounters the following difficulties:

- The limitations of the learning process and awareness require teachers to be persistent
- The practice space is cramped: due to the characteristics of sound emission in practising musical instruments, the practice needs a separate space. However, the infrastructure could be better.
- Impatience of students and teachers: The process of repetitive practice is boring, so if students and teachers are not persistent, they are unable to succeed.
- Teachers must explain the meaning and timbre of the song so that students can feel and perform the repertoire vividly.
- Teachers are required to be people with heart and sympathetic for PwDs

(3) Performance cooperation activities

At the end of the arduous training process with musical instruments, when the artists have mastered each note, it is necessary to organise performances for PwDs to assert themselves in society.

Initially, these activities were challenging due to fear and discrimination against PwDs. However, after several successful performances, especially after large programs, the orchestra's performance activities received much attention and are increasingly sustainable.

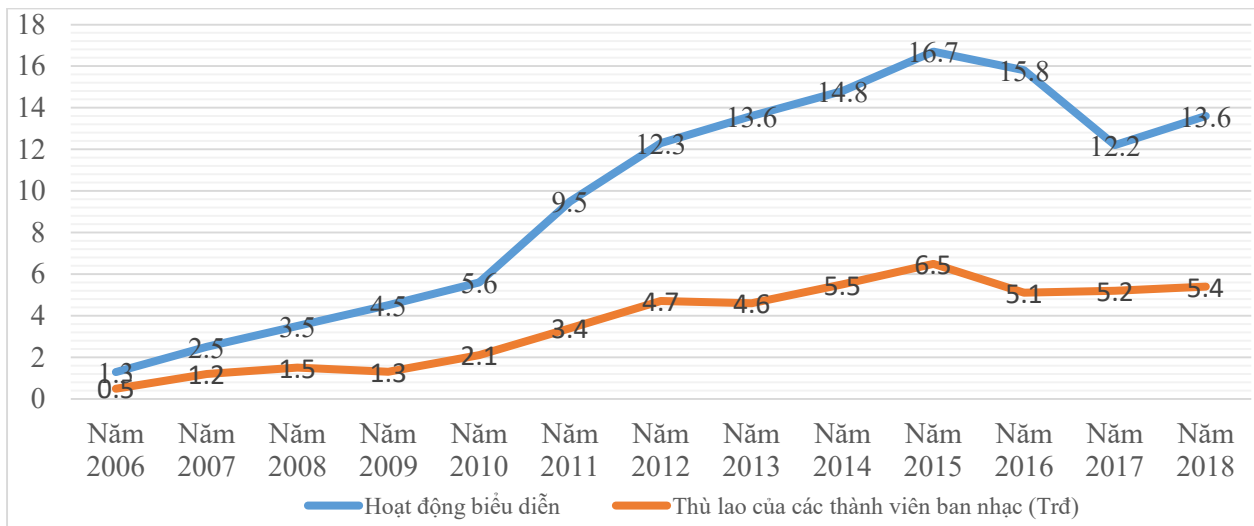


Chart 1: Average number of performances and monthly income of the orchestra

(Source: Summary report of the Organization for the Support and Education of Disadvantaged Children of Vietnam, Ho Chi Minh Office) [10]

According to the analysis data, the number of performances by the orchestra over the past 10 years has been stable. In addition to the invited art programs, the orchestra has daily performance venues such as tea shops and cafes 3 times a week. The performing activities of the artists also bring them joy, respect and life value. By dint of that, they have asserted themselves, earned jobs and generate incomes for themselves and their families. Many PwDs in the orchestra have saved money to support their families. Since its establishment, 80 children have completed their courses, have stable jobs, and are especially firmly integrated into life.

3. Feasibility, sustainability and replicability of the model

Feasibility: Theoretical scientific evidence in the world in general and Vietnam in particular, as well as social practice, have proved that art forms, including music, are suitable for physical and personality characteristics of PwDs in general and children in particular [11], [12], [13] [14], [15], [16].

Sustainability: For each individual, having a job goes hand in hand with earning an income, directly affecting and governing an individual's entire life. PwDs are inherently stigmatised not only because of their disability but also because they do not have a job and are considered dependent workers. After the music training at the Center for PwDs, they can participate in various cultural activities in different locations. The reality has proven that their jobs are relatively stable and provide a decent social income.

Ability to replicate and expand the model: The model fits a small group of 10-20 members. The cost of the model is not too expensive. The purchase of instruments can be socialised and contributed by the organisation and the family of the person with a disability. The teacher's guidance is required for a certain time in the model. However, with modern technology, PwDs can self-study through the Internet. The key factor is self-discipline, willpower, and perseverance of PwDs.

4. Suggest some solutions to improve the effectiveness of supporting sustainable livelihoods for PwDs

- To create sustainable livelihoods for PwDs, it is suggested to socialise the investment in physical facilities and practice spaces. In addition, the support from organisations to connect PwDs and performing places is indispensable.

- For PwDs to learn music and earn money, setting up a separate space for and supporting them to practice is essential. This can be achieved through support policies of the state and competent agencies.

- Forming a linking model with support from cultural and art schools to provide more enthusiastic and sympathetic teaching staff for PwDs.

- The Employment Department introduces organisations to order contracts with the Center for Livelihood Support for PwDs. Besides, the employment service centres of the Central Committee of the Ho Chi Minh Communist Youth Union and other relevant organisations and units, such as the Central Youth Union and the Vietnam Association of the Blind, should also develop detailed plans to organise employment support for PwDs.

- Vocational training centres need to promote further their role in supporting vocational training for PwDs. In addition, the authorities should establish a database on PwDs. Analyse and assess the needs of vocational training and employment of each target group, thereby developing appropriate and effective support policies.

Conclusion

The equality and social integration of PwDs are manifested by their participation in all social life activities. PwDs should be motivated to engage in all family and community activities, just like any other member. Music performance of PwDs is an integrated activity in the community. Music performance for PwDs is not just a performance; each performance is also a desire to express their feelings towards life and other people. In performing art, each sight and smile of the PwDs made many spectators move and admire them. At the same time, this activity has a profound educational meaning. The PwDs transcend their fate and devote beautiful songs to life, which become examples for students to learn. The operation of the music teaching model for PwDs has attained certain success. PwDs have jobs and stable incomes to support themselves and their families. The model is also feasible, sustainable and highly scalable.

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Guarantee of the rights of persons with disabilities in tax laws

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Abstract:

Tax is one of the state's financial tools used to regulate people's income, even PwDs. The article analyses how the legal regulations on value-added, corporate, and personal income tax have affected PwDs. Through those analyses, the article will point out the limitations and inadequacies in the regulations in order to make recommendations for tax regulations to ensure and promote the rights of PwDs in sustainable development in Vietnam.

Keywords: PwDs, ensuring rights, taxes and rights of PwDs.

1. Introduction

Out of more than 7 billion people worldwide, there are more than 1 billion PwDs (accounting for about 15% of the world's population) [1]. Therefore, caring for and ensuring the rights of PwDs is an inherent thing that the world needs to consider and take into account. Along with the development of society, the rights of PwDs are increasingly concerned and focused. In the beginning, the rights of PwDs were a concern for society. However, these rights stopped at the level of ensuring that PwDs have a minimum standard of living and medical care [2]. Afterwards, when economic and social conditions are more developed, the rights of PwDs will be further enhanced, such as creating favourable conditions for PwDs to have the equal exercise of political, economic and cultural rights and creating conditions for them to develop their ability to stabilise their lives, integrate into the community and participate in social and cultural activities like border population. The introduction of the United Nations General Assembly's CRPD in 2006 created a clear legal basis for defining the rights of PwDs in the contemporary world to serve as a basis for countries to ratify and adopt the convention. Then, the countries materialise programs and projects related to promoting and consolidating the rights of PwDs across the country and, ultimately, have a strong regional and international impact on this issue. Accordingly, the rights of PwDs are greatly expanded to include: the right to life, equal recognition before the law, access to the justice system, freedom and personal safety, freedom from torture, cruel, inhuman or degrading treatment or punishment, free from exploitation, violence or abuse. The convention defines it as “emphasising the importance of bringing disability issues back to life as part of relevant, sustainable development strategies” [3]. Vietnam is the 118th member to sign the Convention on October 22, 2007. Accordingly, to concretise the contents of the convention, on June 17, 2010, the National Assembly passed the Law on PwDs. No. 51/2010/QH12.

Among various contents of realising the rights of PwDs, the author is interested in and wants to study and refer more specifically to the provisions of the current tax law in order to ensure the rights of PwDs in sustainable development in Vietnam. Accordingly, the article will analyse Vietnam's current tax regulations on this issue in order to identify the advantages of the tax law as well as the limitations and inadequacies of the regulations to make recommendations for a better and more effective way of ensuring the rights of PwDs in sustainable development in Vietnam.

2. Tax laws to ensure the rights of PwDs in Vietnam: Inadequacies and recommendations for improvement

In order to Taxes related to ensuring the rights of PwDs in sustainable development in Vietnam comprise: value-added tax (VAT), export tax, import tax, corporate income tax (CIT), and personal income tax (PIT). In addition, the Law on PwDs No. 51/2010/QH12, dated June 17, 2010, of the

National Assembly, also stipulates tax contents to ensure the rights of PwDs. The article will analyse the good points and the unreasonable contents of the above regulations that need to fully promote the meaning of the regulations in providing good support for PwDs.

2.1. Legal provisions on value-added tax to ensure the rights of PwDs in Vietnam: Inadequacies and recommendations for improvement

VAT is an indirect tax included in the price of goods and services to adjust the added value of goods and services arising from production, circulation, to consumption. Because VAT is included in the prices of goods and services, the Vietnamese government has considered and calculated goods related to PwDs to ensure accessibility for PwDs. Specifically, Clause 24, Article 5 of the VAT Law No. 13/2008/QH12, dated June 3, 2008, of the National Assembly defines: “Artificial products used to replace body parts of patients; crutches, wheelchairs and other specialised tools for PwDs” are not subject to VAT. This regulation aims to make the selling price of crutches, wheelchairs and other specialised equipment for PwDs to be VAT-free, so the price of goods will be lower, and PwDs will be able to access and purchase these products to help them live and carry out related activities comfortably. The above approach is correct in principle and aims to be reasonable within the price range of goods. However, from an economic perspective and real efficiency, it needs to be reconsidered because it is detrimental to the manufacturers of these products.

Firstly, if these manufacturers only produce crutches, wheelchairs and other specialised equipment for PwDs, they do not have to pay VAT and only CIT or PIT on their income from this activity. Accordingly, if they pay PIT when they are the individual doing business, this does not matter because the PIT on business income will regulate the tax according to the turnover calculation multiplied by the rate for each field production and business sectors and industries [4]. As for these business people who pay CIT, the CIT amount will be calculated as follows: “CIT payable in the tax period is calculated by taxable income multiplied by tax rate” [5].

Example 1: Enterprise A buys stainless steel materials for producing a crutch with a value of 10,000,000 VND excluding VAT (if VAT is included, the value is 11,000,000 VND) with full invoices as prescribed by law. After that, Enterprise A produces and sells for 15,000,000 VND.

Thus, with the corporate income tax rate of 20%, the payable CIT in the period is: $(15,000,000 - 11,000,000) \times 20\% = 800,000$ VND.

In the above example, the inputs' VAT amount will be deducted when calculating CIT. However, it cannot participate in the circulation of goods, causing “interruption” in the VAT collection process. [6].

Secondly, suppose these manufacturers manufacture crutches, wheelchairs and other specialised equipment for PwDs and other goods and services subject to VAT. In that case, there must be a reasonable separation of books for VAT calculation and accurate deduction of input VAT. Specifically: “When goods and services (including fixed assets) are purchased to serve the manufacture or sale of both the goods/services that are subject to VAT and goods/services that are not subject to VAT, only VAT on the goods and services used for the production and trading of goods and services subject to VAT shall be deducted. The taxpayers must separate the deductible input VAT from the non-deductible one; Otherwise, input VAT shall be deducted according to the ratio of revenue subject to VAT, revenue not subject to VAT to the total revenue from selling goods and services, including revenue not subject to VAT that cannot be separated” [7]. Businesses need help with this. If they do it incorrectly, it will cause tax violations that a competent state agency is handling.

Due to this shortcoming, the author believes that the law should categorise “crutches, wheelchairs and other specialised tools for PwDs” as subjects to VAT, but under the group of goods enjoyable, the VAT rate of 0%. This modification will provide the following advantages:

Firstly, classifying these products as subject to VAT leads to the producers of these goods being VAT payers. Accordingly, these entities must fulfil taxpayers' obligations, including tax declaration, finalisation, and VAT payment (if any) to improve state management activities.

Secondly, when stipulating that these products are subject to VAT at the tax rate of 0%, the producers will be able to obtain input and output VAT to register to pay VAT under the deduction method [8]. In particular, if they have 0% output VAT for crutches, wheelchairs and other specialised tools for PwDs, paying tax will be easier and more beneficial for VAT payers as follows:

Firstly, VAT payers under the deduction method when manufacturing crutches, wheelchairs and other specialised equipment for PwDs will enjoy certain tax benefits

For example, with the same facts and figures as example 1, but now the tax liability of enterprise A has changed because enterprise A is a taxpayer of both VAT and CIT as follows:

Regarding VAT, if enterprise A pays by the credit method, the amount of VAT payable by enterprise A = output VAT amount - input VAT amount

$$\begin{aligned} &= 15,000,000 \text{ VND} \times 0\% - 10,000,000 \text{ VND} \times 10\% \\ &= 0 - 1,000,000 \text{ VND} = - 1,000,000 \text{ VND}. \end{aligned}$$

Thus, enterprise A does not have to pay VAT but can be refunded by the state (if eligible) or deducted this VAT amount against other taxes or the subsequent VAT amount.

Regarding CIT, enterprise A pays:

$$(15,000,000 - 10,000,000) \times 20\% = 1,000,000 \text{ VND}.$$

This calculation shows that, in general, enterprise A does not have to pay tax to the state because they have deducted CIT from the VAT part. This demonstrates how this regulation will benefit businesses and encourages businesses to manufacture these products for PwDs, thereby better ensuring the rights of PwDs. However, this provision shrinks the state budget income on the opposite side. However, in the author's opinion, although this regulation reduces the state budget revenue, it brings many benefits to PwDs, so the state should consider and apply it.

Secondly, this amendment will make taxpayers less prone to errors in the declaration process because this product is subject to VAT anyway. However, it is subject to a different VAT rate than other goods and services. This makes VAT declaration and payment of taxpayers less error-prone as well as enhances the tax authorities' administration.

2.2. Legal provisions on corporate income tax to ensure the rights of PwDs in Vietnam: Inadequacies and recommendations for improvement

It is reasonable and necessary for the state to have a CIT policy to ensure the rights of PwDs in sustainable development in Vietnam because these regulations impact the plan and strategy of employing PwDs of the enterprises. Thus, employees with disabilities can find jobs, increase their incomes, secure their lives and be equal with others in society.

At present, two aspects need to be analysed:

Firstly, the regulations on CIT exemption for enterprises employing many PwDs are inappropriate.

Previously, Article 34 of the Law on PwDs No. 51/2010/QH12, dated June 17, 2010, of the National Assembly, stipulates: “Production and business establishments employing 30% or more of the total number of employees who are PwDs. ... is exempt from corporate income tax”. Although this

regulation has made progress, certain limitations still exist [9]. This provision was then annulled according to the provisions of Point k, Clause 4, Article 2 of Law No. 32/2013/QH13, amending and supplementing a number of articles of the Law on Corporate Income Tax because at the same time, Law No. 32/2013/QH13 amending and supplementing a number of articles of the Law on Corporate Income Tax supplements Clause 3, Article 1 of Law No. 32/2013/QH13 amending and supplementing a number of articles of the Law on Corporate Income Tax to clarify this issue further. Accordingly, Clause 3, Article 1 of Law No. 32/2013/QH13 amending and supplementing a number of articles of the Law on Corporate Income Tax stipulates: “Exempt income: Income from production and business activities of goods and services of enterprises with 30% of the average number of employees in the year or more being PwDs, and having an average number of employees in the year of twenty or more, excluding enterprises operating in finance and real estate business”. In essence, this new regulation is better than the old one because it clearly states that the enterprise is eligible for CIT exemption only when it employs a lot of employees with disabilities (from twenty people or more). Consequently, the new regulation encourages enterprises to employ more employees with disabilities to enjoy incentives. Moreover, ultimately, the employability of PwDs is boosted.

However, with the additional provisions of Law No. 32/2013/QH13 amending and supplementing a number of articles of the Law on Corporate Income Tax, whether Article 34 of the Law on PwDs No. 51/2010/QH12 should be completely removed or not? According to the author, it should not be abolished. Because if Article 34 is eliminated like the way Vietnam applies the provisions in the specialised tax law, many people need to be made aware of this preference. Meanwhile, the tax administration agency is applying the “self-declaration, self-payment, self-responsibility” principle. If taxpayers do not comply with these regulations, they will not take advantage of these provisions to be exempt from CIT. This degrades the meaning of this regulation in encouraging enterprises to recruit many employees with disabilities, leading to the deterioration of the ability to find jobs and earn an income from PwDs. Therefore, should Article 34 of the Law on PwDs No. 51/2010/QH12 restate this benefit with simpler text: “The exemption of corporate income tax for enterprises employing many workers with a disability is in line with the provisions of the Law on CIT. This proposal has the following meanings:

Firstly, the Law on PwDs No. 51/2010/QH12 still articulates that if an enterprise employs a lot of employees with disabilities, it will be exempt from income tax. By dint of that, interested parties know about that issue and learn more about the provisions of the Law on CIT. As a result, they need to include these regulations in declaring and paying taxes.

Secondly, this recommendation does not repeat legal provisions to avoid conflicts in regulations and ensure consistency in regulations on tax obligations, which specialised tax laws must regulate.

Secondly, the current tax policy needs to fully reflect the provisions on CIT incentives in the Law on PwDs No. 51/2010/QH12 into the current regulations of specialised tax laws. Clause 2, Article 26 stipulates: “Facilities producing orthopaedic devices, means and equipment for rehabilitation, living, learning and working aids for PwDs...are exempt from or reduced tax according to regulations of the law” and Clause 3, Article 43 of the Law on PwDs No. 51/2010/QH12 stipulates: “The State shall adopt policies on tax exemption and reduction... for research, manufacturing, production of equipment and provision of services and supply of equipment to enable PwDs to access information and communication technology; supporting the collection, compilation and publication of Braille materials for people with visual disabilities, reading materials for people with sensory and intellectual disabilities”. Although it is ambiguous what tax exemption or reduction it is, the listed activities imply CIT. However, comparing the provisions of Articles 13 and 14 of the current CIT Law, there are no provisions for CIT exemption or reduction for these cases. So there is a lack of consistency between

the provisions of the Law on Persons with Disabilities and the specialised tax laws, i.e. the Law on CIT. Therefore, the author recommends that competent state agencies consider bringing incomes from “research, manufacturing, production and service provision activities, means of assisting PwDs to access public information and communication technology; support the collection, compilation and publication of Braille materials for the visually impaired, reading materials for the hearing, speech and intellectual PwDs” and income from “producing orthopaedic devices, means, rehabilitation equipment, living, learning and working aids for PwDs” into incomes eligible for CIT exemption or reduction to ensure consistency between the legal system and specific legal regulations, thereby fulfilling the noble ideas of the International CRPD.

2.3. Legal provisions on personal income tax to ensure the rights of PwDs in sustainable development in Vietnam: Inadequacies and recommendations for improvement

In terms of PIT, the relevant regulations on PwDs currently have the following two main contents: i) determining that a child with disabilities is always a dependent [10] and ii) allowing deduction of humanitarian, charitable contributions to organisations, facilities that care for and nurture... PwDs [11] from the income subject to PIT for income from wages and salaries. In particular, the regulation that a child with disabilities is always a dependent will contribute directly to supporting the PwDs child by reducing the parent's taxable income. In another aspect, the regulation that allows the deduction of humanitarian, charitable contributions for organisations, care facilities, and the PwDs, from PIT taxable income from wages and money encourages the spirit “good leaves protect tattered ones” of Vietnamese people to contribute financially to these establishments so that they can help PwDs.

However, the provisions on PIT to ensure the rights of PwDs are vague and do not foster its meaning. This is demonstrated through the following arguments:

Firstly, according to the current PIT law, the deduction amount for dependents who are PwDs, which is equally as for an ordinary dependent person, needs to be revised. Because raising a person with disabilities is much more expensive than raising a normal dependent. For example, it costs less to raise a normal child under 18 than a child with a disability.

Secondly, the threshold to determine whether PwDs aged 18 and over are dependent or non-dependent on PIT taxpayers needs to be higher. According to current regulations, PwDs aged 18 years or older who are identified as dependents of PIT payers must be “people beyond the working age, or people of working age as prescribed by law but being disabilities and incapable of working or have no income or have incomes not exceeding the prescribed income level” [12]. Meanwhile, “the income level as the basis for identification of dependents to be counted for a deduction based on family circumstances is the average monthly income not exceeding 1,000,000 VND in the year from all income sources” [13]. An income of over 1,000,000 VND/month is unable to afford the basic living needs of ordinary people, and obviously, for PwDs. Because the minimum wage, which is an important milestone for the state to ensure the minimum living needs of workers [14] of Vietnam currently in Region IV, is 3,250,000 VND/month [15]. Therefore, it is unreasonable to stipulate the income level as the basis for counting dependents for the deduction of the average monthly income in the year from all income sources does not exceed 1,000,000 VND.

Thirdly, the family circumstance-based deduction for current income-generators in the current PIT is regulated and applied equally without consideration in terms of the living conditions of PIT taxpayers when they are PwDs. The current deduction based on family circumstances for taxpayers is VND 11,000,000/month [16]. In general, this provision is reasonable for most taxpayers, although some things could be improved in determining this level [17]. If the taxpayer is a person with a

disability, this provision is inadequate. Because PwDs have to spend a lot more effort to provide a service that border the population, or they have to bear other costs to overcome their physical weaknesses in order to be able to find a job with an income to support themselves and their families [18]. For example, when PwDs travel long distances to work, they need to equip their motorbikes with special equipment to assist them in going to work. Consequently, their expenses increase, but their income needs to correspond more. Thus, the same family-based deduction for PwDs and ordinary people will trigger a certain unreasonableness.

According to the author, these inadequacies can be solved by the following solutions:

Firstly, the law should add a certain coefficient when calculating the deductible income on the basis of a family situation for PwDs, such as 1.3 or 1.5 times the border population level. This coefficient will help PwDs get a higher deduction than ordinary people as they have higher costs. Thus, the tax administration of the state is fair.

Secondly, the law should adjust the income level as a basis for determining dependents who are eligible for deductions. Accordingly, the author believes that if the regulation is the income level as the basis for determining dependents, the deduction is the average monthly income in the year from all income sources that do not exceed the minimum wage, according to regulations of the law. Accordingly, if any dependents in general and dependents with disabilities have incomes over this minimum wage, they will not be considered dependents. This provision ensures that dependents, in general, and dependent PwDs, in particular, will be charged a higher deduction, reducing the burden on PIT taxpayers, so they have better conditions to care for PwDs. Moreover, thereby protect and create conditions for PwDs to have more favourable living conditions.

2.4. Some other contents in tax regulations to ensure the rights of PwDs to develop sustainably in Vietnam: Inadequacies and recommendations for improvement

In addition to the VAT, CIT, and PIT laws, which have regulations that directly or indirectly affect PwDs, the Law on PwDs No. 51/2010/QH12 dated June 17, 2010, of the National Assembly, has also there are many directional regulations for other tax regulations to clarify in order better to support PwDs in another direct or indirect way. Specifically:

Clause 3, Article 26 of the Law on PwDs No. 51/2010/QH12 dated June 17, 2010, of the National Assembly, stipulates: “Orthopedic devices, facilities, and equipment for functional rehabilitation, daily-life activities, study and work of PwDs, which come from non-refundable aid programs or projects or are donated by foreign organisations and individuals, are entitled to tax exemption or reduction under the tax law.

Alternatively, Clause 4, Article 42 of the Law on PwDs No. 51/2010/QH12 dated June 17, 2010, of the National Assembly, stipulates: “Public transport means meeting the national technical regulations on accessible transportation are exempted to tax reduction according to the provisions of the tax law upon production and import”.

In theory, Law on VAT, Export and Import Tax should have specific provisions on these tax exemption and reduction cases to strictly comply with the spirit of the Law on PwDs and directly and indirectly support PwDs to access cheaper products. However, the specialised laws have no specific provisions, so these regulations cannot be applied in practice. This restricts the meaning of the above regulations in theory rather than practice. Therefore, the author recommends that the Government studies and submits regulations to the National Assembly in the amendments and supplements of VAT, export and import taxes, and specific regulations so that the above regulation is clear and benefits PwDs, thereby more effectively ensuring the rights of PwDs in the sustainable development of Vietnam.

Tax regulations have had a significant impact on PwDs. Therefore, the study and evaluation of these legal provisions to ensure the rights of PwDs in sustainable development is a practical and important need. In this article, the author has pointed out some inadequacies and unreasonableness in legal tax regulations that have harmed the development of PwDs. Thereby, the author, with a personal view, has made some recommendations to contribute to improving tax regulations in this content to ensure the rights of PwDs more effectively.

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Assurance of the rights to labour and employment of persons with disabilities: legal status and solutions

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Abstract: In Vietnam, the labour and employment rights of PwDs have been paid attention to and protected by the state and specifically recognised in the Labor Code and the Law on PwDs. Practice shows that the work of taking care of life, ensuring labour rights and employment for PwDs in Vietnam is focused. However, the current reality reveals that the number of PwDs of working age who have jobs accounts for a relatively low proportion; at the same time, some rights of employees with disabilities are being violated or not guaranteed by the employer in accordance with regulations. The article analyses and evaluates the current status of Vietnamese law on labour rights and employment of PwDs, pointing out the inadequacies and proposing solutions to improve the law.

Keywords: Labor rights and employment, employees with disabilities, the law

Introduction

About 10% of the world's population, or about 650 million people, live with a disability. According to the United Nations Development Program (UNDP), 80% of PwDs live in developing countries [11]. In Vietnam, the proportion of PwDs aged 2 years and older is 7.09%, of which children aged 2-17 are 2.83%, and adults are 8.67% [12, 14].

From an international legal perspective, the International CRPD [The *Committee on the Rights of PwDs: CRPD*] defines: “PwDs 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”. Thus, CRPD identifies PwDs on the ground of two criteria, i.e.: (i) These are people with physical, mental, intellectual or sensory impairments. These impairments can be a deficiency, absence, reduced ability, or limitation of human capacity in terms of physical, mental, intellectual and sensory. In addition, these defects must be continuous, lasting in time, even after applying measures to restore the defective function; (ii) Show the interaction relationship between PwDs and barriers to the living environment and the existence of PwDs with social behaviours. This interaction has, is and will induce many hindrances for PwDs, limiting their ability to participate fully and effectively as other ordinary people in social life [13]. Accepting CRPD’s point of view, Clause 1, Article 2 of the Law on PwDs 2010 also defines a “*person with a disability*”, which is understood as a person who is defective in one or more body parts or has a functional impairment manifested in the form of disability causing difficulties in working, living and studying.

In social life, PwDs always face health problems and impediments to their ability to participate in activities in social life (economic, political, cultural, social) and personal activities. Compared with other subjects in the same society with the same living, working, and studying environment, PwDs face more difficulty exercising their rights and obligations [7]. In the field of labour, due to their defects, PwDs do not have options for jobs and remuneration like other individuals. PwDs belong to a vulnerable group of people. In addition to their shortcomings, they also have to face psychological and emotional pressures. Many people can feel self-deprecating and lack harmony. In society, at

times, in many places, they are still discriminated against. Although PwDs always need labour and career advancement, career opportunities for PwDs are less complete and diverse than others [4]. Therefore, ensuring labour rights and employment for PwDs is an urgent requirement.

1. Current status of legal regulations on assurance of labour rights and employment of PwDs

1.1. Regulations on the “general” policy of the state in ensuring the labour and employment rights of PwDs

PwDs are normally more economically disadvantaged in social relations than persons without impairment. PwDs face many difficulties in finding work to earn a living. Even some PwDs need foster care and care throughout their lives. At the same time, PwDs often incur more costs for life-supporting tools and expenses for medical examination and treatment. Therefore, the state should enact policies and measures to support and safeguard the income of PwDs.

Apart from “social protection” policies for PwDs, it is important to help them study and work to be self-reliant to upgrade their lives and create conditions to prove they are useful to society. Most importantly, the state has issued policies on labour and employment for PwDs. The Law on PwDs 2010; Law on Employment 2014; Law on Vocational Education 2014; and the Labor Code of 2019 all affirm the basic “common” view: “The State protects the labour rights and self-employment of employees with disabilities; adopt appropriate preferential and incentive policies for employers in creating jobs and recruiting employees with disabilities in accordance with the law on PwDs”.

The evaluation of the implementation of the Project on Supporting PwDs for 2012 - 2020 found that during this period, the vocational training and job creation support for PwDs received special attention from the competent authorities, social organisations and local governments throughout the country. Most localities promulgated the list of training occupations and the cost norms for vocational training for PwDs, diversified forms of vocational training, and encouraged vocational training for PwDs through tutoring, vocational training, and learning-by-doing training. Currently, there are 1,912 vocational education institutions nationwide, including 402 colleges, 466 intermediate schools, 1,044 vocational education centres, 02 specialised vocational training schools for PwDs and hundreds of establishments participating in vocational training for PwDs. There are 63 employment service centres. Each year, the centres provide vocational training and job placement counselling for about 20,000 PwDs, with a success rate of over 50% [1].

At the same time, activities to support PwDs to create jobs, such as preferential loans, livelihood development, counselling, and job introduction, have been fostered by all levels and sectors; accordingly, in the period from 2012 to 2020, it is estimated that about 38,564 PwDs can get loans from the National Employment Fund. Outstanding loans for enterprises employing PwDs and PwDs to develop their production reached nearly VND 90 billion, with over 4,000 customers having outstanding loans, accounting for 0.07% of total outstanding loans and 0.07% of total outstanding loans households with credit programs of the Bank for Social Policies [2]. However, the effectiveness of employment support is still limited [The fraction of PwDs admitting jobs after vocational training is less than 50%, the percentage of PwDs obtaining preferential loans is low (less than 1% of the total number of people getting loans from the social policy bank) [3]. The number of livelihood models is still scattered and small-scale, mainly in the pilot stage. The encouragement of PwDs to participate in vocational training is inefficient due to prior assessment of the vocational training needs of PwDs, and the incompatibility between the training occupations and different types of disabilities and the demands of the labour market. The percentage of PwDs who are employed after vocational training is low. The accessibility to concessional loans for PwDs is still very arduous because, in fact, the preferential loan programs of the Bank for Social Policies provide entrustment loans through

associations and mass organisations but have not been entrusted to the Association of PwDs. Thus, PwDs lose the opportunity to be guaranteed through the Association of PwDs. Borrowing capital from the job creation program requires an effective business plan ensuring job output. This shows that the state's policies are appropriate. However, the enforcement should be more synchronous and effective to accommodate employment requirements for PwDs needs to be implemented more synchronously and effectively.

However, the problem is that Article 35 of the Law on PwDs 2010 and Article 158 of 2019 are recommendable rather than compulsory for enterprises (employers). Therefore, depending on their conditions, capabilities and needs, enterprises will decide whether to accept PwDs to work. If the enterprise employs many employees with disabilities, it will enjoy priority policies as prescribed in Article 34 of the Law on PwDs 2010; and Decree No. 28/2012/ND-CP (amended and supplemented by Decree No. 140/2018/ND-CP) of the government detailing and guiding the implementation of a number of articles of the Law on PwDs. This rule has led to the fact that most businesses have a common sense that they do not wish to hire PwDs, because the arrangement of jobs for PwDs not only increases investment costs in workplace infrastructure for PwDs, but also makes it struggle for agencies, organisations, and businesses to guide, direct, and request PwDs while working. This fact has restricted and hindered the right to access the work of PwDs. This argument is illustrated by the statistics of the Vietnam National Committee for PwDs in 2018, showing that only 31.74% of working-age PwDs have jobs. This rate is much lower than the figure for persons without impairment, 82.38% [12; 91). One of the main reasons for the low employment rate of PwDs is that many people still have a negative attitude about employing PwDs. They believe that PwDs cannot work or that employing PwDs is cost-consuming, especially to improve working conditions. Among the respondents about hiring PwDs, 54.8% think that employers will not hire PwDs, 24.4% claim that employers want to hire PwDs, and only 1.4% said that employers prefer hiring PwDs to persons without impairment [12; pp. 139-140].

1.2. Regulations on preferential policies for agencies, organisations and enterprises that employ PwDs

From the perspective of practising law, preferential policies for agencies, organisations and enterprises that recruit PwDs are prescribed and scattered in various legal documents, from Laws to Decrees and Circulars guiding implementation, which concentrate mainly on a number of important laws such as *the Law on PwDs 2010; Employment Law 2013; Law on Corporate Income Tax in 2008* (amended and supplemented by Law No. 71/2014/QH13 in 2014) and its guiding documents. Accordingly, enterprises employing PwDs at the rate/quantity specified by law are entitled to preferential policies in many fields. Specifically as follows:

Firstly, preferential policies apply to enterprises employing 30% or more of the total number of employees with disabilities and enterprises employing 10 or more PwDs to work stably. Accordingly, they are eligible for incentives, i.e.: (i) Financial support to improve working conditions and environment suitable for PwDs; (ii) Preferential loans for production and business development projects from the Bank for Social Policies (Clause 1, Article 9; Article 10 of Decree No. 28/2012/ND-CP (amended and supplemented by Decree No. 140/2018/ND-CP).

Secondly, specific preferential policies for enterprises employing 30% or more of the total workforce who are PwDs. Accordingly, these enterprises are entitled to particular preferences for renting land, premises and water surface; and corporate income tax.

Overall, these policies aim to support and enable businesses to develop and are driving forces for businesses to accept PwDs to work, which obtained certain achievements. Currently, more than 2,000

enterprises and production facilities in the country employing 30% or more of the total number of employees who are PwDs are entitled to preferential regimes. More than 15,000 PwDs are working in more than 400 production and business establishments of PwDs and about 16,000 other employees with disabilities are working in enterprises, production and business establishments and households or self-employment [6]. However, in reality, approaching policies on supporting production and business establishments to upgrade working conditions and environment for PwDs (including improving accessibility for employees with disabilities) is relatively difficult; because the conditions on the level of enjoyment of preferential policies under Decree No. 28/2012/ND-CP (amended and supplemented by Decree No. 140/2018/ND-CP) rely on the proportion of employees with disabilities without referring to the degree of disability and the size of the enterprise. Such regulation will generate unfairness among enterprises because enterprises that only accept employees with mild disabilities will also enjoy the same incentives as the ones employing workers with severe and profound disabilities, thereby discouraging enterprises from actively recruiting PwDs. According to the research result of the Vietnam National Committee for PwDs in 8 provinces and cities, the number of production and business establishments employing 30% or above of the total employees who are PwDs in the locality is very small.

In contrast, quite a few production and business establishments employ PwDs but only reach 30% of the total number of employees. Therefore, they cannot apply for the preferential policies of the state. Only 16 production and business establishments in Hanoi are eligible; the figure for Quang Ninh is 11; Ho Chi Minh City is 9; Thai Binh is 11. Vinh Phuc has only 1 recognised enterprise; meanwhile, there are no enterprises in Thua Thien Hue, Thanh Hoa to be recognised as an enterprise employing 30% or more of employees with disabilities. In addition, the preferential policy of renting land and water surface for production and business cannot be executed because the locality cannot arrange the location as enterprises require [7].

1.3. Regulations on prohibited acts when employing PwDs

Along with creating jobs so that employees with disabilities have a salary and income to ensure their lives, safety and health for employees with disabilities is a top concern of the state. Previously, the Labor Code of 2012 refrained from the use of employees with disabilities who have reduced working capacity by 51% or more from working overtime and working at night and prohibited the use of employees with disabilities to do heavy, hazardous or dangerous work or being exposed to toxic substances according to the list promulgated by the Ministry of Labor, War Invalids and Social Affairs in coordination with the Ministry of Health. With the advancement of science and technology and machinery support, PwDs have more job opportunities. So the law has been adjusted toward “open” regulations. Accordingly, the Labor Code 2019 stipulates prohibited acts of using employees with disabilities to work overtime, at night or do heavy, hazardous or dangerous jobs. However, there are exceptions if the worker with disabilities consents to do so (Article 160 of the Labor Code).

2. Some recommendations to improve the law on ensuring labour rights and employment of PwDs

Firstly, supplement regulations on job maintenance and support for PwDs to progress in their work. In order to be consistent with Convention No. 159 on Occupational Rehabilitation and Employment of PwDs 1983 and the International CRPD, the Law on PwDs 2010 needs to add regulations on maintaining employment and assisting PwDs to progress in their work. Not only does the regulation recognise that PwDs have the right to have a job, but also the right to maintain their jobs and progress in their work, to be integrated and reintegrated into society. The occupational adaptation policy must be appropriate to the type of disability and have specific measures to implement.

Secondly, amend the provisions of Article 35 of the Law on PwDs in 2010 and Article 158 of the Labor Code 2019 to define the obligation to recruit PwDs rather than encourage them. This means that agencies, organisations and businesses (starting with state agencies and state-owned enterprises) must recruit a certain percentage of PwDs who have been properly trained in the right professions. It should have appropriate sanctions for agencies, organisations and enterprises that fail to comply, such as fines and payment of fees to the social security fund. From a comparative perspective, the above legal solution is imposed in the laws of many countries worldwide (Germany, the United Kingdom, and Japan). For example, Germany's Social Code stipulates that public and private enterprises employing more than 20 employees must ensure that at least 5% are PwDs. In the United Kingdom, this rate is set at 3%. In Japan, the rate is 1.8% for private companies employing 56 or more employees. If the enterprises do not meet the above rate, they will be subject to the policy of acceptable norms.[8; pp. 47-51].

Thirdly, amend Article 34 of the Law on PwDs 2010 in the direction that production and business establishments only need to employ more than the required minimum rate of PwDs to enjoy state support. In addition, Decree No. 28/2012/ND-CP (amended and supplemented by Decree No. 140/2018/ND-CP) should add the rule that two bases for calculating the preferential regime are the number of stable employees with disabilities and degree of disability. Units employing a large number of regular and stable employees with disabilities will enjoy higher benefits than units employing fewer employees with disabilities. Units employing employees with severe and especially severe disabilities are eligible for higher incentives than those employing employees with mild disabilities. Such regulation will ensure equality among enterprises.

Furthermore, it is recommended to draw a lesson from Thailand's experience in establishing and maintaining disability support funds under the management of competent state agencies [10; pp. 59-64); thereby making monitoring and assurance activities more effective. Because according to the current provisions of the Law on PwDs 2010, the Funds to assist PwDs are established on the basis of sponsorship, voluntary contributions, support from the state budget and other legal revenues. However, the establishment and maintenance of the fund still need to be improved. The funds need more operational funding and operate monotonously and faintly without popular and widespread activities to attract PwDs and society.

Conclusion

The right to labour and employment is a sacred and noble human right recognised, respected, protected and guaranteed by the international community and countries [5; 22-31]. For PwDs, the right to work and employment is even more significant because the respected and guaranteed right will create practical opportunities for PwDs to access, integrate and equalise with everyone in the social community [9; pp. 9-13]. In general, the legal framework for ensuring the labour and employment rights of PwDs is comprehensive and complete, thereby creating a legal corridor for the realisation of the rights of PwDs. However, a number of regulations still need to be consistent with the practice of industrial relations and international practices. In fact, despite the labour and employment rights have been implemented, they still account for a relatively low percentage. Thus, there is a need to improve further the legal provisions on ensuring the labour and employment rights of PwDs in the direction as follows:

- Supplement regulations on job retention and support for PwDs to progress in their work;
- Amend provisions in Article 35 of the Law on PwDs in 2010; and Article 158 of the Labor Code 2019 towards defining the obligation to accept PwDs to enterprises rather than encouraging them.

- Amend Article 34 of the Law on PwDs in 2010 to stipulate the minimum threshold of employees with disabilities that production and business establishments need to employ to enjoy State support.

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Start-up policy for women with disabilities

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Abstract:

Being unfortunate to have a defect in one or several parts of the body has made life difficult for PwDs in general and women with disabilities in particular. In order to help women with disabilities not become a burden on their families and society, and at the same time create opportunities for them to reach their full potential to rise in life, in addition to, their efforts require the state to have appropriate policies to support this group to exist and develop fairly and equally as other groups in society. Starting a business for women with disabilities is also necessary to ensure sustainable social development with the motto “no one is left behind”. PwDs are not a burden to society but an outsider to the development of society [8].

Keywords: Women with disabilities start a business; women with disabilities doing business; policies towards women with disabilities; the desire to start a business of women with disabilities; entrepreneurship of women with disabilities.

Preamble

In Vietnamese society today, due to various causes such as traffic accidents, congenital disabilities, and complications from diseases that are not treated in time, the number of PwDs is on the rise. This disadvantaged group is extremely vulnerable in social life or easily affected by government policies, especially women with disabilities. Therefore, respecting and ensuring the rights of PwDs in general and women with disabilities, in particular, is an issue of social morality and state law of concern and simultaneously contributes to promoting sustainable socio-economic development.

1. General issues about PwDs and women with disabilities

According to the 2007 CRPD: “PwDs include persons with long-standing 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” [4]. On the basis of the common international awareness of PwDs [16], the Law on PwDs 2010 of Vietnam defines “*person with a disability is a person who is impaired in one or more body parts or suffers functional decline manifested in the form of disability causing difficulties to his/her working, living and studying*” [11]. Therefore, *women with disabilities are understood as having a defect in one or more body parts, or a functional impairment manifested as a disability, causing difficulties in working, living or studying.*

PwDs, in general, and women with disabilities are vulnerable groups in society. Due to the impairment in at least one part of their body, they always encounter difficulties in daily life, from personal activities to study and work. However, by dint of strong willpower and fortitude, many women with disabilities have gradually overcome difficult physical problems and controlled their lives. They are able to help other PwDs in dealing with the difficulties in economic activities.

According to World Bank, by 2018, around 1 billion of more than 7 billion people worldwide have some form of disability or more [17]. In Vietnam according to statistics from the General Statistics Office of the Ministry of Planning and Investment in early 2019 on the results of the national survey on PwDs in Vietnam, by 2016, Vietnam “*had a total of 6,225,519 PwDs, including 671,659 children aged 2-17 and 5,553,860 people 18 years and older*”. [6, p.15] However, pursuant to data from the Department of Social Protection (Ministry of Labour, Invalids and Social Affairs), “*Vietnam currently has about 8 million PwDs aged 5 years and over, of which more than 4 million are women, and 1.2 million are girls*”. [7] Among PwDs, women with disabilities were identified as the most

vulnerable due to gender barriers. Women with disabilities are prone to suffer the negative impacts of economic activities, such as *difficulty* finding a job, and sexual abuse, leading to poverty and underemployment. *“The challenges for women with disabilities are at least 3 times higher than for men. They have little access to opportunities for personal development, have limitations in social contact, economy, health services, education, vocational training, job search, transportation ...”* [7] These difficulties refrain women with disabilities from integrating into the community and intensify pressure on the state's social management process. Women with disabilities might confront various hindrances to successfully launching a business. From the impediment of social prejudice to the stigma of society, then the guilt of the PwDs woman herself. Therefore, to support women with disabilities to embark on their businesses, the policies of the Party and State should focus on solving the basic barriers that constrain the start-up process of women with disabilities.

Stemming from the nation's legal, cultural tradition, more than 500 years ago in Vietnam, there were regulations to protect the rights of PwDs: *“If a person committed a crime when s/he was young and was without impairment, but the crime is detected when s/he is already old and disabilities, then s/he will be prosecuted according to the law for old age and PwDs ...”* [10, p.41]; *“The local mandarin must adopt the widows, widowers, orphans, and persons with severe disabilities, poor, and persons having no relatives to rely on, cannot earn a living on their own. If the local mandarin abandoned them, s/he was sentenced to 50 lashes and downgraded by one rank. If the local mandarin mutilates loaves and fishes provided to those above people, they must be charged with the same crime as a storekeeper stealing public property (Article 295)”* [10, pp.116-117]. Inheriting that tradition, and also stemming from the nature of the socialist regime, which always values and upholds human rights, the Communist Party of Vietnam has issued Directive No. 39, dated November 1, 2019, of the Secretariat on strengthening the Party's leadership in the work of PwDs to pay more attention to PwDs in general and women with disabilities in particular. This directive was later institutionalized by the Prime Minister in Decision No. 753 /QD-TTg on June 3, 2020, on promulgating the plan to organize the implementation of Directive No. 39 -CT/TW dated November 1, 2019, of the 12th Party Central Committee Secretariat on strengthening the Party's leadership over PwDs.

Due to factors such as traditional customs and extreme gender stereotypes, start-up women find it difficult to call for investment capital and build business organizations: *“According to the latest Deal Street Asia report on Women in Start-up, among start-ups in Southeast Asia, the start-ups with only female founders raised only 0.9% of the total capital called in 2020. As for the Vietnamese market in particular, according to a report by the Vietnam Chamber of Commerce and Industry (VCCI), by the end of September 2019, in Vietnam, there were more than 285,700 enterprises owned or operated by women, accounting for only about 24% of the total number of businesses nationwide. However, the vast majority of businesses are small and micro-scale. Women start-ups need a “team” with additional strengths. Starting a business in general, whether the founder is a man or a woman, requires strong teammates and faces common difficulties in attracting talent to join the team. But especially, women may face more difficulties...”* [5]

2. Policies to support women with disabilities to start a business

In order to actualize policies towards PwDs, the Prime Minister issued Decision No. 1190/QD-TTg dated August 5, 2020, approving the program to assist PwDs in the 2021 - 2030 period to promote the implementation of the United Nations CRPD and the Law on PwDs 2010 in order to improve the quality of life of PwDs; create conditions for PwDs to participate equally in social activities; build a barrier-free environment that ensures the legal rights of PwDs and support PwDs to develop their capabilities, including women with disabilities. The program is divided into phases, including Phase 2021 – 2025: *“80% of women with disabilities receive assistance in different forms.”* [12] Period

2026-2030: “...100% of PwDs have needs and are eligible for loans with preferential interest rates as prescribed;...100% of women with disabilities are supported in other forms...” [12]

The main activities of the Program/Scheme focus on medical assistance; educational assistance; vocational education support, job creation and livelihood support; disease prevention and control and natural disaster reduction; assistance in accessing construction works; assistance in accessing and participating in traffic; Assistance in accessing and using information and communication technology; legal aid; Supporting PwDs in cultural, sports and tourism activities; Supporting women with disabilities; support PwDs to live independently and integrate into the community; Raise awareness, capacity to care, support PwDs and monitor and evaluate. In order to help PwDs have the ability to develop and integrate into the community, the program has set out activities to replicate models of livelihood support, start-up support, vocational training - job creation, and participation in the product value chain to help PwDs develop sustainably. “*Scaling up the model of livelihood support for PwDs; building a model to support PwDs to launch a business; vocational training model associated with job creation for PwDs; cooperative model with PwDs participating in the product value chain.*” [12]

In order for women with disabilities to confidently initiate their businesses, the top issues that need attention are education, vocational training as well as job creation for women with disabilities, especially for young women with disabilities who have a lot of expenditure demands but unstable income that is not enough to cover their living expenses; they are studying and working in a profession that cannot secure sufficient income, the program also identifies “*Young PwDs who establish their businesses, women with disabilities, PwDs and businesses, production and business establishments that employ a lot of PwDs are entitled to preferential loans to create and expand jobs.* [12] To achieve these goals, the Ministry of Labour, Invalids and Social Affairs, acting as the lead agency for the implementation of the program, is responsible for coordinating with relevant ministries and sectors to develop a model for start-up support for PwDs and the Bank for Social Policies executes activities to promote start-ups of young PwDs, and facilitate women with disabilities, PwDs and production and business establishments employing many PwDs to enjoy loans with preferential interest rates as prescribed.

Aiming at encouraging women with disabilities to engage in star-ups, it is essential to coordinate and prove the role not only of parties such as state management agencies but also businesses, mass associations and efforts of PwDs themselves: “*Request the Central Committee of the Vietnam Fatherland Front, the Vietnam General Confederation of Labor, the Central Committee of the Vietnam Women's Union, the Central Committee of Doan Thanh Ho Chi Minh Communist Youth Union, Vietnam Chamber of Commerce and Industry, Vietnam Union of Cooperatives, Vietnam Red Cross Society, Vietnam Federation of PwDs Association, Association for the Protection of PwDs and Orphans Vietnam Orphans, Vietnam Association of the Blind, Vietnam Business Association of Invalids and PwDs, Vietnam Association of Victims of Agent Orange/dioxin, Vietnam Association to Save Children within the scope of their functions and duties to participate in organizing and implementing the Program .*” [12]

For anyone, working is a meaningful activity that helps him or her integrate into the community. By working, people affirm their ability to participate in the production process, carry out cultural and communicative activities and assert their values to society. For women with disabilities, only “*Working and getting a job is the fastest way to integrate into society and assert the value of PwDs*”. [7] As the classics of Marxism declared, “labour created man himself.” [3, 641], to some extent, it shows that the working process of women with disabilities has once again created themselves - affirming their value in social integration. By working, human values are affirmed, and the values of

PwDs are also enhanced. In fact, for persons without impairment, starting a business from scratch is also extremely hard; thus, for PwDs, starting a business is even harder. Especially for women with disabilities starting a business, the challenges might be doubled because they have to face the stigma of society and their loved ones and suffer gender stereotypes and negative customs. However, with a humanistic viewpoint and appropriate policies, in the past, some examples of women with disabilities being successful in start-ups have proved that the models of supporting women with disabilities in starting a business are effective in helping women with disabilities control their lives and integrate into the community. For example, in the case of Ms. Nguyen Thi Phuong Thanh [1], who has disabilities in her legs from a young age, she became the owner of a garment processing factory, creating regular jobs for 30 - 40 local workers. *She got a loan of VND 40 million from the Policy Bank and VND 100 million from the Bank for Agriculture and Rural Development (introduced by the Women's Union). This capital gave her more money to import raw materials and buy machinery to expand her facility. Before that, to overcome her adversity, Ms. Thanh decided to learn sewing to make a living. With disabled legs, getting used to the sewing machine is onerous, which takes months to manage the sewing needle. Later, thanks to the industrial sewing machine powered by electricity, she found it easier. The case of Ms. Thanh shows that in addition to the determination to overcome the adversity of PwDs woman herself and accurate choice of profession in consonance with her ability, it will be easier for PwDs woman if they are supported by the state and mass organizations through practical policies to access capital and technological resource.*

A recent study by the International Labor Organization (ILO) indicates that Vietnam lost about 3% of its GDP annually due to not taking advantage of PwDs in the labour market. [15] Therefore, starting a business for women with disabilities will help this group solve their livelihood problems as well as reduce the economic burden on their families and society, and lessen the psychological pressure on women with disabilities in the process of state management and building a civilized society that leaves no one behind.

3. Proposal to improve the policy to support women with disabilities in starting a business

Based on the results of the 2016 national survey on PwDs, with data on different disability groups (Table 9.3 Proportion of adults with disabilities working in the economy by disability type and age group [...] 6, p.92]), in order to help women with disabilities operate their businesses successfully, apart from general policies for women with disabilities, it is necessary to build specific policies for each group of women with disabilities with different types of disabilities. Encouraging women with disabilities to open their businesses helps them get out of poverty and become managers to guide other women with disabilities out of poverty.

- In the policy of education and training to provide knowledge and skills on entrepreneurship, each group of women with different types of disabilities match different education and training methods. Concurrently, it is necessary to orientate more suitable industries so that they are free to choose a field to involve in. For the deaf and blind, there will be different vocational training needs, but basically, they need to be equipped with business knowledge. *“They must learn from fundamental knowledge, such as calculate interest, manage money in and out; Then, the knowledge related to products, promotion, transactions with partners ...”* [9]

- Supporting women with disabilities to set up a business should avoid activities calling for charity in dealings with partners and the social community. It should create conditions and support women with disabilities to create meaningful and exchangeable products in the supply chain of products, goods and services of society so that women with disabilities are able to assert themselves

in the long run. Women with disabilities should also prove their determination to start a business by responsibly participating in business activities.

- Policies to support women with disabilities to launch a business should take into account particular barriers of each specific group, for example: *“If women want to start a business, then at least a bank account is required. However, now, many banks refuse to open accounts for blind and deaf people because they think those persons cannot communicate with staff or sign documents (for blind people)”* [9]. In this case, it is necessary to have a sponsor (relatives, associations, unions, even local authorities) to ensure that women with disabilities do not miss the opportunity to a business.

- It is suggested to take full advantage of the Industrial Revolution 4.0 with achievements in technology and artificial intelligence to support women with disabilities in daily life and in starting a business. It should focus on training in start-up skills suitable for PwDs such as online business. Online business today has many benefits, such as no moving, thus, not having to spend money on an investment in means of transport, gasoline, and oil, which is very suitable for women with disabilities. Invest in buying apps or building your website and learn how to operate them.

- Implement widespread communication about the entrepreneurship program for women with disabilities to increase society’s understanding of PwDs, and the demand for women with disabilities to start a business. The media needs to clarify that the community is accountable for not only sharing start-up experiences with women with disabilities but also participating in reviewing and evaluating their products. Whether those products meet the needs of society or not, which advantages need to be promoted and which disadvantages need to be overcome, it should avoid buying for charity purposes without helping women with disabilities start a sustainable business.

- To create conditions for women with disabilities to maintain a sustainable business, building a network in the business field is necessary to create opportunities to exchange with partners in the same industry and field. Thereby helping women with disabilities learn experience in production, business, product promotion, search for investment opportunities, and call for investment. This network should be expanded regionally and internationally to enhance the ability of women with disabilities to exchange and develop products in entrepreneurship.

- Amending Point a, Clause 4, Article 4 of Decree No. 55/2019/ND-CP June 24, 2019, of the Government on Legal Support for Small and Medium Enterprises. Accordingly, the principle of providing legal support for small and medium-sized enterprises should be in the order of priority and added the word “women with disabilities” should be as follows:

a) Small and medium-sized enterprises owned by women or women with disabilities, enterprises employing more female or female employees with disabilities are prioritized Firstly if they submit who submit full dossiers. [2]

Next, it is necessary to amend Point b of Clause 4, Article 4 of this Decree No. 55/2019/ND-CP in the direction of adding the paragraph “priority is given to enterprises employing women with disabilities or owned by women with disabilities”

b) Small and medium enterprises employing 30% or more of the total number of employees who are PwDs according to the provisions of the Law on PwDs; priority is given to enterprises employing women with disabilities or owned by women with disabilities”.

This addition means that women with disabilities are prioritized Firstly, as starting a business is harder. This concern must Firstly be expressed in the written policy provisions for the group of women with disabilities so that the implementing agencies will ground on for practical application.

- Strengthen legal support for women with disabilities to initiate a business. This task poses the requirement of “*Building a really strong Small and Medium Enterprises Support Center with the participation of a team of highly specialized experts who are passionate about the economic development of the country.*” [13, 242] Avoiding the situation that “*the team of consultants supporting young people to start a business are young people, with insufficient education and life experience..., as a result, entrepreneurship has reached a dead end*”. [13, p.242] This also requires that legal aid activities for women with disabilities must be conducted by people who are knowledgeable about production and business activities and, at the same time, sympathetic to women with disabilities and are dedicated to helping women with disabilities to excel in life.

- “Industrial Revolution 4.0, with the characteristic of connecting everything, will make the world flatter and flatter. Opportunities for women to develop themselves and affirm their intelligence and talents in business activities are increasing daily” [14, p.272]. Women with disabilities also need to take advantage of the achievements of the 4.0 revolution to start a successful business and contribute to increasing the percentage of female leaders in businesses in line with the national goal of gender equality set by the Government.

Conclusion

Developing entrepreneurship policies for women with disabilities is a measure of the state's responsibility to ensure human rights. With that spirit, the entrepreneurship policy for women with disabilities will help women with disabilities have an equal opportunity to affirm their ability to rise in life to become useful citizens of society like other citizens.

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Inclusive growth and persons with disabilities in Vietnam

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Abstract: There are about 1 billion PwDs worldwide, accounting for 15% of the total population, whereas the fraction in Vietnam is 7%. As a large community, PwDs are a global problem requiring integrated solutions and institutions. In Vietnam, the Party and State have made efforts to promote adaptation and inclusion for PwDs and fulfil commitments to the International CRPD. However, there are still limitations and barriers to exercising the rights of PwDs. Specifically, the rights of PwDs have been omitted in many aspects and processes of inclusive growth. The article reviews several policies and the current situation of PwDs in Vietnam, proposing some policy recommendations to promote inclusive growth for PwDs.

Keywords: inclusive growth; PwDs; permission; policy access; help.

1. Introduction

The 2030 Agenda, adopted in September 2015 at the United Nations General Assembly, has committed to leaving no one behind and making equality a central principle. Of the 17 sustainable development goals, goal 8 calls for “promoting sustained, inclusive, and sustainable economic growth, full and productive employment and decent works for all” and specifically states that “sustainable economic growth and inclusive” is the way to end poverty all its forms. Inclusive growth ensures all people reach their full potential, live with dignity and lead prosperous and fulfilling lives [1, p.7]. Inclusive growth must promote and link the participation of all groups in society. For PwDs, inclusive growth advances their social inclusion and adaptation, fosters their development and improves their quality of life. However, difficulties and limitations still need to be overcome during the entire process, from policymaking to implementation and specific results.

2. Research Methods

The author reviews documents on the research topic and searches the keywords in the abstract in the Google Scholar online database. Concurrently, a number of studies were also examined by performing a similar search in the ordinary Google database. This search was limited to publications and studies on PwDs and inclusive growth.

The author also uses statistical methods, synthesizes and analyzes documents and legal documents of state agencies, data and databases from GSO, ILO, and UNDP sources. Based on that information, the author has analyzed and made policy suggestions to promote inclusive growth for PwDs.

3. Inclusive growth and PwDs in Vietnam

3.1. Inclusive growth

Inclusive growth is a multi-dimensional concept, focusing on ensuring that the economic benefits or opportunities created by the growth process are distributed fairly to all members of society, especially to disadvantaged groups.

According to the United Nations, disability-inclusive development means that all stages of the development process are inclusive and accessible to PwDs. Everyone must have equal access to education, health care services, employment and social protection [2].

Horizontally, inclusive growth is not only about poverty eradication and income distribution. It also covers other societal issues such as equal resource access, environmental pollution, change innovation, and social security.

Vertically, inclusive growth is concerned not only with the outcome but also with the process. Inclusive growth is concerned with the voice and participation of different groups in a country's economic, social or political development. Inclusive growth encourages all individuals and businesses to contribute to the growth process and enjoy the fruits of that growth.

The content of inclusive growth, according to the Asian Development Bank, is: to accelerate growth and expand the size of the economy, to ensure a level playing field for investment, and to increase the opportunities for high-productive employment, ensuring equitable access to these opportunities. It allows all actors in society to participate and contribute to the growth process equally, regardless of their circumstances [3]. Therefore, groups of PwDs are equal members of society and should be included in inclusive growth.

3.2. Situation of PwDs in Vietnam and inclusive growth for PwDs

The household survey results revealed that 7.06% of the population aged 2 years and older are PwDs, of which the rate of disability for children aged 2 to 17 is 2.83%. Combined with the results of the General Review of PwDs who are residing in centres, the disability rate of the population aged 2 years and over is 7.09%, of which children 2-17 years old are 2.83% (children 2-15 years old is 3.02%) and adults is 8.67%, equivalent to more than 6,199,048 PwDs residing in households. If the data source of the total administrative review of PwDs is included, the country has 6,225,519 PwDs, including 671,659 children aged 2-17 and 5,553,860 people aged 18 and over [4]. In reality, this number could be much higher due to survey and data investigation shortcomings. The quantity of PwDs in Vietnam inclines to rise in the coming time.

31.7% of PwDs participating in the labour market compared to 82.4% of persons without impairment. There are still about 2 million unemployed PwDs of working age with the working ability [4]. This costs Vietnam about 3% of the GDP annually [ILO]. PwDs still make important contributions in all fields, such as economy, science, technology, culture, society, physical training and sports.

The Communist Party of Vietnam and the State have strengthened and perfected the system of policies and laws to safeguard and support PwDs in all areas of social protection; assist PwDs in health care, education, vocational training, employment, culture, sports, entertainment, access to public works and information technology, and participating in traffic; prioritize the implementation of social protection policies and support PwDs who are children and the elderly. However, access to and implementation policies for PwDs in Vietnam has many things that could be improved and gaps. PwDs encounter challenges and barriers in the development and integration process, which need to be considered during inclusive growth.

Firstly, the lack of a complete and synchronous database on PwDs

As prescribed, the Ministry of Labor, War Invalids and Social Affairs “conducts surveys, makes statistics, builds and manages databases and information, periodically publishes reports on PwDs” [5]. However, it was not until 2018 that Vietnam, for the Firstly time, conducted a large-scale survey with complex content using an international standard measurement toolkit on PwDs. Statistics were published in 2018 for 2016 census data. Before that, in the 2009 Population and Housing Census, disability information was collected only with four functions: hearing, vision, walking and remembering (or focusing attention). It did not use the term “person with a disability” in the survey and data publication.

From 2018 to now, the General Statistics Office has continued to carry out mass censuses such as the 2019 Population and Housing Census or the Census and Housing Change as of April 1, 2020. However, the results on the indicator of PwDs are limited. The 2019 Population and Housing Census investigates and unleashes the proportion of PwDs aged 5 years and older by urban, rural, gender,

socio-economic region and province, and city. The 2020 census does not examine the disability indicator.

A complete and synchronous database on PwDs plays a critical role in serving the purpose of assessing the population's disability status and related living conditions for planning and drafting evidence-based disability policy; monitoring and evaluating the implementation of policies and laws on PwDs in Vietnam, as well as international commitments of the Vietnamese Government on PwDs. However, due to the need for a complete and synchronous database system before 2018, management agencies and the state confronted many difficulties in formulating and implementing policies for PwDs based on evidence and authenticated data. The lack of periodic surveys and examinations of PwDs can entail difficulties in policy making and implementation towards PwDs.

Secondly, PwDs should be taken into account in economic and social development plans.

Reviewing the five-year socio-economic development plans over time shows that the indicators on PwDs should be mentioned. Six social indicators for 2016 - 2020 [5] and 8 social indicators for 2021-2025 [7] do not encompass any indicator for PwDs. Even the “close” indicators, such as social security and social assistance, are also completely “absent”. In the action programs, plans and guidelines for the implementation of socio-economic development strategies of the localities, the targets for PwDs are also not taken into account.

The indicators on PwDs are also presented in the Vietnam Population Development Strategies over time with direct targets such as “Improving reproductive health for specific population groups (PwDs)” [8] or indirect ones such as “proportion of pregnant mothers receiving prenatal screening”, “preventing child marriage and consanguineous marriage in ethnic minority areas”. Thus, even in the Population Strategies with a series of indicators directly related to PwDs, the indicators on PwDs still need to be taken into account or are opaque.

Besides, PwDs have yet to be recognized as a driving force for the development. The quarterly and annual statistical reports on labour and employment do not include surveys on indicators related to employees with disabilities.

Thirdly, popularize the approach to PwDs who are policy beneficiaries but have not yet participated

The majority of the policy approaches to PwDs in Vietnam focus on the direction that PwDs are merely beneficiaries of policies. Ranging from policies on education, health care, employment and social security, PwDs are mainly referred to as beneficiaries of policies that are mostly in the forms of “subsidy”, “support”, and “incentive” policies.

However, this is not a comprehensive approach and has many limitations in the current context.

PwDs, apart from being disadvantaged and vulnerable and needing the support and protection of the whole society, are also citizens who are equal before the law in terms of public rights and obligations. Nevertheless, in the past, policies and laws on PwDs often approached them from a supportive and preferential perspective. This approach is appropriate but can also induce invisible discrimination and stigma between persons without impairment and PwDs. PwDs are seen as weak citizens who need support and are unable to contribute to social and economic development. Meanwhile, the large number of PwDs, 1 billion people worldwide, accounting for 1/7 of the world's population [10, p. 5] and in Vietnam more than 7%, has inadvertently become a burden for the development of countries.

However, as a “big group” [10, p. 5], PwDs still bear potentials and abilities that can be exploited to serve countries' economic and social development. Most PwDs have the ability to work to varying degrees; their intellectual, artistic and labour abilities have been demonstrated and proven in practice but are limited by barriers in education, health care, science, technology, communication, and access

to transportation. If these hurdles are removed, the potential contribution of PwDs is released. PwDs are able to participate in all fields and make achievements like other groups in society.

PwDs have not engaged in making policies that are directly related to them. The provisions of the Law on PwDs have assigned *organizations* of PwDs to participate in drafting and monitoring the implementation of legal policies for PwDs [5]. However, they have not clarified the right of *individuals* with disabilities to participate. Furthermore, due to limited education and mass media, PwDs need help to access and research the Party and State's policies on PwDs. Commonly, PwDs need to learn and understand policies and laws on PwDs.

Fourthly, there are many gaps and policy barriers for PwDs

According to the Department of Social Protection, in terms of support for PwDs, high achievement targets are legal aid, access to education, and access to air traffic; middle achievement targets include: early detection and early intervention, training of staff assisting PwDs; low targets are vocational training, job creation, access to construction works, access to and use of information technology, culture, sport and tourism [11]. Although access to education is good, vocational training and job placement for PwDs are challenging. As prescribed, enterprises must employ more than 30% of employees with disabilities to enjoy the state's incentives [5]. This unintentionally triggers barriers to admitting employees with disabilities, as 30% is quite high. If less than 30% of employees with disabilities are employed, enterprises will not be entitled to incentives while taking the increased costs of employing employees with disabilities. Meanwhile, there are no effective sanctions regulating the social responsibility of enterprises for employees with disabilities. Therefore, the current promotion of the employment of employees with disabilities is in the direction of humanitarian and charitable promotion, not in the direction of inclusive growth, “no one is left behind”.

PwDs also need help directly accessing credit sources for production, business and start-ups. Credit sources for PwDs are directly allocated from the central to local levels through the Bank for Social Policies, but this capital could be more meagre. As a general rule, subjects, including PwDs, can borrow up to 100 million VND (the loan amount applied to employees), but the demand for loans from this source is increasing due to the impact of the pandemic. The allocated budget is small; consequently, the level of lending to each person is also small. PwDs do not have collateral, so it is more difficult to get this loan.

PwDs need help accessing the public transport system and construction works. Although the Ministry of Construction has issued a set of national technical regulations on construction for PwDs to access housing and facilities, so far, only about 22.6% of medical works; 20.8% of educational works; 13.2% of exhibitors and exhibitors; 11.3% of conference centres and offices; 5.7% supermarkets; 3.8% gymnasium, post office, railway station, border gate; 7.5% of nursing homes, retirement clubs and 2% of banks ensure accessibility for PwDs. As of 2018, only 30% of the total 457 stations are accessible for PwDs, and only 478 public buses (accounting for about 4.8% of public transport) have secured access to PwDs [12].

Some daily obstacles include buses and roads not accessible to people in wheelchairs; deaf and hard of hearing people do not have language support when going to medical care; lack of loudspeaker system in public areas for the blind; lack of learning, information and entertainment facilities for PwDs.

All these barriers exacerbate the inferior feelings of PwDs, leading to arduous integration into society in all fields. Therefore, PwDs are often linked to poverty, with 17.8% of PwDs living in multi-dimensional poor households [4].

4. Conclusions and policy recommendations to promote inclusive growth for PwDs

Today, inclusive growth is a major goal of advanced nations and humanity worldwide, including Vietnam. While promoting inclusive growth, the Party and Government have also continued to make great efforts towards PwDs to improve their quality of life and economic participation. However, the country's economic and social limitations, a large number of PwDs, and inadequate state management methods and forms have caused barriers and policy gaps for PwDs in Vietnam. PwDs find participating in and enjoying the country's development achievements challenging. To truly advance inclusive growth for PwDs, policy recommendations are made including:

Firstly, change the awareness and actions of the state and society about PwDs towards a “humanistic instead of humane” approach. Actively disseminate information on all channels about the rights and dignity of PwDs. Reduce activities related to stigma and self-stigmatization towards PwDs.

Review the legal system and policies on PwDs; amend, supplement and internalize legal provisions in accordance with the International CRPD. Apart from “helping” PwDs, it is essential to encourage PwDs to be “self-reliant” and “free to choose” to integrate and adapt. PwDs actively participate and contribute to all social development processes. Leveraging technology to increase digital connectivity, improve economic empowerment, and stimulate the participation and contributions of PwDs.

Secondly, strengthen the investigation, survey and publication and storage of a database on PwDs. Supplement the system of indicators on PwDs in the annual Census. After each Population and Housing Census, a specialized publication on PwDs should be published. This data system will be useful information for policy making and implementation for PwDs.

Thirdly, integrate the targets of PwDs into strategies and plans for economic and social development. Promote mechanisms and policies so PwDs can participate and enjoy the development process. Consider supplementing the proportion of personnel with disabilities in addition to the current structure of ethnic minorities and women in the National Assembly and People's Councils.

Fourthly, increase investment resources of the state, society, businesses and families of PwDs for PwDs. In addition to the current state subsidies and incentives for PwDs, seeking and supplementing other resources from businesses, society, and the community is necessary. Look for new mechanisms and regulations encouraging businesses and communities to invest in PwDs. Amend the regulation that enterprises must use 30% of employees with disabilities to receive lower incentives and the regulations on credit for PwDs; encourage various forms of investment, even venture capital investment in projects of PwDs.

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Humanity in the employment contract between employers and employees with disabilities in enterprises

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Abstract

Enterprises have paid attention to the conclusion of labour contracts between employers and employees with disabilities. However, there are still areas for improvement during law implementation. The article focuses on studying the humanity of our State policies and laws to promote the social integration of employees with disabilities in enterprises. In addition, the article also identifies social prejudices and legal barriers when signing an employment contract between employers and employees with disabilities in the enterprise, thereby proposing recommendations.

Keywords: humanities, concluding, labour contract, employees with disabilities, enterprises

1. The humanity of State policies and laws has fostered the social integration of employees with disabilities in enterprises

An employment contract is an agreement between an employee and an employer on paid jobs, wages, working conditions, rights, and obligations of each party in the labour relationship. A document with a different name is also considered an employment contract if it contains the agreement on a party's paid job, salary, management, and supervision, Clause 1, Article 13, Labour Code 2019. *Concluding an employment contract is a legal act that gives rise to a labour-legal relationship. On the one hand, concluding an employment contract is the initial premise for the legal rights and obligations of the parties to be established and executed in the future. On the other hand, the basis for stability, harmony, and sustainability of labour relations is to be established* [5]. Entering into an employment contract is the Firstly stage of cooperation between employers and employees, especially those with disabilities, in the enterprise aiming to nurture goodwill in establishing labour relations. In essence, entering into a labour contract is similar to entering into a civil contract. *Previously, most countries' laws considered an employment contract to be a type of civil service contract, subject to the civil laws of France, Germany, the United Kingdom, and the United States solely* [5]. In the past, our Party and State have strengthened the protection of workers, especially in enterprises [7]. The provisions on labour contracts in the Labour Code must also fully reflect the viewpoint of protecting the legitimate rights and interests of the employer, such as regulations on the right to choose the type of contract and form of contract to enter into with the employee; the right to select specific contents to include in the labour contract; the right to amend the content of the labour contract, temporarily transfer the employee to a job other than the labour contract to overcome difficulties or solve necessary demands encountered by the employer during the production process [14].

PwDs also need jobs to earn income and live independently. Nevertheless, the General Statistics Office (2016) says less than one-third of PwDs are employed. PwDs have fewer job opportunities than persons without impairment. The employment rate of PwDs aged 15 and over is 31.7%. This rate is 2.5 times higher for persons without impairment, up to 82.4% [17].

PwDs are the largest minority of vulnerable groups. ILO research has shown that Vietnam loses about 3% of its GDP due to not taking advantage of PwDs in the labour market [19]. Therefore, the employment of PwDs has generated encouraging economic benefits for Vietnam. Our Party and State

have promulgated policies and laws to protect the interests of employees, especially those with disabilities in labour relations. Specifically:

Regarding the prohibition of discrimination in entering into labour contracts

According to Article 27 of the International CRPD (CRPD), it should be aware that PwDs may be restricted from participating in the labour market due to certain social and environmental barriers. Thus, policies and legislation on PwDs should provide equal treatment to PwDs to offset their structural disadvantages while implementing the measures outlined in the CRPD. Discrimination on the basis of disability is prohibited in all matters. Protecting the right of PwDs to just and favourable working conditions on an equal basis with others, including equal opportunity and equal pay for work of equal value, safe and healthy working conditions, including protection from harassment or abuse. The United Nations Sustainable Development Goals (SDGs) have called on countries, by 2030, to achieve full, productive employment and decent work for all women and men, including both young people and PwDs, and equal pay for work of equal value. Therefore, countries have an obligation to create mechanisms and policies that must be based on the principle of equality and non-discrimination in entering into labour contracts between employers and employees with disabilities.

According to the Labour Code in 2019, provisions prohibit discrimination when entering into a labour contract between an employer and an employee with a disability in the employment relationship.

Regarding tax reduction policy

In the labour relations for the conclusion of labour contracts between employers and PwDs, our state has introduced tax reduction policies for hiring employees with disabilities. Specifically, tax exemption for income from production and business activities of goods and services of enterprises that employ PwDs accounting for more than 30% of the average number of employees in the year, provided that the average number of employees in the year is 20 or more, excluding businesses in the field of finance and real estate.

Regarding the working environment

According to Clause 1, Article 159 of the Labour Code 2019, an appropriate working environment is the condition that allows PwDs to perform jobs with the same requirements as others. Clause 3, Article 33 of the Law on PwDs 2010 stipulates that agencies, organisations, enterprises and individuals that employ employees with disabilities shall, depending on their specific conditions, arrange jobs and ensure suitable working conditions and environment for PwDs.

Incentives

Enterprises employing employees with disabilities might be exempt from corporate income tax or borrow loans at a preferential interest rate. Enterprises are exempted from land, ground, and water surface lease in service of production and business if employing 70% or more of employees who are PwDs. Enterprises are eligible for a 50% reduction in land, ground and water surface rents in service of production and business if using from 30% to less than 70% of employees who are PwDs.

Employees with disabilities will be entitled to 14 days of annual leave instead of 12 days like ordinary workers. Enterprises must organise periodical health checks at least once every six months for these employees, ensure that the working conditions, working tools, occupational safety and hygiene are suitable for the workers; must not employ PwDs with a working capacity decrease of 51% or more to work overtime or work at night; must not employ PwDs to do arduous, hazardous or dangerous jobs or in contact with hazardous substances as prescribed by law.

The Labour Law stipulates the legal framework for concluding a contract in terms of principles, form, and content of the labour contract. Therefore, the accurate and sufficient conclusion of labour

contracts between the employer and the employee with disabilities will contribute to limiting disputes between the parties in the labour relationship, promoting the sustainable development of enterprises.

The principles for the conclusion of an employment contract encompass voluntariness, equality, good faith, cooperation and honesty; freedom to enter into labour contracts which is not contrary to the law, collective labour agreement and social ethics, Article 15, Labour Code 2019. This principle means that when entering into a labour contract between an employer and an employee with a disability, he or she is free of reason without being seduced or deceived.

An employment contract must be concluded in one of the following forms: an indefinite-term labour contract in which the two parties do not determine the term and the time of termination of the contract's validity; a definite-term labour contract in which the two parties determine the term and the time of termination of the contract's validity within 36 months from the effective date of the contract. The labour contract must be in writing and made in 02 copies, the employee keeps 01 copy, and the employer keeps 01 copy. An employment contract concluded via electronic means in the form of a data message in accordance with the law on electronic transactions has the same value as a written one.

Previously, the labour law required employers to use a model labour contract issued by the Ministry of Labour, War Invalids and Social Affairs (often called a green contract). However, from 2003 onwards, the labour law created favourable conditions for the parties to negotiate and sign labour contracts freely. Accordingly, it is not required to use a model labour contract. The employer can create his/her form of the labour contract and incorporate the agreements between the employer and the employee into the labour contract before signing [3]. An employment contract must comprise the following principal contents: the name and address of the employer and the full name and title of the person signing the labour contract on the employer's side; full name, date of birth, gender, place of residence, number of citizen identification card, identity card or passport of the person entering into the labour contract on the employee's side; work and place of work; the term of the labour contract; salary according to job or title, the form of salary payment, time limit for salary payment, salary allowance and other additional amounts; the mechanism of increasing salary grades and wages; working time, rest time; safety protection equipment for employees; social insurance, health insurance and unemployment insurance; training, fostering, improving professional qualifications and skills.

2. Social prejudices and legal risks when entering into labour contracts between employers and employees with disabilities in the enterprise

2.1. Social prejudices

According to WHO data, the average prevalence of PwDs is 10% worldwide [13]. Most PwDs are unemployed or work in the informal sector with low wages. Most PwDs live in poverty, dependence and social exclusion [9]. Many are underemployed or unwilling to enter the labour market [1].

PwDs, when being recruited, often have fewer advantages than persons without impairment. Specifically, they often need more confidence and even low self-esteem; thus, their competitiveness is low. Therefore, the majority of PwDs are manual labourers, performing unstable jobs or temporary jobs in organisations or establishments of humanitarian and charity nature. Only a few people can find long-term jobs in agencies, organisations, businesses or jobs that require skills and qualifications. Therefore, their income could be higher and more stable, which makes it difficult for them to make a living for themselves and their families [1].

According to statistics, only 31.74% of PwDs are employed out of 1.6 million PwDs have the ability to work over 6.2 million PwDs [17].

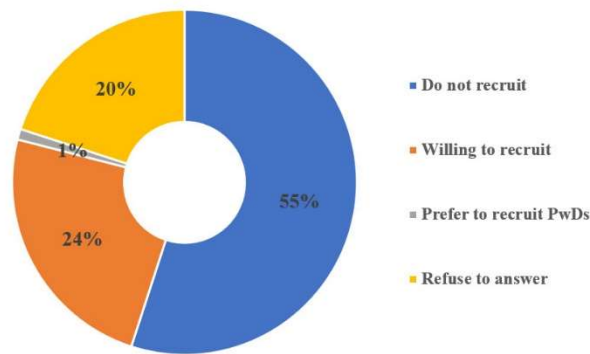


Figure 1: Employer's perspective on hiring PwDs [17].

According to statistics on the opinion on hiring PwDs, only 24.4% of enterprises - a very modest number - express their willingness and desire to employ PwDs. Meanwhile, the proportion of enterprises that do not want to hire PwDs accounts for a high rate of 54.8%, and only 1.4% of enterprises prefer to hire PwDs. Most large enterprises, especially foreign ones, are interested in integrating PwDs in the workplace. Most small and medium enterprises still hesitate to recruit PwDs [20]. *“What Vietnamese businesses “prejudice” PwDs or Deaf/hard of hearing people is mostly based on their working ability. Businesses often underestimate or do not understand thoroughly about PwDs due to inaccurate information, so they have a “blind” point about PwDs. Most jobs require communication. Even in case the working method does not require communication, the working environment still requires coordinated communication with others.*

Moreover, a fresh person applying for a job also needs to experience an apprenticeship, and hearing impairments greatly hinder that apprenticeship. Therefore, I or the deaf (with partial hearing ability, using hearing aids) or Deaf people (congenital and using sign language) all face difficulties and barriers when applying for a job” [16]. Therefore, social prejudice is one of the primary reasons hindering job opportunities and the opportunity to enter into employment contracts between employers and employees in enterprises.

In addition, there are personal prejudices against PwDs, which refer to discriminatory behaviour based on prejudices about PwDs and customer attitudes [10]. PwDs are unable to perform the required work [12]. Discrimination against PwDs has induced social prejudices against PwDs when participating in labour relations and entering into labour contracts between employers and employees with disabilities in the enterprise.

Social prejudices of employers in the enterprises encompass discrimination in entering into labour contracts with PwDs. Employers might concern that their employees will disengage or co-workers will react badly, or an employer will not be able to discipline or fire a worker with a disability because of their poor productivity. Employers, when entering into contracts with employees with disabilities, worry about costs such as health insurance and infrastructure. Ultimately, PwDs still need to gain the same access to work opportunities as persons without impairment.

2.2. Legal risk

Although there are precise policies and regulations, the percentage of PwDs who are denied admission because of their disability is relatively high, accounting for 53% of the total number of people surveyed recently by iSEE and UNDP [12]. In labour relations, PwDs face a risk from the starting point: **the LABOUR RECRUITMENT PROCESS**, which employers have blocked as they do not want to hire employees with disabilities. Vietnamese law lacks sanctions to punish businesses and employers who refuse to recruit PwDs who meet the requirements for capacity according to the job

position. Thereby resulting in direct or indirect discrimination against PwDs in labour relations. PwDs have experienced greater institutional, environmental and discriminatory barriers. They are excluded from accessing health care information and services, and they also face serious disruption for employment, education and access to social protection and other support services. These can be exacerbated by the many forms of discrimination suffered by women, children and the elder with disabilities, and PwDs in personal risk and humanitarian emergencies [8]. Vulnerability of employees with disabilities appears right from the recruitment stage, so employees with disabilities who pass the recruitment stage and enter the stage of **CONCLUDING LABOUR CONTRACT** also encounter employers' discrimination. Therefore, the rights of employees with disabilities are more or less affected.

According to current legal regulations, our country lacks detailed guidance documents on entering into employment contracts between employers and employees with disabilities to create an inclusive and accessible working environment for PwDs in accordance with the provisions of the Law on PwDs 2010, the Labour Code of 2019 and guiding documents. Enterprises employing at least 30% of the average number of PwDs and having an average total number of employees in the year 20 or more are exempt from corporate income tax. However, in practice, enterprises have about 30% of the average number of employees who are PwDs. However, the number of total employees is less than 20 because most Vietnamese enterprises are small and medium, so it is not easy to satisfy the legal requirements to enjoy this benefit.

Most enterprises comply with the law on the principle of entering into labour contracts between employers and employees with disabilities. In light of the market economy, businesses aim to reduce costs and increase profits by avoiding performing the employer's obligations towards employees with disabilities. Thus they are inclined to intentionally fail to conclude a labour contract with the employee with a disability to evade their obligations such as paying social insurance, health insurance, and unemployment insurance.

While participating in labour law relations, employees face various difficulties and risks. Developed countries around the world have applied the achievements of the fourth scientific and technological revolution with the support of connecting through the Internet and accessing big data through cyberspace..., thereby helping employers to control and better understand all aspects of their employees' operations to increase productivity, improve processes and promote growth. Even some large corporations have invested in high technology, such as using robots and artificial intelligence to replace humans, increasing unemployment. Therefore, in the face of rapid changes in the market, it is difficult for employees to reach an equal agreement with their employer on working conditions, working environment, and salary [3]. In principle, the conclusion of a labour contract between an employer and an employee with a disability is equal. However, whether the employee requiring the employer to provide information on financial, strategic development, business situation, and human resource policy is responsive or to what extent responsive? [6].

In practice, freedom and voluntariness, in many cases, are inapparent and opaque. For example, when signing a labour contract, the employer usually offers a labour contract with defined terms, and the employee reads it if he agrees and then signs the contract. Otherwise, the relationship will be terminated. There is almost no meeting or expression of will between the two sides [18]. In addition, some enterprises still violate the legal provisions of the probationary period and collective labour agreements.

There are two types of labour contracts: labour contracts with definite terms and labour contracts with an indefinite term. Some problems with implementing regulations on labour contracts are that

enterprises use labour contract addendums to modify the term of the labour contract or extend it before it expires. Thus, when the labour contract expires, the enterprise still carries out procedures to terminate the labour contract and settle benefits for the employee. However, after that, the enterprise “re-recruits” that employee under a fixed-term labour contract. This fact has remained the status of labour relationship between employers and employees to be the Firstly labour contract [15].

Currently, enterprises typically apply the pre-printed form of the labour contract, which contains all the main contents. However, the agreements are often imprecise and need clear references, which is overall or vague [15]. In practice, regarding the content of the contract between the employer and the employee with a disability, there are still some problems not in compliance with the current laws, such as the employee's working location, health insurance, unemployment insurance, and salary. In addition, the employer also embodies a number of other contents in the contract, such as a commitment not to be pregnant during the Firstly 1 to 2 years of work, or the employer is allowed to retain the main university degree of PwDs employee, the employee has to pay a sum of money to the enterprise to ensure the performance of the labour contract. These terms have violated the provisions of Article 17 of the Labour Code 2019 on prohibited acts by employers during the conclusion and performance of employment contracts with employees with disabilities.

3. Recommendations to ensure humanity in entering into labour contracts between employers and employees with disabilities in enterprises

Firstly, raising awareness for employers, management staff, and human resources staff working at enterprises about the legal provisions related to entering into labour contracts between employers and employees with disabilities. Furthermore, strengthens the propaganda, dissemination and education of the law on labour in enterprises. Improving awareness and thinking about the participation of employees with disabilities to understand their needs and how to perform well in labour relations in order to dispel misconceptions and social prejudices against them.

Secondly, amending and supplementing the provisions of the law related to the conclusion of contracts between employers and employees with disabilities. There should be mandatory regulations on the minimum percentage of employees with disabilities in agencies and businesses and specific sanctions and regulations for businesses that do not comply with regulations on labour norms.

There should be strict sanctions for discriminatory behaviour between PwDs and employees without impairment

It is necessary to complete regulations on specific working regimes for employees with disabilities, specific health insurance regimes for employees with disabilities, and easily accessible facilities for all types of various disabilities in the enterprise.

It is necessary to add regulations on preferential regimes and priority to businesses that employ employees with disabilities to motivate them to work safely. There should be a tax reduction policy or subsidised wages for employers employing employees with disabilities. Creating mechanisms and policies to recruit candidates with disabilities easily. There should be strict sanctions for employers with direct discriminatory behaviour or indirect by not recruiting employees with disabilities.

It is necessary to amend or rescind Clause 3, Article 1 of the Law on Amending the Law on Corporate Income Tax in 2008 and amended in 2013, which stipulates that enterprises employing 30% of employees with disabilities must have at least 20 employees who sign labour contracts in the next year to be exempt from corporate income tax.

It is necessary to amend the Law on Supporting Small and Medium Enterprises in 2017 to encourage employers to employ more employees with disabilities in Vietnam today.

It is necessary to supplement the regulation that the employer is not allowed to sign another type of contract to replace the labour contract when an employment relationship arises.

Thirdly, encouraging businesses to put in place a written policy on non-discrimination against employees with disabilities in the enterprise. To improve the capacity of staff to supervise and manage employees with disabilities during the working process, it is necessary to have an experienced expert in dealing with disability-related problems of different types according to the provisions of the law.

Fourthly, employees with disabilities should understand the legal provisions on labour in general and the law on entering into contracts in particular to ensure the rights of employees with disabilities. To strengthen capacity building through training employees with disabilities.

Fifthly, to strengthen inspection and supervision. Competent state agencies should strengthen inspection, supervision and handling of violations related to the conclusion of labour contracts between employers and employees with disabilities.

Our Party and State have promulgated humane policies and laws to ensure the rights of employees with disabilities to help them integrate better into labour contracts. In the upcoming time, it is necessary to have synchronous measures on institutions, to raise the awareness of enterprises, and employees with disabilities, to create policies and laws to encourage and motivate PwDs in a timely and appropriate manner so that they can overcome barriers and difficulties, assert themselves and contribute, participate in labour relations in the enterprise, especially the conclusion of labour contracts./.

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Fulfilment of labour rights for persons with disabilities in Vietnam

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Abstract: The purpose of this study is to realise the rights of PwDs to obtain jobs in the social life of their interests and needs without diminishing their rights. The research method used is normative juridical combined with analytical and synthetic methods. Decent work on the basis of one's desires is the right of every human being, without exception. Various racial, ethnic, and religious backgrounds that are part of a human's identity should not become a barrier for him to get his rights, along with the physical or non-physical conditions underlying a human being. Every human being, regardless of his/her physical or non-physical background, also has the same right to do what he or she wants, including PwDs. The State of Vietnam signed the CRPD in 2007. The preamble of the Convention indicates that the countries that signed the Convention are obliged to promote and protect the rights and dignity of PwDs and promote their participation in the civil, political, economic, social, and cultural spheres with equal opportunities, meaning that Vietnam is obliged by law to fulfil the rights of PwDs, especially in terms of the right to work in Vietnam.

Keywords: PwDs, Vietnam, labour.

1. Introduction

On December 13, 2006, at the 61st session of the United Nations General Assembly, all delegates unanimously adopted the CRPD. This is the Firstly international legal document of human society, affirming that all approaches to PwDs are based on the rights of PwDs as stipulated in the Convention. The Convention further aims to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by PwDs, and to promote respect for the inherent dignity of PwDs. This requires the members to recognise the labour rights of PwDs on an equal basis with others. This right includes the right to employment opportunities in areas of the social life of interest to them without impairing their rights. Members protect and promote the realisation of the right to work, including for PwDs in the work process, by taking appropriate steps, including passing legislative measures.

2. Research aim

This study aims to analyse the implementation of the current legal regulation law on the labour rights of PwDs to get employment in areas of the social life of their interest without reducing their rights in Vietnam.

3. Literature review

3.1. Rule of Law Theory

The term *rechtsstaat*, translated as the rule of law according to Philipus M. Hadjon [1], has become popular in Europe since the 19th century. However, there has been a long history of thinking about it. Plato put forward the idea of the rule of law for the Firstly time, and then Aristotle emphasised this thought [2]. According to Aristotle, it is not humans who rule in a country but a fair mind and decency that determines the good or bad of a law. Aristotle asserts that a good country is ruled by a constitution and has the rule of law.

Meanwhile, Burkens explains the simple meaning of *rechtsstaat* cited by A. Hamid S. Attamimi [3], which is a state that places law as the basis of state power, and the exercise of this right under all forms is carried out under the rule of law. In *rechtsstaat*, according to him, the bond between the state and the law does not take place in a loose or random relationship that is an essential one.

3.2. Equality Before The Law Theory

Article 2 of the 2013 Constitution stipulates that the State of the Socialist Republic of Vietnam is a socialist rule by law, of the People, by the People, and for the People. In addition, the equality before the law theory is provided for in Article 16: Everyone is equal before the law. No one shall be discriminated against in political, civil, economic, cultural, or social life.

Equality before the law is one of the essential principles of modern law. This principle is one of the pillars of the doctrine of the rule of law. The principle of equality before the law is one of the manifestations of the rule of law, so there must be equal treatment for everyone before the law.

The principle of equality before the law ensures the achievement of justice (the law) without the absence of separable parties when participating in the law enforcement process. Legal protection guarantees are implied in the principle of equality before the law. Accordingly, this theory guarantees that all subjects get the same treatment. This brings logical consequences: the law will not give privileges to other legal subjects. Because if this happens, it violates the principle of equality before the law and encourages discrimination before the law [4].

3.3. Principles of Protection and Fulfillment of Human Rights for PwDs in Vietnam

The 2013 Constitution, with provisions related to human rights, provides legal certainty for protecting human rights. PwDs are human beings, so their human rights must be protected, and their needs must be met. Since its emergence to the present day, human rights have undergone a process of development and change known as the human rights generation. The Firstly generation includes civil and political rights, and the second generation includes social, economic, and cultural rights; finally, the third generation includes several new collective rights, such as the right to development/progress (development), the right to peace, the right to a clean environment, the right to natural resources, and the right to cultural heritage [5].

State, a law-based society, must protect and uphold human rights so that all human beings' inherent principles, interests, and equality are properly realised, without discrimination, regardless of differences in their physical habitats, cultural traditions, values, cosmology, and views of people and the world.

The declaration in the preamble to the Universal Declaration of Human Rights was received and proclaimed by the United Nations General Assembly on December 10 1948, through resolution 217(III). One of the sentences states that the “recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world”. Considering that the rule of law should protect human rights, people are not forced to choose the path of rebellion as a last resort against tyranny and colonialism.

The concept of human rights, which initially emphasised vertical relationships, is mainly influenced by a history of human rights abuses committed by the state against civil rights and economic, social, and cultural rights. As a result, the state's primary obligation is to protect and promote human rights. We can see this from the formulas in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights.

4. Research methods

Research is the primary means of development of science, including technology. The research aims to reveal the truth systematically, methodically, and consistently. The author has conducted legal research on implementing labour rights for PwDs in Vietnam. This study may qualify as standard legal research, as it examines the rules or norms contained in the law regarding the policies of Vietnamese law to exercise the rights of PwDs in Vietnam, including relevant laws and regulations.

The method of analysis and synthesis: the author uses the contents of the article to understand and clarify the theoretical issues, the provisions of the law, as well as the practical implementation of the laws, opinions, and solutions to improve the effectiveness of protecting the labour rights of PwDs to get jobs in areas of social life that interest them without reducing their rights. In addition, the written law analysis method is used to understand the purpose and value of current legal provisions for protecting the right to work according to the wishes of PwDs and to discover inadequacies and gaps in the legal regulations governing this issue, thereby proposing recommendations for improvement.

5. Discussion

Article 35 of the 2013 Constitution stipulates: “1. Citizens have the right to work, to choose their occupation, employment and workplace. 2. Workers are guaranteed fair and safe working conditions; and have the right to salary, and rest regime. 3. Discrimination, forced labour, and employment of workers below the minimum working age are strictly prohibited.” The 2013 Constitution has only two provisions specifically regulating PwDs for social security issues. Specifically, Article 59 stipulates that: *The State creates equal opportunities for citizens to enjoy social welfare, develop the social security system, and adopt policies to assist the elderly, PwDs, the poor and other disadvantaged people*, and Article 61 provides for problems in accessing education: *The State shall prioritise the educational development in mountainous and island areas, ethnic minority areas and regions that have extremely difficult socio-economic conditions; shall prioritise employment and development of the talented people and provide favourable conditions for PwDs and the poor to access education and vocational learning*.

Thus, apart from these two provisions in the 2013 Constitution, there is no other classification. This means that PwDs are included in both these contents in the type of protection of citizens or everyone. The realisation and protection of the rights of PwDs are all actions or activities aimed at ensuring and protecting the constitutional rights of PwDs to dignity and to avoid acts of violence and discrimination, especially in terms of accessing the jobs they want without diminishing their rights over others.

Human rights as fundamental rights are inherently universal and need to be respected and protected for vulnerable groups, especially PwDs. The state respects, protects, and implements the rights of PwDs. PwDs should have equal opportunities to develop independently as qualified human beings [6]. The passage of the Law on PwDs 2010 related to the accession to the CRPD on October 22, 2007, demonstrates Vietnam's commitment and seriousness to respecting, protecting, and implementing the rights of PwDs.

Therefore, the state is obliged to exercise the rights contained in the Covenant through the adjustment of laws and regulations, including ensuring the realisation of the rights of PwDs in all aspects of life, such as education and training education, health, work, politics and governance, culture, tourism, and the use of information and communication technologies, in particular, ensuring access to desirable employment without diminishing their rights compared to others.

PwDs often face discrimination, making it difficult to find the jobs they want. The Labour Code 2019 stipulates a separate section for employees with disabilities on State policies, employment, and prohibited acts when employing PwDs.

Despite three aforementioned specific regulations for employees with disabilities in the labour field, Vietnam's opinion has been concretised during the implementation of the CRPD. According to the author, a law should stipulate the employer's obligations in ensuring the conditions for employees with disabilities to access the job they want without losing their rights compared to other workers. Other actors, such as specialised facilities, should provide labour protection for employees with

disabilities to easily exercise their other rights without affecting their productivity and job desire. Providing these issues explicitly in the specialised law, especially in the labour law and the occupational safety and health law, proves recognition in implementing statutory measures to ensure that employees with disabilities have the freedom to choose their desired employment without being discriminated against in any subtle way.

In addition, Article 63 of the 2015 Law on Occupational Safety and Health also stipulates occupational safety and hygiene applicable to females, minors, or employees with disabilities, which complies with the Labour Code and the Law on PwDs. So, the legal framework for ensuring the accessibility of employees with disabilities to the employment of their interest without reducing their rights is still qualitative and generic. There are no quantitative laws that apply to both employers and employees with disabilities. Specific laws express the subtleties and empathy with employees with disabilities, helping them confidently and efficiently participate in the labour market in line with their wishes and without feeling discriminated against by inner feelings. Notably, the lower optimism may also reflect perceptions that employer attitudes or culture, including prejudice, discrimination, and reluctance to make workplace accommodations, often reduce the chances of being offered a job, promotion, or successful retention.

6. Conclusion

Protection and realisation of human rights are granted to all Vietnamese people, including those with disabilities. However, Vietnam faces challenges in realising the right of PwDs to work. PwDs encounter various difficulties in gaining the right to work, such as negative social stigma; terms and conditions for employees do not offer them the opportunity to work; their resume does not meet the employer's requirements; and diffidence due to their physical impairments. The ratification of the CRPD shows Vietnam's commitment and seriousness to respect, protect and implement the rights of PwDs, especially in work, which is expected to improve the welfare of PwDs. In addition, the author suggests that there should be a stricter legal corridor on the responsibility of managers. Only in this way can PwDs enjoy full legal rights and obligations like other ordinary workers, contributing to realising PwDs' wish "let us integrate into the community".

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The right to employment of persons with disabilities in the context of the Fourthly Industrial Revolution in Vietnam - From a legal perspective

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Abstract: The fourth industrial revolution (Industrial Revolution 4.0), with unprecedented discoveries in history, has had a strong impact on human rights in general and the rights of PwDs in particular, including the right to work. The industrial revolution 4.0 has made many traditional occupations disappear and created many new jobs, and the nature of labour relations has greatly changed. Based on the principles of the rights of PwDs and practice, the article analyses the response of legal provisions to ensuring the employment rights of PwDs in the context of the Fourthly Industrial Revolution in Vietnam. From there, it proposes changes in the legal aspect to implement the right to employment of PwDs effectively.

Keywords: PwDs; human rights; rights of PwDs; employment rights; employment law; Industrial Revolution 4.0.

1. Introduction

Employment is a special labour activity and an inherent characteristic of human beings. Therefore, the right to employment is a basic human right. The Industrial Revolution 4.0 has strongly impacted all aspects of human life and human rights, including the right to employment of PwDs. PwDs include persons with long-standing physical, mental, intellectual or sensory impairments that, when interacting with various barriers, may preclude their full and effective participation in society on an equal basis with others [1]. With certain limitations in terms of health and labour, PwDs are the most vulnerable social group in the field of employment to the rapid and powerful social changes of the Industrial Revolution 4.0. The “sensitivity” to changes in the employment of PwDs is evident in this revolution's positive and negative impacts. “The Industrial Revolution 4.0 will allow countries to develop more prosperously, connect and integrate faster and easier, better ensure human rights, and pose challenges on labour rights, employment, inequality, increased vulnerability for target groups in society ...” [2]. PwDs face a double burden when entering the workforce. They suffer certain obstacles to their disability and additional infrastructural, institutional and qualifications barriers related to their disability. “The Industrial Revolution 4.0 especially affects vulnerable groups, such as women, PwDs, children, and the elderly. These groups need special support in accessing and realising human rights” [3]. As an active member of the international community in promoting and ensuring human rights in general and the rights of PwDs in particular, Vietnam has promulgated a system of legal documents governing the development of legal relations in the field of employment of PwDs on the basis of internalising the principles and standards of the rights of PwDs in international conventions. So, in light of the opportunities and challenges of the Industrial Revolution 4.0, how adaptive is the current legal framework? What practice is posing a requirement to perfect the law on promoting and guaranteeing the rights of PwDs in the context of the rapid development of science and technology?

2. Research content

2.1. The concept of the right to employment of PwDs

In a broad sense, “a job” is “a set of tasks and duties carried out, or meant to be carried out by a person” [4]. The right to work is a composite right that includes rights arising in the labour relationship: the right to secure safe working conditions; the right to choose and accept work freely; the right to fair and equitable remuneration; the right to guaranteed hours of work and rest; the right

to equal treatment in labour relations; the right to establish, join and participate in trade union activities; the right to collective bargaining agreement and the right to strike [5]. In addition, the right to employment is also associated with issues such as opportunities for promotion and nomination, unemployment benefits and social benefits, and abolishing forced labour; child labour. According to other studies, the right to work has the same connotation as labour rights, workers' rights [6], or the right to work [7].

The right to work is one of the basic human rights belonging to the group of economic, social and cultural rights. The right to work is enshrined in Article 23 of the Universal Declaration of Human Rights (UDHR, 1948). Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) states: 1. The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right; 2. The steps to be taken by a State Party to the present Covenant to achieve the full realisation of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual". Article 7 requires States Parties to the Covenant to recognise the right of everyone to just and favourable conditions of work as embodied in institutions: fair and just wages; secured safe and healthy working conditions; guaranteed equal opportunities for promotion; assured working time, rest time. Article 8 on ensuring everyone's right to form and join trade unions, the right to strike, and the right to operate trade unions. The right to employment of PwDs is set out in Article 27 of the International CRPD, 2007: "1. States Parties recognise the right of PwDs 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 PwDs. States Parties shall safeguard and promote the realisation of the right to work, including for those who acquire a disability during employment, by taking appropriate steps, including through legislation, to, inter alia: (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, the continuance of employment, career advancement and safe and healthy working conditions; (b). Protect the rights of PwDs, on an equal basis with others, to just and favourable work conditions, including equal opportunities and remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances; (c). Ensure that PwDs are able to exercise their labour and trade union rights on an equal basis with others; (d). Enable PwDs to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training; (e). Promote employment opportunities and career advancement for PwDs in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment; (f). Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business; (g). Employ PwDs in the public sector; (h). Promote the employment of PwDs in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures; (i). Ensure that reasonable accommodation is provided to PwDs in the workplace; (j). Promote the acquisition by PwDs of work experience in the open labour market; (k). Promote vocational and professional rehabilitation, job retention and return-to-work programmes for PwDs. 2. States Parties shall ensure that PwDs are not held in slavery or servitude and are protected, on an equal basis with others, from forced or compulsory labour". In addition, ILO Convention No. 159 on Vocational Rehabilitation and Employment of PwDs (1983) requires Member States to have a policy on occupational re-adjustment

for PwDs, according to which they are able to find and maintain suitable employment accessible to all types of PwDs, and must promote their employment opportunities in the open labour market.

Thus, the right to employment of PwDs is a basic human right of PwDs arising in employment, embracing the full employment rights of ordinary people. At the same time, stemming from the individual characteristics of PwDs, international law especially emphasises equality and anti-discrimination in terms of employment rights for PwDs.

2.2. Impact of Industrial Revolution 4.0 on the employment rights of PwDs

Industry 4.0 is the fourth revolution of humanity, combining scientific achievements of 3 main fields (1) Digital, including Big Data, connected internet things (IoT) and artificial intelligence (AI), in which big data is considered the core factor for using and developing internet of things and artificial intelligence; (2) Biotechnology, including applications in agriculture, fisheries, medicine, food processing, environmental protection, renewable energy, chemistry and materials; (3) Physics fields such as new generation robots, self-driving cars, new materials (graphene, skyrmions...), nanotechnology...

Unlike previous Industrial Revolutions, Industry 4.0 has an unprecedented growth rate, progressing at an exponential rather than a linear speed. This revolution occurs not only on the scale of all fields in a country or region but also globally. The Industrial Revolution 4.0 changes not only the production system of an enterprise or a field but also has a strong impact on the management system of a country and the global management system.

Given the above characteristics, the Industrial Revolution 4.0 has a profound impact on the right to employment in all aspects: the right to work, the right to a salary, guaranteed safety, occupational hygiene, working hours, and time off, opportunities for promotion, the right to join and form a union. Because the essence of the Industrial Revolution 4.0 is to create virtual systems established from the information environment, helping to connect and interact between people, machines and the real world through all five human senses (sight, hearing, taste, smell, touch). Technologies such as advanced robotics, autonomous transportation, artificial intelligence and several others are being used on an industrial scale and are expected to create disruptive changes in employment. Thus, the Industrial Revolution 4.0 will change from how it is organised and managed to the nature of specific jobs. The employment rights of PwDs are subject to all the impacts of the Industrial Revolution 4.0. In addition, PwDs have their characteristics in how they approach and exercise their right to work, so this impact also has its characteristics.

2.2.1. Positive impact

In the past years, the industrial revolution 4.0 has brought great changes, creating conditions for employees with disabilities to study and train continuously to improve skills, change careers and create self-employment. These are also new opportunities for PwDs to remove barriers and integrate into the community.

Industry 4.0 helps PwDs increase their ability to find and access jobs. Among the total number of PwDs, the form of disability that accounts for the highest number (over 50%) is lower body mobility disability (3,566,854 people) [8], which hinders PwDs from moving. The internet and social networks have developed with wide coverage in space and time, along with modern and advanced means and equipment, opening up many opportunities for PwDs when they do not need to move. However, they can still search for job information on social networks and technology platforms. These include very useful technologies such as *Dot* helps blind people access messages, tweets, and even books anywhere and anytime; *Talkitt* is an innovative application that converts difficult pronunciation into understandable speech so that we can understand what they mean, despite speech impediments;

Sesame phone helps to access all smartphone features without touching the device; *UNI* is a two-way communication tool for the deaf using gesture and speech technology; *Finger Reader* is useful for visually impaired people to read printed text in books or on electronic devices and is also used as a language translation tool; *With My Eyes* is an app that helps blind people “see” the world; *Transhood* provides a solution for deaf people in group conversations... Besides, there is software to convert common text channels to braille or audio channels for people with visual disabilities, language software for people with hearing disabilities, and teaching software to form concepts and adjust behaviour for PwDs about developmental disorders.

Industry 4.0, with outstanding technological inventions, has created many new jobs that have never been before and are very convenient for PwDs, such as graphic design, e-commerce transactions, online sales, YouTubers, streamers, vloggers, and TikTok. New flexible, remote, online forms of work, also known as freelance jobs in the digital economy, are very suitable for their disability in terms of space, and time, as well as not wasting time and effort to travel, does not require much of the skills to work in the office environment; anywhere, PwDs can participate and integrate into the working environment. Sometimes it also helps them avoid guilt and inferiority when working in offices and businesses, creating comfort for individuals. At the same time, it promotes the capacity, rise to integrate and contribute to society. Online work experience can help PwDs establish a career path and develop professional networks, opening up more opportunities in the future. Recent studies have shown that online work can also help youth with disabilities build a sense of self-worth with empowerment combined with a sense of creativity and contribution to society. For example, Digital Divide Data (DDD) in Cambodia and Enablecode in Vietnam are social enterprises that specifically target young PwDs to increase their access to employment opportunities in a competitive digital environment. [9].

Industry 4.0 generates business opportunities for PwDs in the digital economy. Some important principles outlined in the International Convention on PwDs are: “Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons” (Article 3(a)) and “Full and effective participation and inclusion in society” (Article 3(b)). With the emergence of online platforms, new possibilities for entrepreneurship in the digital environment have appeared. The right ecosystem can help young PwDs start and grow their businesses, creating more jobs and economic growth. For example, Alibaba has taken proactive measures to make Taobao, its e-commerce platform, more inclusive for PwDs. Statistics show that on Taobao, China's largest online shopping website, 174,100 online stores sold about 11.66 billion yuan of goods from June 2018 to May 2019, operated by PwDs. Thus, PwDs not only passively receive opportunities and jobs from the State and society but can also create jobs for themselves and the community. Their “autonomy, independence” and “participation, integration” became more complete and effective.

Industry 4.0 opens up many opportunities in job selection. The scope of work in the current digital technology era is wider than in one country. However, it is expanded to many different countries, working for domestic employers and employers in other countries. Thus, the working environment will be more open and advanced, and employees with disabilities will have access to many new technologies, exposed to and accumulate a lot of knowledge and work experience in many other civilisations. If China is considered the world's factory, then India is the world's office - many Indian workers work for companies based in Europe, North America and Europe. USA through call centres located in India. The application of digital technology helps investors have more choices in the production and business process, freely choosing investment locations in one country or another. From there, it will create flexible jobs, and employees benefit from finding the job, and now, jobs have to find them.

2.2.2. Negative impact

However, the Industrial Revolution 4.0 has many negative impacts on ensuring the employment rights of PwDs. Along with creating new opportunities, this revolution also challenges countries to promote and secure the employment rights of PwDs.

As automation replaces manual labour, robots and intelligent intelligence (AI) replace humans in many fields. Many people are unemployed, and PwDs are the most directly affected. The impact of digital technology is not only threatens the employment of low-skilled workers but also middle-level workers if they need to be equipped with new knowledge and creative skills. “The biggest challenge for Vietnam’s labour and employment sector is the backward labour structure and low labour skills. Process-based, mid-skill jobs are now competed by computers; jobs requiring high-level skills benefit from computers; repetitive, low-skill jobs are automated for the Firstly time” [10].

Meanwhile, nearly three-quarters of PwDs aged 15 and over living in multi-dimensional poor households have never attended school or have no qualifications. There is a marked difference in training occupation; for every 100 PwDs from the age of 15 and above, only seven people received vocational training (7.3%), while this number among persons without impairment was 22 people (21.9%) [11]. PwDs, due to health limitations and personal conditions, do not have the opportunity to study at the high level required by the labour market. Thus, it is clear that with the development of technology and machines to replace manual labour and low-skilled workers, PwDs are the subjects that are hardest hit. The survey results show that PwDs need to work for income and live independently, but less than one-third of PwDs have a job. PwDs have fewer job opportunities compared to persons without impairment. The ratio of PwDs aged 15 and over with a job is 31.7%. This rate of persons without impairment is 2.5 times higher, up to 82.4% [12].

High technologies such as robots, artificial intelligence, internet of things (IoT)... can create products and solutions to support PwDs that greatly contribute to the overall development by improving work efficiency for these persons and reducing the social burden because they can better integrate into life independently. However, the percentage of households with PwDs that own communication tools are lower than those of households without PwDs, specifically: Television (87.7% vs 94.4%), internet subscribers (16.8% vs 30.9%), computers (13.7% vs 28.6%) and telephones (84.7% versus 96.2%) [13]. Besides, investing in technology for PwDs is a big challenge. Arnon Zamir – Innovation Director of the international project for PwDs TOM (Tikkun Olam Makers) Israel – shared with Science and Development Newspaper: “Technology for PwDs is a very special field because of its speciality. Doing business in this field will face the barrier that the product cost is too high while the target audience is very limited.” Therefore, this is an infrastructural and resource barrier to the promotion and assurance of the rights of PwDs.

Digital technology is exacerbating the gap between the rich and the poor. The continuous creation of new technologies that create new jobs and increase labour productivity has generated huge economic benefits for inventors, investors and employers. At the same time, a large income gap also occurs in the workforce of highly qualified PwDs and workers with low skills and qualifications.

In light of the development of technology, many new jobs are created, but the nature of labour relations also changes. According to the general concept, the labour relationship is the relationship between the employees, the employee's collective, the employer and the employer's representative organisation, established on the basis of the labour law, including labour standards, mechanisms for establishing and operating labour relations, mechanisms for settling labour disputes, and the roles of parties in labour relations. According to Clause 5, Article 3 of the Labour Code, “Labour relationship is a social relationship arising in the hiring, employment, and payment of wages between employees,

employers, representative organisations of the parties, competent state agencies. Labour relations include individual labour relations and collective labour relations”. However, at present, many new jobs generate income. However, they only have some of the elements of the labour relationship, so employees are not guaranteed certain benefits like workers under labour contracts (e.g. insurance regime, labour accident, rest regime).

2.3. Assess the appropriateness of Vietnamese law in ensuring the employment rights of PwDs

As an active member state of international conventions on human rights, Vietnam has joined 7/9 core human rights conventions and acceded to 25 ILO conventions. Among those, there are conventions directly related to the employment rights of PwDs, such as the International CRPD, Convention No. 159 (ILO) on vocational rehabilitation and employment of PwDs, 1983. Recently, Vietnam signed and joined new generation FTAs such as the EU-Vietnam Free Trade Agreement (EVFTA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which have set a requirement to review and perfect the legal framework regulating social relations, especially labour relations, and “internalise according to the roadmap in accordance with the international treaties to which Vietnam is a contracting party, Firstly of all, the law on trade, investment, intellectual property and technology transfer, labour – union”.

The domestic legal system has relatively fully and comprehensively provided for the employment rights of PwDs. The 2013 Constitution recognised the right to work in **Article 35**: “1. Citizens have the right to work, choose a career, employment and workplace; 2. Wage workers are guaranteed fair and safe working conditions, salary, and rest regime; 3. Discrimination, forced labour and using workers below the minimum working age are strictly prohibited. The right to work in the 2013 Constitution has been properly expressed with the “attribute” of human rights that is an inherent and natural right that the State has the responsibility to recognise and guarantee, instead of the dependent regulation from the side of the State in the 1992 Constitution: “Labour is the right and duty of citizens. The State and society plan to create more and more jobs for workers” (Article 55). At the same time, the Constitution emphasises: 2. The State creates equal opportunities for citizens to enjoy social welfare, develops the social security system, and adopts policies to assist the elderly and PwDs, the poor and people with other difficult circumstances” (Article 61).

In addition, the employment rights of PwDs with the full implications of this concept are affirmed in most of the important employment codes and laws, such as Labour Code 2019, Law Employment 2013, Law on Vocational Education 2013, and Law on PwDs 2010.

The Labour Code of 2019 has demonstrated the spirit of catching up with the requirements of the reality of the Industrial Revolution 4.0 when institutionalising new labour relations. It is recognised that the subjects of application of this Code include “people working without labour relations” (Article 2). “... 6. Persons who work without an employment relationship are those who work not for hire under a labour contract” (Article 3), which includes PwDs. At the same time, the Labour Code stipulates the State’s policy on employees with disabilities: “ ...7. Ensuring gender equality; stipulate labour regimes and social policies to protect female workers, employees with disabilities, elderly workers, and underage workers (Article 4). PwDs are given priority to the annual leave with a full salary under the labour contract of 14 days (2 days more than those who do the job under normal conditions) (Article 113). “The State protects the labour rights and self-employment of employees with disabilities; adopt appropriate incentive and preferential policies for employers in creating jobs and accepting employees with disabilities to work in accordance with the law on PwDs” (Article 158). Prohibited acts when employing PwDs: “1. Employing employees with mild disabilities with a working capacity decrease of 51% or more, severe disability or particularly severe disability working

overtime, working at night, unless the employee with disabilities agrees; 2. Employing employees with disabilities to do heavy, hazardous and dangerous jobs according to the list promulgated by the Minister of Labour, War Invalids and Social Affairs without the consent of PwDs person when full information about the job has been provided by the employer” (Article 160).

The 2013 Employment Law, with its governing scope, regulates policies to support job creation. The state management of employment has paid attention to employees with disabilities on the basis of adopting policies to support employers in employing many PwDs. The National Employment Fund gives priority to loans with lower interest rates to: “a) Small and medium-sized enterprises, cooperatives, cooperative groups, business households that employ a lot of PwDs, ethnic minorities; b) Ethnic minority people living in areas with extremely difficult socio-economic conditions, PwDs”. The Employment Law also encourages PwDs to create jobs for themselves and households to create jobs for PwDs through preferential policies: loans with preferential interest rates for production and business from the Bank for Social Policies; guidance on production and business, support to transfer of production technology, support in product consumption. At the same time, detailing priority policies to encourage production and business establishments to employ 30% or more of the total workforce who are PwDs; enterprises, administrative agencies, non-business units employing 10 PwDs who work stably...

The Law on Vocational Education 2013 stipulates: “ ... 7. Supporting ... PwDs ... to create opportunities for them to study in order to find work, create self-employment, improve themselves and establish a career; implement gender equality in vocational education” (Article 6). “1. The State encourages vocational education institutions to recruit PwDs for inclusive learning; encourage organisations and individuals to establish vocational education institutions for PwDs” (Article 27). Vocational education institutions for PwDs are entitled to preferential policies such as financial support from the State, land allocation, and land lease. The State supports enterprises with funding for training PwDs to study and work for enterprises. Learners who are PwDs with permanent residence in areas with extremely difficult socio-economic conditions, ethnic minority areas, border areas and islands are entitled to boarding policies as the Prime Minister prescribes.

The Law on PwDs 2010 is a specialised law on PwDs that encompasses provisions to ensure the employment rights of PwDs from the vocational training stage: “1. The State ensures that PwDs receive free vocational training counselling, choose and learn a job according to their ability and capacity on an equal footing with others” (Article 32); “1. The State creates conditions for PwDs to restore their work function, receive free job counselling, and get a job and work suitable to the health and characteristics of PwDs; 2. Agencies, organisations, enterprises and individuals must not refuse to recruit PwDs who fully meet the recruitment criteria to work or set recruitment standards contrary to the provisions of the law in order to limit employment opportunities of PwDs; ...5. Job placement organisations are responsible for providing vocational training, counselling and job placement for PwDs; 6. PwDs who create jobs for themselves or households that create jobs for PwDs are entitled to loans with preferential interest rates for production and business. They receive guidance on production, technology transfer, and consumption of products according to the government's regulations” (Article 33). In addition, the State issued special policies for production and business establishments that employ a lot of PwDs (Article 34): Business and production establishments employ at least 30% of the total number of employees who are PwDs are supported to improve working conditions and environments suitable for PwDs; exempt from corporate income tax; borrow loans at preferential interest rates according to production and business development projects; to be given priority to lease land, premises, water surface and exempt or reduce the rent of land, premises and water surface in service of production and business according to the proportion of employees

who are PwDs and the degree of disability of the employees and business size. Article 35: “1. The State encourages agencies, organisations and enterprises to accept PwDs to work. Enterprises that employ a lot of employees with disabilities are entitled to preferential policies as prescribed in Article 34 of this Law”

Thus, the guarantee of employment rights for PwDs has been stipulated in the Constitution and most relevant laws on the basis of compliance with specific principles and policies for PwDs such as equality about vocational training and job search opportunities; financial and consulting support; regime of rest, health care, social insurance; encouraging self-employment. In particular, the Labour Code of 2019 has been amended and supplemented in the direction of covering employees who do not have an employment relationship. This is a very specific object arising in the context of the Industrial Revolution 4.0.

However, in the face of the rapid and profound change in employment in the current digital economy, the Vietnamese legal system still has certain limitations, as follows:

In terms of timeliness, the impacts and influences of the Industrial Revolution 4.0 on human rights in general and the employment rights of PwDs, in particular, are very rapid, profound and wide-ranging. The Labour Code has been recently amended and supplemented, including provisions on new legal relations in the field of labour arising in practice. However, these regulations have only been shown to be general principles but have not been specific. The Law on PwDs was promulgated in 2010 before the 2013 Constitution, and Vietnam ratified the International Convention on PwDs (2014). So far, in the new context of the digital revolution, it is also necessary to review, control, adjust, and supplement.

Regarding uniformity, currently, other laws related to the employment rights of PwDs, such as the Employment Law, the Law on Social Insurance, the Law on Science and Technology, and the Law on PwDs, are outside the Labour Code. The regulation of employees without labour relations is a new concept in the Labour Code, and there needs to be a specific guiding document. The Law on Science and Technology 2013 covers organisations and individuals engaged in science and technology activities; the organisation and implementation of scientific and technological activities; measures to ensure scientific and technological development; State management of science and technology. In encouraging and creating opportunities and conditions for PwDs to be proactive in self-employment and start-up from applying science and technology, the Law on Science and Technology still needs to include priority provisions. Encouragement for individuals and organisations who are PwDs to engage in scientific and technological activities. At the same time, there are no regulations on appropriate protection policies for inventions that support PwDs to integration into the community.

2.4. Solutions to improve the law to promote and ensure the employment rights of PwDs in the context of the Industrial Revolution 4.0

Firstly, to ensure the principle of job selection for PwDs, it is necessary to have a stronger mechanism to create more jobs from which they can choose instead of accepting when there is no other choice.

Secondly, the Industrial Revolution 4.0 and the development of the market economy make PwDs easily lag behind the community. Many PwDs, due to various types of disabilities, economic conditions, and families, cannot keep up with high technology, so they do not have jobs. “21. The right of everyone to the opportunity to earn a living by work which he freely chooses or accepts” (Article 6(1)) will not be possible when the only real opportunity is open to Employees with disabilities are working in places where “protective” conditions are below standard. Arrangements for persons belonging to a certain disability group to work in certain occupations or produce certain goods may violate this right [14]. “12. Without government intervention, there are always

circumstances where free market operations will have adverse outcomes for PwDs as individuals or groups. Moreover, in such a case, it is the responsibility of the government to engage and take measures to mitigate, supplement, compensate or eliminate such adverse outcomes brought about by market forces”. [15] ... The right to work is important to each person, not only is it the source of income and the opportunity to earn a living, but through the right to work, individuals want to affirm their position and role in social life, their ability, capacity, prestige and value. When people have jobs and exercise their right to work, people will look to the truth and beauty, acknowledge their values, and be able to integrate into the community. Therefore, in addition to supporting and helping PwDs who are able to meet highly qualified jobs, the law needs to stipulate the State’s responsibility in creating, preserving, and sponsoring to maintain the traditional jobs for PwDs who do manual labour or simple jobs. For example: maintaining traditional crafts, “handmade” professions...

Thirdly, “19. The fundamental obligation of Member States is to ensure the continued implementation of the process of application and enforcement of the right to work. Therefore, the States Parties to the Covenant must adopt measures as soon as possible to fully realise the rights contained in the Covenant”. [16] This requires amendments and supplements to relevant Laws as well as specific guidance documents on legal relations on new jobs arising in the context of digital technology, such as regulations on workers without an employment relationship, in order to promptly ensure the rights of workers in general and PwDs in particular when participating in jobs without labour relations (most commonly online jobs, in cyberspace).

Fourthly, to add to the Law on Science and Technology the priority and incentive for individuals and organisations who are PwDs to engage in scientific and technological activities. This is essential for PwDs who want to start a business, be creative, and create their jobs in science and technology because no one can help and accompany PwDs better than PwDs themselves. At the same time, stipulate adequate protection policies for scientific inventions that support PwDs to work and integrate into the community.

Fifthly, the level of labour market segmentation tends to increase. Knowledge, not capital, will be an important factor of production in the future. This will create an increasingly segregated job market into “low-skill/low-wage” and “high-skill/high-wage” segments. Since then, the difference in wages and income between these two groups of workers will increase. That leads to the need to change and adjust the minimum wage level and the salary scale framework currently being used across industries/occupations, regions/regions, and qualification levels to ensure a minimum standard of living for employees with disabilities.

Sixthly, “20. Employment is the area where discrimination on the basis of disability is most widespread and persistent. In most countries, the unemployment rate of PwDs is two to three times higher than that of the general population. In places where PwDs are employed, they are usually only employed in low-paid work and are often isolated from the labour market. States should actively support the integration of PwDs into the labour market”. “In order to eliminate discrimination in the past, present and future, the adoption of comprehensive anti-discrimination laws against PwDs is considered essential for all member states. This Act should provide legal protection where possible and necessary and social programs to enable PwDs to live an inclusive, self-determined and independent life” [18]. In Vietnam, theoretically, legally and practically, there is a requirement to promulgate a Law on equality and anti-discrimination, which applies to all sectors and fields. It is indispensable to prevent discrimination against PwDs in general and in employment.

Seventhly, “Union-related rights (Article 8) apply equally to employees with disabilities regardless of whether they work indoors or under ordinary working conditions. In addition, Article 8 should be

understood in relation to other rights, such as the right to freedom of assembly, to emphasise the importance of the right of PwDs to form their organisations. If these organisations are to be effective in “promoting and protecting the economic and social interests (Article 8(1)(a)) of PwDs, they need to be regularly consulted by state and local authorities on issues affecting PwDs. If necessary, organisations of PwDs should be financially supported to ensure they can survive and thrive” [19]. Currently, the Labour Code has regulations on representative organisations of employees. This is a favourable legal basis to help employees with disabilities who need to associate with and form organisations to protect their rights on specific topics in the field of employment.

3. Conclusion

Being a part of a social community, despite having its own individual characteristics, the need to work to live independently, affirm self-worth and integrate, and contribute to the country's and nation's common development process is a legitimate human right of every person with a disability. Faced with the opportunities and challenges of the Industrial Revolution 4.0, our Party and State always have a consistent view and policy to ensure the rights of PwDs: “Promoting the implementation of the United Nations CRPD and the Law on PwDs to improve the quality of life of PwDs; create conditions for PwDs to participate equally in social activities; building a barrier-free environment that ensures the legal rights of PwDs and supports PwDs to develop their capabilities” (Decision No. 1190/QĐ-TTg dated August 5, 2020, of the Prime Minister approving the program to assist PwDs from 2021 to 2030). Therefore, researching and discovering legal and practical issues on ensuring the right to employment of PwDs in the context of the Industrial Revolution 4.0 to propose solutions to improve the legal system is a practical requirement nowadays.

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Supporting persons with disabilities' start-ups in Vietnam

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Abstract:

Ensuring the rights of PwDs with the slogan “no one is left behind” is a fundamental human right in an equal society. Some sustainable development goals attached to PwDs include having good health and well-being, reduced inequalities, decent work and economic growth. More than meeting daily necessities, PwDs need long-term work and a stable income to affirm their value and participate in the labour market equally with ordinary people. Start-ups are only for some, especially PwDs, with many obstacles to communication, funding, infrastructure, and customer access. There are examples of successful start-ups of PwDs. Nothing is better than PwDs start-ups for PwDs as they are based on empathy and an understanding of the demand of PwDs. Therefore, this article proposes several suggestions, such as creating a legal environment, adopting priority policies for PwDs start-ups, increasing business training programs, and developing a network among the PWDS community, between PWDS with investors and organisations within Vietnam and abroad.

Keywords: start-ups; PwDs; support; Vietnam; sustainable development goals.

1. Introduction

PwDs suffer certain disabilities, like the border population, which are not completely healthy. We seem not to understand all the difficulties, disadvantages, and misfortunes of PwDs. Once put yourself in that situation, sympathise, and share with the unhappy life; once down, touch the pain, and acknowledge that PwDs have the right to love, be loved, and live with the most basic human rights.

No discrimination is not enough to ensure PwDs' integration into normal life. We need to support them to be autonomous, independent, and care for themselves, not to carry the reputation of begging or living off subsidies. There have been many typical examples of overcoming difficulties in starting a business. With a noble soul and unwavering determination, PwDs can help each other create value for life.

The challenges here are the stigma of others, the lack of support from partners and the authorities, and the limitation of opportunities. Although the Party and the State of Vietnam have been very keen to direct, the number of PwDs who successfully started up still needs to be higher. Starting a business requires a lot of effort, time and determination.

From the author's point of view, this article will discuss the advantages and disadvantages of PwDs start-ups and the achievements and limits of government support, then propose possible recommendations.

2. Start-ups of PwDs

2.1. PwDs

Clause 1, Article 2 of the Law on PwDs 2010 stipulates that a person with a disability has a defect in one or more body parts or a functional impairment manifested in the form of a disability that makes working, living or studying difficult.

Specifically, Article 2 of Decree No. 28/2012/ND-CP detailing and guiding the implementation of a number of articles of the Law on PwDs stipulates six forms of impairments as follows:

Table 1. Types of disability

No	Type of disability	Definition
1	Mobility Impairment	partial or total loss of the mobility of the head, neck, legs, arms, or body, resulting in limited movement
2	Hearing and speech disabilities	decrease or loss of listening, speaking or both listening and speaking functions, pronunciation into clear speech and sentences leading to limitations of communication and exchange of verbal information
3	Visual impairment	partial or total loss of sight and senses of light, colours, images, and objects under normal lighting and environmental conditions
4	Mental impairment	disorder of senses, memory, feeling, thought and act control manifested abnormal speech or acts.
5	Intellectual Disability	a condition of reduced or lost cognitive ability, thinking manifested by slowing or not being able to think, analyse things, phenomena, solve things
6	Other types of disability	the decrease or loss of bodily functions, causing difficulties in work, living and learning difficult but not in the above cases

In addition, the Decree also specifies three levels of disability (Article 3), including (1) People with particularly severe disabilities are those whose impairments lead to total loss of their function and self-control or make them unable to carry out their activities of moving, dressing, keeping personal hygiene and other things serving the daily needs of personal living without being monitored, assisted and cared for; (2) People with severe disabilities are those whose impairments lead to partial loss or deficiency of their functions, self-control or make them unable to carry out their activities of moving, dressing, keeping personal hygiene and other things serving the daily needs of personal living without being monitored, assisted and cared for; (3) People with mild disabilities are PwDs who do not fall into the cases specified above.

Within the scope of this article, the author focuses only on people with mild disabilities, who have one or several impairments in their basic functions/parts of the body, but without neurological or intellectual disabilities, so that they can start a business.

2.2. Entrepreneurs with disabilities

Entrepreneurship is not a mass movement. Start-ups are starting a business of your own, managing to operate, staying active, and taking responsibility even in the worst-case scenarios. Providing new products, new services, or even trading in goods already on the market, but according to your ideas,

are all called start-ups. Managers, founders, or co-founders can hire staff to work for them. Entrepreneurship benefits PwDs and society, ordinary workers, and people in the same situation.

For individuals with disabilities who dare to pursue entrepreneurship, this activity helps them create jobs and income. They are independent at work, and if the company develops well, the income can be many times higher than the paid work.

For society and the economy, start-ups by PwDs create diverse jobs. This helps our country to tackle unemployment, generating a source of income for PwDs to feed themselves and their families and then helping people in the community with disabilities.

Successful entrepreneurship inspires PwDs to live useful lives, to be less insensitive, more self-confident or not commit suicide, contributing to reducing pressure on the economy, and social benefits, making the country increasingly civilised and developed.

2.3. Barriers to starting a business

Most of PwDs employees of working age live in rural areas. Their main jobs are to help families in agriculture, forestry, fisheries or unstable jobs with low income. Although there are 40% of PwDs of working age and working capacity, only 30% have jobs and income generation for themselves, their families and society [1].

PwDs need help with capital, personnel, and market risks like many entrepreneurs. In addition, the characteristics of PwDs make them difficult to communicate, convince partners, and customers, catch the market trend, and promote products. Particularly for the blind/deaf, when opening a store, they find it challenging to decorate, arrange the store, and talk with customers, so they need help from ordinary people. Moreover, some PwDs still think they are defective and need to be supported by the community and charity. This thought is also a barrier for them to start their own business.

To support PwDs in starting a business, the most important thing is to learn basic knowledge such as calculating interest and managing money in and out, followed by knowledge related to products, promotion, and transactions with partners...

The access opportunities of women with disabilities are more limited due to stereotypes, the environment and themselves, so they have not boldly connected with suppliers or partners.

3. Supporting PwDs in start-up

3.1. Achievements

The government has issued preferential policies for business enterprises in accordance with Article 8 of Decree 28/2012/ND-CP to encourage them to create jobs and participate in production and business, specifically:

Firstly, capital assistance. PwDs who are self-employed are entitled to loans from the Bank for Social Policy at preferential interest rates for production and business. The conditions, duration and level of loan capital shall comply with the current regulations applicable to employment capital projects. Over the years, the Vietnam Bank for Social Policy has always accompanied and focused resources on promoting credit programs for PwDs, such as: Lending preferential loans to PwDs through the National Fund for Employment, Project “Expanding access to finance for PwDs - Small-scale financing for production and business establishments using, serving or owned by PwDs” funded by Japan's Nippon Fund in some large cities such as Da Nang, Hanoi, Quang Ninh and some other credit programs.

Secondly, guiding the production and business, supporting the transfer of production technology, and supporting the consumption of products. Accordingly, the People's Committees at all levels shall, within the scope of their tasks and powers, assume the prime responsibility for and coordinate with

related agencies, organisations and individuals in guiding the production and business of, technology transfer of, and assisting in the consumption of, products made by PwDs.

The above policies have provided business enterprises with guaranteed economic opportunities. According to the General Department of Vocational Education, up to now, 282 thousand PwDs have been supported with vocational training and job creation. In particular, 22 thousand people received loans from the National Fund for self-employment, production and business organisation [2].

According to the Bank for Social Policy report, the State's loan support policies have helped enterprises of PwDs find capital sources to stabilise and develop production and business. As of February 28, 2018, outstanding loans to enterprises employing PwDs and PwDs self-developed production at the Bank for Social Policy reached 118 billion VND, with 5,838 customers outstanding.

In addition to its policies, PwDs start-ups are also entitled to support policies from the State, such as other start-up enterprises as stipulated in the Law on Support for Small and Medium Enterprises 2017 and other relevant regulations such as information support, consulting, human resource development, the transition from business households, innovative start-ups, joining industry clusters, value chains...

Since 2012, the government has implemented an assistance program for PwDs across the country to promote the implementation of the United Nations CRPD and the Law on PwDs to improve the quality of life of PwDs; creating conditions for them to participate equally in the activities of society; building a barrier-free environment that ensures the legal rights of PwDs and promotes their abilities.

After eight years of implementation, the Disability Assistance Program for the period 2012 - 2020 (Project 1019), with funding from the regular annual expenditure, estimates that over 300 billion VND has been disbursed to improve the status of PwDs, change awareness, views and responsibilities of all levels of government, unions and society on disability issue and PwDs. Many PwDs are apprenticed and have jobs and income. Their lives have been improved, contributing to the stability and sustainable development of the entire country.

In 2021, nearly 1,000 PwDs were supported with vocational training in cooperation with the German Organization for Development and Cooperation (GIZ) to develop 02 programs “Awareness raising on inclusive education for PwDs”, “Inclusive teaching skills” and a digital accessibility toolkit to promote the participation of PwDs and other marginalised groups in society. Organise training to raise awareness of inclusive education for PwDs; inclusive teaching skills and certificates for nearly 80 teachers, lecturers and managers of some vocational education institutions nationwide. In 2021, lending over 2,869 projects to employees with disabilities, creating jobs for about 16,000 employees with disabilities. The Vietnam Blind Association alone has lent 856 projects, including 757 projects of PwDs, to create jobs for 589 members.

Following the successes and overcoming the limitations of the Disability Assistance Program from 2012 to 2020, on August 5, 2020, the Prime Minister issued Decision No. 1190/QĐ-TTg approving the Disability Assistance Program in 2021 - 2030. Accordingly, in the post Covid-19 period, the program will focus on supporting PwDs start-ups by replicating the livelihood support model for PwDs, building a model to support PwDs to start up, a vocational training model associated with employment settlement for PwDs, the cooperative model with PwDs participating in the product value chain; striving for the percentage of PwDs who need and are eligible for loans at preferential interest rates as prescribed in the period 2021 - 2025 to be 90% and in the period 2026-2030 to be 100%. Priority beneficiaries of the program are youth with disabilities start-ups, women with disabilities, and business enterprises that hire PwDs. Based on the direction of the program, the Ministry of Labour, War Invalids and Social Affairs is the lead agency for the implementation of the program. It coordinates with relevant ministries and branches to develop an action plan to implement

the program. The Social Policy Bank organises the implementation of activities for young PwDs, women with disabilities, PwDs and business establishments with disabilities who wish to obtain loans at preferential interest rates according to regulations.

Circular 03/2022/TT-BTC recently regulates the management and use of non-business funds from the state budget to implement social work development, disability assistance and social assistance programs from 2021-2030. Accordingly, many expenses for disability assistance programs are added, such as:

- Expenses for hiring consultants.
- To enhance the application of information technology
- To review, update and manage data on the special educational needs of PwDs into software to manage the system to support the education of PwDs.
- Expenditure on replication of livelihood support model for PwDs.
- Expenditure on building models:
 - + Model of supporting PwDs to start up;
 - + Model of vocational training associated with job creation for PwDs;
 - + Model of epidemic prevention and disaster mitigation to ensure accessibility for PwDs;
 - + Develop a communication model integrating advocacy to support women with disabilities in the community; build a model of women with disabilities who are self-reliant;
 - + Build model lines and expand public passenger transport vehicles for PwDs to participate in traffic.

3.2. Limitations

In general, PwDs still need access to or have inadequate access to the State's support policies on health care, education, vocational training, employment, and credit. The level of social assistance for PwDs could be higher. The performance of some organisations of PwDs could be higher. Some cadres and people need to be fully aware, considering the work of PwDs as humanitarian and charity activities, under the responsibility of the labour - invalids and society; there is still a situation of stigma and discrimination against PwDs. In some places, implementing the Law on PwDs and policies on PwDs could be more active and complete.

Resources for the implementation of programs and projects to support PwDs are limited. There are still many barriers facing PwDs, with many difficulties in starting, maintaining and developing businesses. One of them is that enterprises of PwDs have only been given incentives to lend capital at the start-up stage but have not enjoyed other incentives in the process of organising activities such as tax incentives, ground lease, land lease, credit policy, vocational training support, working environment improvement support... as of enterprises often employing employees with disabilities if they do not ensure the number of employees in accordance with the regulations on incentives for enterprises employing PwDs in accordance with the current law.

In addition, some PwDs face many difficulties despite the need to borrow capital to expand, buy equipment and machinery, and develop the model into their production ecosystem because banks need incentives and require collateral. It is difficult to access the bank capital of enterprises of PwDs when they do not know the policy information or where to start the loan application.

Besides, PwDs, when starting a business, still need clarification about administrative procedures in registering for the establishment and organisation of their production establishments because there is no separate support mechanism for PwDs. It must be implemented like other ordinary enterprises. This is inappropriate and inconvenient for PwDs because they often need help in labour, living,

studying, mobility, and communication. When PwDs want to start a business, they must at least have a bank account. However, at the moment, many banks refuse to open accounts for the blind and the deaf because they cannot communicate with employees or sign documents (for the blind).

Moreover, opportunities for PwDs education, access to skills training courses, and knowledge are constrained, so many PwDs need more confidence in themselves. They also have no one to accompany, support, or motivate them to implement the start-up idea, turning passion into reality.

4. Recommendations

Firstly and foremost, we need to take a more compassionate view of PwDs, treat them as ordinary people with rights and opportunities to work and understand the provisions of the law on non-discrimination against PwDs. Further investments are needed in public services for PwDs, allowing them to participate in social activities.

The change in the social community's views and perceptions towards PwDs is critical. Psychologists suggest that when evaluating PwDs, we need to change our perspective. They are not sick people with serious illnesses; rather, we should put them in the position of normal people. Positive comments and reviews will help PwDs have a strong motivation to rise. Their success is likely achieved when surpassing the ability of a normal person. Because PwDs have desires to overcome their fate and assert themselves, this change must firstly stem from PwDs themselves. They always love a happy life, know how to conquer fate, and believe that there is nothing they cannot do. The viewpoints of the family and the people around them also need a positive change.

PwDs need sharing, not pity, and this is their desire. They are equal to all other healthy citizens. PwDs in localities are cared for by their families and society and create jobs suitable for their health to ensure their lives and integrate into the community.

To improve the support efficiency for PwDs start-ups:

Firstly, the government should continue to review and improve the system of legal documents on PwDs; ensure that the support covers all PwDs by expanding the beneficiaries of support, including technical assistants working in the informal sector and providing information on the government's support package in the form of accessible technical assistance, simplifying the procedures and processes for receiving support. Currently, only those with a certificate of disability that is particularly severe and severe are eligible for government assistance with this package, and many people with mild disabilities are not subject.

Secondly, adding long-term preferential policies for production and business establishments of PwDs, such as preferential land lease, production and business premises; incentives for land rent exemption and reduction; support for loans for PwDs who want to start-up... These incentive policies are only available to enterprises employing PwDs that meet the statutory conditions. Enterprises owned by PwDs on a small scale, despite many difficulties, have yet to be eligible for this incentive.

Thirdly, balancing and allocating sufficient resources to implement credit programs to support PwDs in their start-up, maintenance and development of production and business. Annually, grant additional funds to the National Fund for Employment; consider allocating funds specifically for preferential loans for PwDs and enterprises employing PwDs. In the localities, the authorities at all levels continue to be interested in allocating resources from the budget and other legal capital sources entrusted to the Bank for Social Policy to lend to PwDs in the locality.

Fourthly, based on the government's program on supporting PwDs, localities shall take the initiative in formulating creative implementation plans suitable to their local economic conditions, focusing on funding from the budget, ODA, non-refundable aid, and social capital for PwDs. In particular, it is

necessary to focus on rehabilitation and health care for PwDs; disease and disaster prevention for PwDs; prioritising construction works, traffic, legal aid, education and health care. At the same time, plan training programs, vocational training, and support to access new skills, especially information technology, so they can work safely after Covid-19 and compete in the technology 4.0 environment. To support PwDs in starting a business, training and providing business knowledge and skills for individuals or business households is crucial. This opens opportunities for many PwDs to improve their income and contribute significantly to Vietnam's economic recovery efforts.

Fifthly, promulgate policies to support the products of PwDs enterprises and encourage functional agencies to coordinate with domestic and foreign organisations and individuals to support PwDs start-ups in trading products. One resource needed to accompany PwDs to start a business is networking. For example, the Vietnam Society for the Protection of PwDs and Orphans can connect with enterprises to organise exhibitions and fairs to introduce products made by PwDs and have plans to consume products safely in the post-Covid context.

5. Conclusion

Supporting PwDs to identify their life goals and start their dreams is a noble gesture that should be appeared in every society. Understanding barriers when PwDs do start-ups, Vietnam took practical actions from capital assistance, guiding the production process, supporting technology transfer, and consuming products. However, there are still many obstacles for PwDs in their business journeys, such as public awareness, stigma and discrimination, tax incentives, ground lease, land lease, credit policies, vocational training, working environment improvement,

and administrative procedures... Therefore, the article proposes some possible recommendations for better support of PwDs start-ups in Vietnam: improving the system of legal documents on PwDs; adding long-term preferential policies for business establishments of PwDs; balancing and allocating sufficient resources to implement credit programs to support PwDs in their start-up, maintenance and development of production and business; formulating creative implementation plans that are suitable to their local economic conditions, focusing on funding from the budget, ODA, non-refundable aid, social capital for PwDs; connecting PwDs enterprises with domestic and organisations and individuals in trading products.

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Income security for older employees with disabilities under the impact of population ageing in Vietnam today

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Abstract:

According to the in-depth analysis of the population and housing census of the General Statistics Office in 2019, Vietnam is expected to enter the ageing population period in 2026 officially. This will significantly impact the income of older workers in general and older employees with disabilities in particular, with many issues related to pension insurance, social assistance, and life insurance. According to the human rights-based approach, the Party and Government should pay attention to this particular group because older employees with disabilities suffer from “double” vulnerability when accessing job opportunities and income security. Stigma is an invisible but cruel barrier that pushes this group of people to the margins of life, especially when they cannot meet the needs of the labour market due to their old age and poor health. This paper analyzes income security for older employees with disabilities under the pressure of population ageing, the current situation and possible solutions.

Keywords: Income Security; Workers; Older PwDs; Aging Population; Vietnam

1. Introduction

In the past, PwDs were often viewed with pity by the community. They were considered PwDss. The protection and support for them were mainly based on compassion and humanity. However, this way of thinking has changed. They are considered PwDs. They are also rights holders, and Governments, communities, organizations and individuals have an obligation to respect and ensure the realization of the rights of PwDs. This change has enhanced the status of PwDs in society. PwDs are classified as vulnerable people who need special attention and care. That is because long-term physical, mental, intellectual or sensory impairments make it difficult to carry out social relations. When participating in social relations in general and labour relations in particular, PwDs may face discrimination and stigmatization, hindering access and enjoyment of their rights.

As far as the concept of older employees with disabilities is concerned, older people are those within the age group defined by the law on the elderly, whose insufficient physical strength but rich specialized knowledge, skills and life experiences. Article 2 of the 2009 Law on the Elderly of Vietnam stipulates that “Elderly people are Vietnamese citizens aged 60 years or older” [1]. Meanwhile, the 2019 Labor Code uses the term “older worker”. Accordingly, an older worker is a person who continues to work after the age of 62 for men and after the age of 60 for women [2]. Thus, *older employees with disabilities are understood as persons aged 60 years or older for women and 62 years or older for men, who have long-term physical, mental, intellectual or sensory impairments that make it difficult for them to participate in labour relations, creating obstacles in accessing and enjoying their rights.*

Regarding population ageing, according to the United Nations, if a country has 10% of its population aged 60 years or older, that country is considered to have entered the ageing process; 20% to less than 30% is called the “old” population; 30% to less than 35% is called “ancient” population; 35% or more is called “super old” population [3]. As shown in the General Statistics Office’s in-depth census on population and housing in 2019, Vietnam is predicted to officially enter a period of an ageing population in 2026. What problems are the ageing population posing for older workers in general and older employees with disabilities in particular? That is the problem of income security for older

PwDs, along with problems related to pension, social assistance, life insurance and finding solutions to ensure their income.

So, what is income security for older employees with disabilities in the face of population ageing in Vietnam today? *Income security for older employees with disabilities is understood as guarantees through forms such as a pension, social assistance, and life insurance. The Government is obliged to ensure income for older employees with disabilities through contributions from the elderly's monthly income to the centralized financial fund so that when they are no longer able to work, they still have the income to ensure their lives or receive social assistance if they are eligible as prescribed by law.*

It is highly essential to ensure income security for older employees with disabilities under the impact of population ageing in Vietnam today due to the following reasons:

Firstly, according to the rights-based approach, older PwDs under the impact of population ageing in Vietnam now suffer from “double” vulnerability. Double vulnerability is reflected in the following aspects:

PwDs are inherently disadvantaged in society (physically or mentally handicapped). Due to their poor health, meeting employment criteria such as appearance, qualifications, education, and health is challenging. Therefore, quite a lot of PwDs live in poverty. They do not have a job or financial capacity to serve the basic needs of life, including health care. In addition, older people are also classified as vulnerable under the International Law of Human Rights due to declining health, many diseases, loss of work capacity and inability to secure income. Therefore, many employers do not wish to employ older workers. Older employees with disabilities suffer from “double” vulnerability when accessing employment opportunities and income security.

Besides, the greatest obstacle for older employees with disabilities is stigma. This invisible but ruthless barrier pushes this group of people to the margins of society, especially when they cannot meet the needs of the labour market due to their age and health reasons. Along with losing their position in the labour market, social stigma makes them timid, lack confidence, fear social contact, and fear education. They think that they lose the ability to compete with other ordinary workers.

Secondly, the needs of the elderly with disabilities are constantly increasing, while their independent financial capacity is minimal.

It is a fact that in low- and middle-income countries, including Vietnam, elderly PwDs are facing poverty and diseases. Millions of older adults live below the poverty line. Most of them have minimal income and no savings. Only a tiny percentage have a pension or limited income support. Due to old age, poor health, and declining working capacity, the elderly become people without income. Meanwhile, the essential needs of the elderly such as health care and medical treatment, increasingly account for a large proportion of total financial needs. Health declines as age increases, and the cost of medical and healthcare services increases.

Thirdly, the ageing population in Vietnam must threaten income security for older employees with disabilities.

According to the 2019 General Statistics Office in-depth analysis of the population and housing census, Vietnam is forecasted to enter the ageing population period from 2026 officially, and the ageing population period will last for 28 years (2026-2054), corresponding to the proportion of the population aged 65 and over accounting for 10.2% to 19.9%. Next is the period of the ancient population (2055-2069), corresponding to the proportion of the population aged 65 and over, accounting for 20% to less than 29.9% [4]. With the current policy for older workers in general and older employees with disabilities in particular, their participation rate in the labour force will decrease, leading to a decline in the production of material wealth and an increase in the proportion

of beneficiaries. This will put pressure on pension funds and social assistance. Adjusting the working age and creating conditions for the elderly in general and the elderly with disabilities, in particular, to participate in the labour market is necessary to avoid the risk of breaking the social security system.

Fourthly, the proportion of elderly PwDs participating in income security forms in Vietnam is still deficient compared to other countries. Many of them are economically disadvantaged, often sick, and underemployed. Meanwhile, policies on employment, pension, life insurance and social assistance to ensure income security have not paid due attention to the benefits of older employees with disabilities. Many elderly PwDs are eligible for social policies, but they are not benefited in practice.

The question is how to ensure the income of older employees with disabilities under the impact of population ageing in Vietnam. How not to break the national pension fund when the proportion of the elderly with disabilities increases? To deal with this situation, the Government will have to increase spending, which will positively affect the budget and the long-term sustainability of the national economy.

2. Income security for older employees with disabilities under the impact of population ageing in Vietnam today

2.1. Income security for older employees with disabilities through compulsory social insurance

This is a type of social insurance in which employees and employers are required to pay a fee to the social insurance fund so that when the employees run out of working capacity as prescribed by law (60 years old for males, 55 years old for females, paying the insurance premium for 20 years or more), they are entitled to a stable monthly pension until their death. This ensures that older employees with disabilities have an alternative wage income to serve their lives and ensure national social security [5].

2.2. Income security for older employees with disabilities through voluntary social insurance

Voluntary social insurance is the preeminent type for rural and self-employed workers (Vietnamese citizens aged 15 years and over and not subject to compulsory social insurance). This is a commercial insurance product provided by life insurance companies, in which the participants voluntarily participate and can choose the level of premium and the payment method in accordance with their income, with the subsidy from the Government. When meeting the age and premium payment time requirements like compulsory insurance, elderly employees with disabilities will be entitled to a stable pension [6].

2.3. Income security for older employees with disabilities through supplemental pension insurance

Clause 7, Article 3 of the Law on Social Insurance 2014 stipulates that “Supplemental pension insurance is a voluntary social insurance policy which acts as a supplement to the pension scheme in the compulsory social insurance, with a mechanism to create funds from the contributions of employees and employers in the form of personal savings accounts, which are preserved and accumulated through investment activities in accordance with the law” [7]. In addition, according to Decree No. 88/2016/ND-CP on voluntary supplementary pension program, “voluntary supplementary pension program is a voluntary social insurance policy aiming at supplementing income for fund participants upon reaching retirement age in the form of individual pension accounts, invested and accumulated in accordance with the law” [8]. Thus, supplemental pension insurance is a voluntary social insurance policy that helps workers create a pension fund through investment activities per the law, thereby supplementing their income when retirement age is reached. The pension fund management enterprise receives the trust to invest in pension fund assets, including Deposits at commercial banks; Government Bonds; Bonds guaranteed by the Government; Local

government bonds; Securities investment fund certificates (Clause 3, Article 20 of Decree No. 88/2016/ND-CP).

Those entitled to supplemental pension insurance include workers reaching retirement age; workers who died or entirely and permanently disabilities; workers who voluntarily resigned after at least five years working for the company; workers who moved to work for another company; workers required by the company to terminate the labour contract because of labour surplus, organizational structure change or business unit transfer. Beneficiaries of supplemental pension insurance are workers contributing to the fund and their relatives designated as beneficiaries. Beneficiaries can receive a monthly pension (when reaching retirement age for at least ten years) or a lump sum, depending on the agreement in the contract.

2.4. Income security for older employees with disabilities through social assistance

According to Clause 5 and Clause 6 - Article 5 of Decree No. 20/2021/NĐ-CP on social assistance policies for social assistance beneficiaries dated March 15, 2021, older adults without pensions and PwDs are beneficiaries of social assistance policies. So, what social allowance will older employees with disabilities receive?

Older PwDs will be subject to monthly social allowances in one of the following cases:

- a) Being classified as a poor household, having no one with obligation and right to take care of, or having someone with obligation and right to take care of but this person is receiving a monthly social allowance;
- b) Older persons aged 75 years to 80 years, being classified as poor households or near-poor households that are not specified at Point a of this Clause, living in communes or villages in ethnic minority areas or mountainous areas with particular difficulties;
- c) Older persons aged 80 years or over who are not specified at Point a of this Clause and do not have a monthly pension, social insurance allowance or monthly social assistance allowance;
- d) Older persons are classified as poor households, having no one with obligation and right to take care of them, unable to live in the community, and eligible for admission to social assistance establishments. However, someone agrees to care for them in the community [9].

Persons with profound disabilities and older persons with severe disabilities who fall into the following circumstances will receive monthly social assistance allowances:

The monthly social assistance allowance to which PwDs are entitled is regulated as follows: a coefficient of 2.5 for the elderly with profound disabilities and; a coefficient of 2.0 for the elderly with severe disabilities [10].

3. The current situation of income security for older employees with disabilities under the impact of population ageing in Vietnam today

In the implementation of Resolution No. 28-NQ/TW of the Seventhly Session of the 12th Central Committee of the Communist Party of Vietnam on reforming social insurance policies dated May 23, 2018, our Party and State have set the goals of increasing the coverage of social insurance and expanding the beneficiaries of pension, including older employees with disabilities. However, the system of policies and laws on social insurance for older employees with disabilities has not kept pace with socio-economic development and population ageing. Expanding social insurance beneficiaries to cover the elderly with disabilities is still below its potential. Social insurance coverage has increased slowly. Without substantial policy commitments to reform the social security system and improve coverage, there will be a large proportion of the elderly in general and the elderly with disabilities in particular who do not receive any pension benefits in the future.

There are no official statistics on the number of older employees with disabilities who have participated in compulsory, voluntary, or supplementary social insurance. According to many experts, this group often works in the informal sector (at home or in small-scale production facilities), so they rarely participate in compulsory insurance. In addition, due to their weak financial capacity and limited awareness, they also do not actively participate in voluntary and supplementary social insurance for their well-being in old age. This analysis shows that income security for older employees with disabilities is still minimal. There are many PwDs and older employees with disabilities who are not entitled to pensions.

The majority of elderly PwDs are eligible for social assistance. The current level of social assistance allowance for the elderly with disabilities is slightly higher than the poverty line (360,000 – 1,080,000 VND). The Government's fiscal allocation of allowances for older PwDs has been low over the years, which has not ensured that beneficiaries can escape poverty and maintain a minimum standard of living. For example, the Government's budget allocation for social assistance for the elderly in 2020 was 6.13 trillion VND, accounting for about 0.15% of GDP. This is considered deficient compared to other countries with similar development levels.

In addition, recent studies have discussed the “risk of breaking the social insurance fund”. According to the Ministry of Labour, War Invalids and Social Affairs, the number of people participating in social insurance is still low, only accounting for nearly 20% of the labour force. It is forecasted that by 2023, the social insurance fund will reach the balance between revenue and expenditure. From 2024, expenditures are expected to exceed revenues, requiring deductions from the fund's balance to cover the difference. The question is how to reduce the risk of breaking the social insurance fund and have a source of payment for older employees with disabilities. What are the solutions to encourage elderly PwDs to participate in social insurance? What are the solutions to improve social assistance coverage for older PwDs?

4. Some recommendations to ensure income security for older employees with disabilities under the impact of population ageing in Vietnam today

4.1. Ensuring income for older employees with disabilities in Vietnam today

Firstly, in order to ensure income security for older employees with disabilities, it is necessary to implement universal social allowances for the entire population at a lower age (currently 80 years old) and increase social insurance coverage.

This policy was clearly stated in Resolution No. 28-NQ/TW of the Seventhly Session of the 12th Central Committee on reform of social insurance policies dated May 23, 2018. However, the critical point is how well the law is implemented. The policy must take into account the practical interests of older employees with disabilities both in the short term and long term. For example: (i) reducing the number of years of social insurance premium payment for employees with disabilities (depending on the degree of disability) from 20 years to 15 years; (ii) adding a children allowance scheme for households with elderly employees with disabilities (both benefiting elderly employees with disabilities' families and helping to raise children's awareness of the pension scheme; (iii) providing financial support such as payment support for elderly employees with disabilities associated with “double” vulnerability.

Regarding social assistance, currently, the law stipulates that the age to enjoy this allowance is 80 years old and above. However, it should be noted that this group suffers from “double” vulnerability; therefore, it is advisable to create opportunities to enjoy this allowance for older PwDs aged 55 and over.

Secondly, it is necessary to strictly implement the principles of “anti-discrimination based on age” and “anti-discrimination and anti-stigma against PwDs”.

This principle is clearly stated in the current Law on PwDs and the Law on the Elderly. However, the implementation of this principle in practice could be better. For example, industrial parks like Samsung and Vsip (Bac Ninh) only employ workers who are at most 35 years old. Therefore, ensuring the excellent implementation of these principles is one of the recommendations to ensure income security for elderly employees with disabilities.

4.2. Ensuring income for older employees with disabilities in Vietnam to cope with population ageing effectively

Firstly, it is necessary to have changes in the thinking of legislators regarding older employees with disabilities when dealing with an ageing population

In addition to eliminating the principle of “anti-discrimination based on age” and the principle of “anti-discrimination and anti-stigma” against PwDs as stipulated in the law, it is necessary to consider the ageing process in the sense of “positive ageing”. This means not considering elderly employees with disabilities as a dependent group or a burden on society but as a dynamic population group that can promote social development, thereby giving elderly employees with disabilities opportunities to make use of their actual working capacity in practice, not just limited to the provisions of the law.

Secondly, it is highly encouraged to have an Employment Promotion Act for the Elderly, which includes older employees with disabilities

This idea is drawn from studying the legal systems of developed countries with high population ageing rates, such as Korea, Singapore, and Japan. In this act, the law should stipulate the obligation of the Government to establish and implement a policy to prevent age discrimination in order to eliminate age-based discrimination in employment, improve the awareness of employers and citizens about the employment of the elderly, and promote the employment of the elderly. In addition, the Government has the responsibility to collect recruitment information related to the elderly and provide employment information to those in need through the activities of the Job Centres for the Elderly. Currently, there are no such centres in our country; but along with the ageing population, it is necessary to consider the establishment of these centres. Moreover, the act should also impose obligations on employers to hire a standard proportion of older people to expand employment opportunities for older workers. If the number of elderly workers exceeds the prescribed rate, taxes will be reduced or waived for companies that make these efforts. This can be seen in Japan's Act on Stabilization of Employment of Elderly Persons 1971 (amended in 2020) of Japan, according to which “guaranteeing employment opportunities up to the age of 70 is the obligation of companies”.

Thirdly, develop a Law on long-term care insurance for the elderly

This idea comes from Korea and Japan, where the beneficiaries of long-term care insurance are elderly PwDs such as those bedridden and with dementia. In Japan, nursing insurance is compulsory, and all citizens over 40 must participate. In Korea, nursing insurance is also compulsory and is required to be paid for together with social insurance. Nursing care services in Japan are eligible for persons 65 years old or over, bedridden, or with dementia. In Korea, elderly persons aged 65 years or over or citizens under 65 years old but suffering from chronic diseases or disabilities, and having difficulty in daily activities for six months or more, will be entitled to this service. The premium for long-term care insurance is 6.55% of the health insurance premium. In addition, a minimum score is required when applying to the Assessment Council. Beneficiaries only need to pay a fee of 10% - 20%, including costs for bathing, excreta, meals, functional exercises, nursing and medical management at home or a nursing home. The formulation of this law seems to be only related to

health care for elderly PwDs. However, it is indirectly related to ensuring income for elderly PwDs, because they do not have to pay expenses when they are sick. On the other hand, this is an effective solution to mobilize a sizeable financial fund in parallel with the social insurance fund, helping to avoid the risk of breaking the social insurance fund and the health insurance fund. It strengthens financial resources against the effects of population ageing.

Fourthly, develop a Decree to maintain children's duty to visit and care for their parents

This proposal is inspired by the 1995 Maintenance of Parents Act of Singapore (amended in 1996). Accordingly, any residents aged 60 years and above who are unable to provide for themselves or any individual/organization as an authorized representative can apply to the court to claim maintenance from their children who are capable of supporting them. Parents can claim maintenance through monthly allowances or a lump-sum payment. Singapore sets up the Tribunal for Maintenance of Parents. Upon receipt of the application, the Tribunal will review and may issue an order that requires the children to support their parents financially if they have the sufficient financial capacity or order to dismiss the parent's claim if the children do not have the financial capability. This can be a suggestion for Vietnam, as it is a solution that upholds the responsibility of children and families to ensure income security for the elderly in general and the elderly with disabilities in particular through the court system.

Fifthly, establish job centres and a website specialized in jobs for the elderly in general and jobs for the elderly with disabilities in particular

Many older adults, in general, and elderly employees with disabilities, in particular, want a job to increase their income; but most find jobs through acquaintances. In the face of population ageing, the establishment of job centres and an employment website for this group of people will be very useful to serve their needs of job search and income security in reality.

5. Conclusion

Income security is essential for older employees with disabilities, especially in the current ageing population trend in Vietnam. The author's analysis of a number of issues regarding the current legislation and law enforcement, as well as some recommendations to ensure income security for this target group, such as supplementing the provisions of existing laws and developing new relevant laws, provides insightful suggestions in promoting the development of policies and laws to protect the rights of older employees with disabilities in the context of the ageing population today.

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Ensuring the right to social insurance for women with disabilities in Vietnam today

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Abstract

Social insurance is one of the essential social security issues for every human being and is especially critical for women with disabilities in rural areas. On the basis of studying the theoretical framework on ensuring the right to social insurance for women with disabilities in rural areas, the article evaluates the current status of influencing factors and social insurance participation of women with disabilities in rural areas of Vietnam; points out the problems posed in the expansion of social insurance beneficiaries of women with disabilities in rural areas, thereby, proposing some recommendations to ensure better the rights of PwDs in general, women with disabilities in rural areas in particular.

Keywords: Social insurance; assure rights; women with disabilities; Vietnamese countryside

1. Theory of assuring the right to social insurance for women with disabilities in rural areas according to international law

Social insurance is understood as an assurance or replacement for lost or reduced incomes of employees during maternity, old age or when facing risks (such as illness, occupational accident, or death) on the basis of contributions of employees and employers to the social insurance fund before the occurrence of such events. Social insurance is always executed on the principle of taking the majority, compensating for the few, and sharing risks to ensure social safety. Thus, it can be seen that social insurance is a core issue in ensuring human rights in general and women with disabilities in rural areas in particular.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) notes that States parties to the International Conventions on Human Rights of 1966 are obliged to ensure equal rights between men and women in the enjoyment of all civil, political, economic, social and cultural rights. CEDAW agrees: The adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination (Clause 2, Article 4), and at the same time, shall take all appropriate measures to eliminate discrimination against women in the field of employment, in order to ensure, on the basis of equality of men and women, the same rights, in particular the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity, old age and another incapacity to work, as well as the right to permission with salary (Point e, Clause 1, Article 11) [4].

For rural women, Committee Recommendation No. 34 on the Elimination of Discrimination against Women states that: They still face persistent barriers to thoroughly enjoying their human rights. The proportion of women living in poverty and discrimination in rural areas is also often higher. They face systemic discrimination in their access to land and natural resources. They have to do a lot of work but have no salary, such as farming and caring for family members. Even when officially employed, they still have to work in many high-risk jobs with low income and are not entitled to social security benefits [10].

Based on a review of periodic reports on the implementation of CEDAW by more than 60 member countries, the Committee for the Elimination of Discrimination against Women found that they provide scarce information on women with disabilities. These reports also concern women with disabilities who suffer from double discrimination linked to their special living conditions [9, p. 8].

Member States are encouraged to embrace in their periodic reports information on women with disabilities as well as information on measures taken to address the particular situation of PwDs, including peculiar measures to ensure their equal access to education, employment, health services and social insurance, and to ensure their participation in all areas of social and cultural life [9]

From CEDAW's general recommendation No. 18 on women with disabilities and the practice of ensuring women's rights in countries, it can be understood: Ensuring the right to social insurance for women with disabilities in rural areas means that the State by various methods and measures, including protecting by legal provisions as well as ensuring the implementation of such regulations in practice for publication, legal recognition and practical implementation of the right to guarantee or replace the lost or reduced incomes of women with disabilities in rural areas when facing risks (such as illness, work accident, death) or during maternity or old age.

2. The situation of formation and development of the theoretical basis for ensuring the right to social insurance for women with disabilities in rural Vietnam

- Laws and policies

Over the past time, the Party, State and society have always paid attention to the work of PwDs and have issued and implemented many guidelines and policies to care for, ensure rights and promote the role of PwDs in contributing to advancing social progress and sustainable development. The work of PwDs has achieved many remarkable results. Awareness and responsibility of Party-affiliated committees, authorities and mass organizations at all levels towards PwDs have been improved. PwDs are increasingly confident and more convenient to integrate into social life. In 2014, Vietnam ratified the United Nations CRPD, and in 2019 ratified the International Labor Organization's (ILO) Convention 159 on occupational and employment re-adaptation for PwDs. This further affirms Vietnam's commitment to ensuring that employees with disabilities are not discriminated against in terms of job and employment, in line with the 2030 Agenda for Sustainable Development and the Incheon Strategy on realizing the rights of PwDs in the most effective manner.

In 2010, the Law on PwDs was promulgated. In 2014, Vietnam issued the Firstly national technical regulation on the construction of works to ensure access to and use of public works and newly built apartment buildings for PwDs. In 2015, when the United Nations Convention on PwDs was ratified, Vietnam enacted a number of documents to recognize and ensure the rights of PwDs. Accordingly, the Vietnam National Committee on PwDs was established with the task of directing and coordinating among ministries, branches and localities in resolving issues related to mechanisms and policies to carry out the work of PwDs.

In 2019, the Party Central Committee's Secretariat issued Directive No. 39 on strengthening the Party's leadership in terms of works related to PwDs, confirming the views and policies, requiring agencies, organizations and individuals to raise awareness and responsibility towards PwDs and organizations of PwDs; and orienting the improvement of policies and laws; emphasizing requirements to ensure rights of PwDs; and requiring to enhance the effectiveness and efficiency of state management in the implementation of policies and laws on PwDs.

Most recently, the Prime Minister approved the program to assist PwDs from 2021 to 2030, which mentions the gender index and requires gender segregation. The program sets goals as the basis to guarantee gender equality for women with disabilities: In 2021 - 2025, 80% and 2026-2030, 100 % of PwDs women will receive assistance in different forms [7]. The program also refers to support activities for women with disabilities, including communication activities; building the capacity of staff to support disadvantaged women; Reviewing, evaluating and building models to advocate and support women with disabilities.

Regarding social security and ensuring social insurance rights for women with disabilities in rural areas, the 2013 Constitution prescribes: “Citizens have the right to social security”. Over the past years, Vietnam's legal system on social insurance has been gradually comprehended, aiming to expand its coverage and create opportunities for access and benefits for specific groups such as women and children, PwDs, and the elderly. From a gender perspective, the law on social insurance comprises specific provisions to ensure the social insurance rights for women, such as the shorter period of social insurance payment for female employees compared to men, supplementing the participants in compulsory social insurance who are part-time workers in communes, wards and townships to enjoy pensions; increase the maternity leave period from 04 months to 06 months; men have the right to enjoy the maternity regime when their wives give birth; add the maternity benefits for female employees when carrying out surrogacy and the mother asking for surrogacy; The State supports 10% of voluntary social insurance contributions for participants [6]...

It can be said that the Law on Social Insurance of Vietnam in 2014 covers employees in the public and private sectors in case of sickness, maternity, labour accident, occupational disease, old age and death. In order to effectively organize and implement the Law on Social Insurance, on May 23, 2018, at the 7th Conference, the 12th Party Central Committee issued Resolution No. 28-NQ/TW on social insurance policy reform, thereby setting the goal of achieving universal coverage; proposing a specific development roadmap for social insurance towards workers in rural areas and the informal labour sector in the period from 2018 to 2030 as follows [3]:

- In the period to 2025: farmers and workers in the informal sector participating in voluntary social insurance will account for about 2.5% of the labour force of the working age.

- In the period to 2030: farmers and workers in the informal sector participating in voluntary social insurance will account for about 5% of the labour force of the working age.

One of the critical social insurance policy reforms for workers in rural and informal sectors is to accelerate the process of increasing the number of workers participating in social insurance in the informal sector by developing enterprises in the spirit of Resolution 10-NQ/TW, dated June 3, 2017, of the 12th Central Committee on developing the private economy to become a critical driving force of the society-oriented market economy. Research and design short-term social insurance packages with payment rates, benefits, and transaction methods suitable for workers in the informal sector [2]. These are crucial political and legal bases for ensuring social insurance rights for women with disabilities in rural areas.

- Socio-economic in rural areas in Vietnam

The socio-economic status of each country is a pivotal determinant for the right to social security for people in general and PwDs in particular. This direct factor decisively affects the level of support or allowances for vulnerable and disadvantaged people. Therefore, the economic circumstances of the country or the locality are essential in implementing social insurance for women with disabilities in rural areas.

Vietnam has an agricultural economy, with more than 70% of the population living in rural areas, so rural socio-economic development is the priority task set by the Party and State. On August 5, 2008, the Seventhly Conference of the 10th Central Committee of the Communist Party of Vietnam issued a Resolution on agriculture, farmers and rural areas, marking a milestone for developing our country's agricultural economy. The lives of farmers and rural residents have been improved in all aspects. The rural areas have changed profoundly towards becoming more modern and civilized. By 2020, agricultural production was restructured. The proportion of agriculture, forestry and fishery labourers

decreased sharply (to about 32.8%), compared with 44% in 2015 [5]. The share of agriculture in the national economic structure reduces, but the growth rate of agriculture continuously climbs.

The national target program for building new rural areas has achieved comprehensive and historical results. Specifically, the income of rural residents is increasing (in 2010, it only reached 12.8 million VND/person, in 2020, it reached 43 million VND/person). Material and spiritual life is constantly upgraded. Agricultural labour declined due to the positive shift in the rural economic structure, whereas non-agricultural labour and services in rural areas scaled up. The rate of poor households in rural areas plunged (about 1.5 %/year on average) from 17.3% in 2010 (according to the old criteria) to 7.03% in 2018 and below 3% by 2020 [1]. Those mentioned above, rural socio-economic development has created a premise for people to have more job opportunities, increase income, increase the rate of wage workers, and reduce the rate of workers in the informal sector, making a significant contribution to ensuring social insurance rights for women with disabilities in rural areas.

- Culture - society in rural Vietnam

The socio-cultural characteristics of rural Vietnam are to uphold the spirit of community, mutual love, and good leaves to protect torn leaves; each individual is under the control and supervision of the community. The standard values stimulated by society are preserving the friendship of the village, respecting the roots and ancestors, gratitude for the ancestors' merits, and promoting the spirit of mutual affection. People have close family, clan and village relationships and always have the spirit of caring and helping each other. So, the role of the community becomes salient, and their behaviour is greatly influenced by social institutions such as clans, families, and villages. Culture in rural areas is mainly folklore, through activities of festivals to transmit aesthetic, moral, lifestyle, and life-experience values from one generation to another. Rural culture has preserved valuable traditional values but also contains barriers to development. Therefore, socio-cultural characteristics in rural areas have a positive influence, which is a favourable condition for building and deploying models of advocacy, support, and assistance for PwDs and implementing social mechanisms to guarantee social insurance rights for women with disabilities in rural areas.

3. Actual situation of ensuring social insurance rights for women with disabilities in rural Vietnam

According to reports, in Vietnam, there are currently about 6.2 million PwDs, accounting for 7.06% of the population [8], and about 4.6 million women with disabilities. According to estimates of the National Committee on PwDs in Vietnam, there are about 60% of women with disabilities in the working age (15-60 years old) [11], equivalent to 2.76 million people, of which 32%, equivalent to nearly 883,200 people are still able to work. A summary of local reports reveals that more than 70% of women with disabilities, equivalent to about 618,240 people, are engaged in economic activities, but only about 92,736 people, corresponding to 15%, are salaried workers, working in the formal sector, having labour relations, working and getting paid from the production and business establishments of PwDs; about 10% have a stable income, and most of them live in urban areas.

In rural areas, women with disabilities are about 3.68 million people, accounting for 80% of women with disabilities in the country. About 40% of women with severe and profound disabilities are entitled to a monthly allowance. There are about 2.2 million women with disabilities of working age (from 15 to 60 years old); The number of women with disabilities in rural areas with working capacity is about 880,000 people (equivalent to 40%), and about 616,000 people participate in economic activities in the informal sector in the form of “self-employment”, or as “households” do not receive wages and salaries, so most of them have low and unstable incomes, resulting in a difficult life.

Regarding the participation in social insurance of women with disabilities in rural areas, although there are no official reports from the Vietnam Social Insurance Agency, through research and observation at a number of provincial/municipal Social Insurance agencies, the number of women with disabilities participating in the current social insurance system is only about 92,000 (as specified in Clause 1, Article 2 of the Law on Social Insurance 2014 on participants in compulsory social insurance), representing 3.33% of the total number of women with disabilities of working age and most of them are in urban areas. Thus, most PwDs women in rural areas with working capacity do not have access to social insurance policies because they do not have jobs in the informal sector or are self-employed, so they are not compulsory social insurance participants. They even are not able to take part in voluntary social insurance because of low-income and dangerous jobs. Meanwhile, due to a disability, their expenses for medical examination, treatment, and health care are higher than that of an average person.

From the study of the legal framework and the current status of participation in social insurance of women with disabilities in rural areas, some problems can be seen as follows:

- The legal framework on social insurance has not yet covered the target group of women with disabilities in rural areas. Although the legal policies on social insurance have been gradually improved and the principles of gender equality are reflected in the Law on Social Insurance provisions. However, the results of the implementation of social insurance policies exhibit that the actual coverage of social insurance is still low, and there is no specific regulation for employees with disabilities. Especially the vast majority of female employees with disabilities in rural areas are in the informal sector, leading to their human rights and social security rights not being implemented in practice, such as the right to health care, the right to maternity benefits, the right to retirement in old age...

- Women with disabilities in rural areas do not have access to the media on social insurance. Over the past time, in order to realize the goal of developing social insurance participants set out by Resolution No. 28-NQ/TW, propaganda about social insurance policies is paid attention to by all levels, sectors and Vietnam Social Insurance through diverse forms of communication, with helpful content that is suitable for most of the people. However, due to limited communication networks, limited mobility, hearing, and vision, almost all women with disabilities in rural areas are not aware of the meaning and role of social insurance as well as the policies and laws of the Party and State on the development of universal social insurance.

- The State's support measures for voluntary social insurance participants also do not reach women with disabilities in rural areas. Since 2018, the State has supported voluntary social insurance participants to pay social insurance premiums. According to the provisions of Decree No. 07/2021/ND-CP on regulations on the multidimensional poverty line for 2021-2025, the current lowest social insurance premium payment is 530,000 VND/month, equivalent to 22% x1,500,000 VND. The level of support for women in rural areas of poor households is 30%, equivalent to 99,000 VND/month; women from near-poor households is 25%, equivalent to 82,500 VND/month; the remaining women is 10%, equivalent to 33,000 VND/month. Many localities satisfy medical conditions but lack a mechanism to support voluntary social insurance participants. The assistance is only applied to those already participating in social insurance. Meanwhile, in the context of the current working conditions and income, it is impossible for women with disabilities in rural areas to join voluntary social insurance, even at the lowest fee.

- Most women with disabilities in rural areas are not vocationally trained. According to the Survey Report on Vocational Training and Employment for PwDs in Vietnam by the International Labor

Organization 2010, women with disabilities in rural Vietnam have very few opportunities to access quality vocational training because most vocational training centres are concentrated in urban areas. Moreover, these centres provide training in specific industries with low technical requirements, such as handicrafts, fine arts, and some services. Most training courses for PwDs are held at centres or through annual training by enterprises of PwDs. Therefore, national reports show that the fraction of trained Employees with disabilities are meagre at about 5%, mainly in urban areas. Due to a lack of vocational training, women with disabilities find it harder to find jobs. This is also the most significant barrier for women with disabilities to access social insurance rights in rural areas.

- Women with disabilities in rural areas face difficulties in finding jobs. Based on some studies on employment for women with disabilities and through surveys in some localities, less than one-third of women with disabilities are employed. Among them, some people used to work but quit for many reasons. Many people are rejected when applying for a job because the employer does not want to be bound by the provisions on PwDs in the Labor Code and related legal documents because their capacity does not qualify the production line requirement, affecting the overall productivity and efficiency of the enterprise.

- Gender stereotypes exacerbate the responsibilities of women with disabilities in housework and child care. Despite being PwDs, they still have to take care of their families and children. Besides, they are unable to avoid the stigma of being considered weaker with poorer capacity and labour skills and being paid lower than usual.

4. Some recommendations to ensure the right to social insurance for women with disabilities in rural Vietnam

Research discloses that there is still a “gap” in ensuring social insurance rights for women with disabilities in rural areas. This is partly due to the lack of survey data on women with disabilities in social insurance by sex and region (urban/rural). It also demonstrates the lack of in-depth consultation and analysis on gender and territory. Because women with disabilities have different living situations, difficulties and barriers on the basis of sex and gender, leading to discrepancies in income, employment, and participation in social insurance.

In order to better ensure human rights, including the right to social insurance for women with disabilities in rural areas, the author makes the following recommendations:

- Completing the legal system on social insurance, including specific regulations recognizing the right to social insurance for PwDs, especially women with disabilities working in the informal sector and rural areas; explicitly stipulates the responsibilities of state agencies, social insurance agencies, individuals and organizations in the matter of social insurance for employees with disabilities.

- In the field of social insurance, it is necessary to have an assessment, statistics, and analysis on gender / PwDs/ on the living area to identify specific problems of women with disabilities. Women with disabilities need to join and make comments while finalizing and amending the Law on PwDs, the Law on Social Insurance, and the Law on Gender Equality.

- It is suggested to establish vocational training programs and effective interventions for employment support to help women with disabilities in rural areas meet the job requirements, develop a plan and organize flexible vocational training suitable to the time, place and actual conditions of women with disabilities in rural areas.

- Arrange social security packages which focus on developing social insurance for women with disabilities in rural areas with the nature of self-sufficient labour.

- Continue to implement healthy policies to encourage specific production and business establishments of PwDs, and enterprises that employ many employees with disabilities in rural areas towards increasing the number of women with disabilities participating in labour relations and paid jobs and reducing the number of women with disabilities who work for self-productive purposes.

5. Conclusion

Social insurance is one of the crucial social security issues for every person and is especially significant for women with disabilities in rural areas. However, up to now, most of PwDs women in rural areas, who are of working age and have the ability to work and participate in economic activities, are outside the social insurance system. This requires state agencies to synchronously implement solutions to ensure human rights for PwDs in Vietnam and women with disabilities in rural Vietnam in particular./.

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Corporate social responsibilities in guaranteeing the enforcement of the rights to work and vocational training of persons with disabilities under the current law of our country

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Abstract: Within the scope of the article, the author focuses on generalising theoretical issues about the responsibility of enterprises in the enforcement of the right to employment and vocational training of PwDs, analysing and clarifying a number of limitations and inadequacies in the regulations as well as the practical application of the law on the responsibility of enterprises in the enforcement of the right to employment and vocational training of PwDs, thereby proposing solutions.

Keywords: Social responsibility, enterprise, right to employment and vocational training, PwDs.

1. Introduction

PwDs are one of the subjects that attract a lot of attention and support from the state and the community. They have the right to employment and vocational training and enjoy the results commensurate with their labour. In recent years, our country's law has promulgated provisions to ensure the right to employment and vocational training of PwDs. These regulations have created a specific legal framework to deal with this problem. However, the prevailing legal provisions governing this issue still have certain limitations, which make it difficult to enforce the right to employment and vocational training of PwDs as well as affect the legitimate rights and interests of PwDs. Therefore, the completion of the legal framework on the responsibility of enterprises in exercising the right to employment and vocational training of PwDs, as well as improving the effectiveness of enforcing these legal provisions in practice, is crucial and urgent in the current context.

2. Overview of the right to employment and vocational training of PwDs

According to the provisions of Clause 1, Article 2 of the Law on PwDs 2010, a person with a disability is a person who has a defect in one or more body parts or a functional impairment manifested in the form of a disability that makes working, living, and studying difficult. Although they suffer defects that cause challenges for their living, studying and working activities, they still have all the necessary conditions to participate in the labour market and enjoy the results of the labour process. However, some businesses are often afraid to recruit this force, threatening the assurance of their right to have jobs and vocational training. The right to work and have a job is extremely important for PwDs because unemployment will destroy their opportunity to approach and integrate with everyone in society.

Employment for PwDs fascinates the United Nations (UN) and the International Labor Organization (ILO). The UN requires that countries recognise the right of PwDs to work by taking appropriate steps, including utilising legislation [1]. The labour rights of PwDs are recognised in international human rights law, specifically documents such as the 1948 Universal Declaration of Human Rights and the International Covenant on Economic and Social Rights. And culture in 1966 of the United Nations and a number of conventions of the International Labor Organization (ILO), the CRPD 2006 (Article 27) [2].

Corporate Social Responsibility (CSR) is understood as the responsibility of an enterprise for the impacts of its decisions and business activities on society [3]. One of the most specific manifestations of CSR is that businesses have well-implemented recruitment policies for employees with disabilities.

Solving the employment problem for employees with disabilities is the responsibility of society in general and of enterprises in particular, especially when they are specific objects and should receive the whole society's attention. The 2013 Constitution stipulates policies to support PwDs in Clause 2, Article 59, and Clause 3, Article 61. *“The State shall create equal opportunities for citizens to enjoy social welfare, develop the social security system, and adopt policies to support elderly people, PwDs, poor people, and other disadvantaged people”, “The State shall prioritise the development of education in mountainous areas, on islands, in ethnic minority areas, and in areas that have challenging socio-economic conditions; prioritise the employment and development of talented people; and create the conditions for PwDs and poor people to receive education and vocational training”*. Clause 2, Article 33 of the Law on PwDs 2010 has defined that *“Agencies, organisations, enterprises and individuals may neither refuse to recruit PwDs who fully satisfy the recruitment conditions nor set recruitment criteria in violation of law in order to restrict working opportunities of PwDs”*. The above regulations partly contribute to job creation for PwDs and the implementation of corporate social responsibility.

In addition, Decree 81/ND-CP and Joint Circular No. 19/2005/TTLT/BLDTBXH-BTC- KHDT stipulate that each enterprise of all economic sectors must receive 2 - 3% of the total number of labour of the enterprise who are PwDs; otherwise, the enterprise must contribute to the budget of the Employment Fund for PwDs in that province an amount equal to the current minimum wage rate prescribed by the state multiplies with the number of employees with disabilities that enterprises should recruit more to meet the prescribed rate. However, at present, the regulations on contribution to the budget of the Employment Fund for PwDs have expired according to Circular 09/2019/TT-BLDTBXH annulling the legal document issued or jointly promulgated by the Minister of Labor, Invalids and Social Affairs. Even so, during its effective period, this regulation still positively impacts businesses and employees with disabilities.

When performing the corporate responsibilities in exercising the right to employment and vocational training of PwDs, enterprises will enjoy preferential policies as prescribed in Article 34 of the Law on PwDs 2010 and Article 9 of Decree No. 28/2012/ND-CP. Specifically, if the production and business establishments employ 30% or more of the total number of employees who are PwDs, they are entitled to the following preferential policies:

- Financial support to improve working conditions and environment suitable for PwDs according to regulations of the Ministry of Labor, War Invalids and Social Affairs.

- Exemption from corporate income tax in accordance with tax laws.

- Preferential loans for production and business development projects from the Bank for Social Policies.

- Priority is given to the lease of land, premises and water surface in accordance with the provisions of law.

- Exemption of land, ground and water surface rents in service of production and business for production and business establishments employing 70% or more of employees with disabilities.

- A 50% reduction in land, ground and water surface rents in service of production and business for production and business establishments employing between 30% and less than 70% of employees with disabilities.

The Labor Code 2019 prohibits discrimination in labour, i.e. discrimination, exclusion or preference based on disability that harms the equality of employment opportunities. At the same time, the Labor Code 2019 also stipulates that one of the state's policies on labour is the regulation of labour regimes and social policies to protect employees with disabilities. On the other hand, Article 158, Article 159,

and Article 160 of the Labor Code 2019 concretise the legal provisions for employees with disabilities, the state's policy towards employees with disabilities, employment and prohibited acts when employing PwDs.

In addition to the above-mentioned legal documents, the legislature also enacted many other legal documents such as the Law on Vocational Education, the Law on Employment, the Law on Construction, the Law on Road Traffic, the Law on Health insurance, Law on Occupational Safety and Health which recognise and guarantee the right to employment and vocational training of PwDs. Moreover, the competent authorities have also launched projects to identify specific tasks in the work of equalising jobs for PwDs, such as the Project on vocational training for rural workers until 2020 (approved under the Prime Minister's Decision No. 1956/QĐ-TTg dated November 27, 2009; Project on assisting PwDs in the period 2012 - 2020 (approved under the Prime Minister's Decision No. 1019/QĐ-TTg dated August 5, 2012); Directive of the Ministry of Labor, Invalids and Social Affairs No. 3930/BLĐTBXH-TCDN dated October 21, 2014, on improving efficiency and quality in implementing teaching objectives jobs and create jobs for PwDs [2].

3. The status of the law on corporate social responsibilities in exercising the right to employment and vocational training of PwDs

The provisions of the law have been devoted to defining the responsibility of enterprises in exercising the right to employment and vocational training of PwDs, thereby ensuring their rights. However, during the implementation process, a number of regulations have revealed various issues that are no longer consistent with reality, specifically as follows:

Firstly, in terms of the policy of vocational training for PwDs. Circular No. 152/2016/TT-BTC stipulating the management and use of funding to support primary level training and training under three months has specified conditions for learners – including PwDs – to be eligible for subsidy. However, these conditions no longer match the current reality, as illustrated in the following aspects:

One is the age threshold. According to Clause 1, Article 4 of Circular No. 152/2016/TT-BTC, learners must be “*of working age (female from full 15 to 55 years old; male from full 15 - 60 years old)*”. However, this age is different from the current Labor Code. Accordingly, the working age according to the Labor Code 2019 for women will be from 15 to 60 years old by 2035; for males, from the total of 15 to 62 years old by 2028; From January 1, 2021, it will increase by three months for male employees and four months for female employees every year.

Secondly, one of the conditions specified in Clause 2, Article 4 of Circular No. 152/2016/TT-BTC is “*Having the plan to create jobs after vocational training*”. It is unreasonable to require PwDs to have a plan for self-employment while not receiving vocational training or acquiring knowledge from vocational training [4]. On the other hand, this option must “*ensures its feasibility as certified by the People's Committee of the commune*”. However, the law needs to have specific criteria to determine the feasibility, making the determination of the feasibility of the commune-level People's Committee qualitative, depending on the subjective point of view and without consistency.

Secondly, one of the prohibited acts under the Labor Code 2019 is “*Assigning employees with disabilities to do heavy, hazardous and dangerous jobs in the list approved by the Minister of Labor, War Invalids and Social Affairs without their consent after being provided with sufficient information about the job by the employer*”. Accordingly, the employer is required to provide sufficient information about heavy, hazardous and dangerous work listed by the Minister of Labor, War Invalids and Social Affairs for employees to decide “agree or not”. PwDs will face different difficulties. Deaf people will find it hard if employers provide information verbally; visually impaired people will

encounter challenges if employers provide information by text, not written in Braille. Therefore, the specific regulations on the form for each case will ensure the rights of employees with disabilities.

Thirdly, the procedure to enjoy preferential policies for enterprises employing employees with disabilities is still complicated and has to be extended frequently. Many enterprises employ employees with disabilities for up to 30% of their total employees. However, it is still challenging to attain tax incentives because the procedures to enjoy incentives are arduous and require frequent extension annually [5]. Besides, it is also challenging for PwDs to borrow loans for self-production and business. According to the Vietnam Bank for Social Policies, from 2014 until now, the National Employment Fund has not been enlarged to provide loans to policy beneficiaries, including PwDs, but only loans by revolving capital [5].

4. Some recommendations to improve regulations on the responsibility of enterprises in exercising the right to employment and vocational training of PwDs

Employees with disabilities are subjects of interest to legislators, and many regulations have been set aside to ensure their right to employment and vocational training. However, in the process of law enforcement, some regulations no longer match reality and need to be revised and improved. Specifically:

Firstly, amend the working age in Circular No. 152/2016/TT-BTC in the direction of being consistent with the regulations on the working age in the Labor Code 2019 (being female from complete 15 - 60 years old by 2035; male from full 15 - 62 years old by 2028; from January 1, 2021, an increase of 3 months for male employees and four months for female employees every year). Furthermore, it is necessary to reconsider the mandatory conditions of “having a self-employment plan” for PwDs and the criteria for determining the feasibility of the self-employment plan.

Secondly, supplement regulations on forms of providing information about heavy, hazardous and dangerous jobs in Clause 2, Article 160 of the Labor Code 2019 to be suitable for each type of disability in order to avoid the case that PwDs receive incomplete and inaccurate information that is detrimental to them in their labour relations, and ensuring their legitimate rights and interests.

Thirdly, concretise and detail preferential policies for employers when recruiting employees with disabilities. At the same time, it is also essential to simplify the procedures so that the employer can take the initiative and easily access preferential policies. Specifically, many businesses still need help to receive tax incentives because the procedures to enjoy incentives are complicated and must be renewed regularly every year. Therefore, it is recommended to study and amend Circular No. 78/2014/TT-BTC to adjust the extension period for receiving tax incentives to be longer. Simultaneously, it should complete regulations on allocating capital from the National Employment Fund for PwDs to access this capital. Specifically, local Departments of Labor, War Invalids and Social Affairs should actively promote the role of advising the Party committees and local authorities to allocate more entrusted budgets further for the local Social Policy Bank system to increase loan capital for job creation [6].

Apart from the improvement of legal regulations, the issue of improving efficiency also needs attention:

Firstly, competent state management agencies need to step up the propagation and education of the law, and policies and benefits of enterprises when employing PwDs, such as policies on exemption of corporate income tax reduction, low-interest loans, priority for land leasing, to make it easier for businesses to access these policies. Propaganda sessions can be conducted in various forms, such as seminars, face-to-face consultations or through Zoom or Google Meets.

Secondly, vocational education and training institutions need to equip PwDs with the necessary knowledge and skills to enter the labour market. Their families also need to encourage them to be confident and integrate into the community and society. Although the state has created many favourable conditions, the most critical factor is still that Employees with disabilities themselves must cultivate and improve their capacity, creating value for society. Enterprises employing PwDs also need to focus on their social responsibilities and organise for employees to learn and develop professional skills.

Thirdly, vocational education and training institutions need to improve the professional qualifications of vocational teachers for workers. The teaching staff not only have knowledge and skills but also need to be sympathetic, imparting knowledge and acting as a companion to help PwDs develop the necessary soft skills. Furthermore, the education unit should cooperate with the recruitment unit to ensure job output for PwDs.

5. Conclusion

PwDs have the right to work, get jobs, and receive vocational training, and the state has issued many regulations to ensure that legal right. However, in applying the law, some regulations are no longer appropriate, which will partly affect the guarantee of labour rights of PwDs. Therefore, it is imperative and urgent to improve the legal regulations and intensify the effectiveness of law enforcement on the protection of labour rights of PwDs to ensure their rights in the current context.

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Active access to employment for employees with disabilities

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Abstract:

Currently, many organisations and businesses have employees with disabilities (PwDs). However, the percentage of PwDs who can find work and earn money for themselves still needs to be increased. According to Sustainable Development Goal (SDG) No. 8 “Ensure sustainable, inclusive and continuous economic growth; creating full and productive jobs and good jobs for all”, ensuring employment for PwDs is an essential activity. The article focuses on analysing three issues: (1) The reality of PwDs in accessing jobs, (2) Promoting job training for PwDs and (3) Implementation recommendations to protect the right of PwDs in the workplace.

Keywords: PwDs, worker, employment, job training.

Introduction

Vietnam is a country that has experienced wars for decades, and PwDs left behind by war account for a large number. According to the General Statistics Office report in 2019, more than 7% of the population aged two years in Vietnam, equivalent to more than 6.2 million people, are PwDs. There are 13% of the population (nearly 12 million people) live in a household with a person with a disability. Most PwDs who can still work want to have a suitable job to stabilise their lives and be truly equal. Due to limited educational attainment and difficult living conditions, the number of PwDs, such as people with intellectual and neurological disabilities, participating in vocational training is minimal. Most of them engage in specialised vocational training institutions for PwDs.

Abbreviations and Acronyms

PwDs (singular Person with Disability, abbreviated as PwDs) are people affected with one or more types of disability. Vietnam Business Association of War Invalids and PwDs (hereinafter referred to as Association) (VEBAB) is understood as a socio-professional organisation of Vietnamese individuals and organisations operating in the field of manufacturing - business - services or in other sectors of the economy related to the use of human resources who are war invalids and PwDs according to the provisions of Vietnamese law.

1. Situation of PwDs in accessing jobs

According to the results of the 2009 population and housing census conducted by the General Statistics Office, there is a clear difference in labour force participation and employment between PwDs and persons without impairment, depending on the level of disability. The more severe the disability, the lower the labour participation rate and the higher the unemployment rate. Most PwDs in Vietnam live in rural areas (accounting for 87.3%) with inadequate infrastructure, living conditions, and specialised means of living, so they face many obstacles in terms of travel and communication with the community and society. About 70% of PwDs cannot live independently and often live with their families. Only about 25% of them have income-generating activities, but their job and incomes could be more stable.

VABEB has the task of maintaining and developing products and business establishments for war invalids and PwDs, exploiting all resources to provide vocational training and create jobs with stable income for them. After obtaining a practising certificate, up to 70% of PwDs have been arranged by VABEB to work at member units or create jobs in the locality of their families. For example, hundreds

of PwDs worked in fine art at the company on July 27, Ho Chi Minh City (the VABEB's member). Besides, Ngo Ha grinding facility (Thuong Tin district - HN) provides vocational training and creates sustainable jobs for dozens of PwDs. In addition, PwDs with self-employment now also account for a high proportion. 75% of PwDs have the ability to work and participate in economic activities, of which 42% are self-employed.

2. Access to vocational training for PwDs

Vietnam is a member of the United Nations (UN) and a member of most other international organisations (such as UNESCO, UNICEF, ILO,...). One of the vital commitment issues is the recognition of the rights of PwDs, the right to work/have a job for PwDs, and guidelines to promote equal employment opportunities for PwDs.

The Labor Code of Vietnam amended and supplemented in 2012, Clause 1, Article 176 affirms: “The State protects the labour rights and self-employment of employees with disabilities, adopt policies to encourage and give incentives to employers to create jobs and accept employees with disabilities to work, according to the provisions of the Law on PwDs.

Law on PwDs 2010, Article 4 stipulates the rights and obligations of PwDs. To implement the above provisions, Decree No. 28/2012/ND-CP of the Government guiding the implementation of a number of articles of the Law on PwDs has detailed regulations on vocational training and employment for PwDs. Accordingly, the state ensures to create of the most favourable conditions for PwDs to choose, consult and learn vocational skills and work according to their abilities and health; vocational training organisations must ensure vocational training conditions; agencies, organisations, enterprises and individuals must not refuse to recruit qualified employees with disabilities.

In 2014 - 2015, the International Labor Organization (ILO) and the Aid Development Agency Iceland in Vietnam surveyed the project “Promoting rights and opportunities for PwDs - Employment through the law”. In addition, the General Department of Vocational Training, in collaboration with the ILO, also surveyed 120 PwDs in vocational training and job creation in 3 years in 4 provinces and cities: Phu Tho, Hai Duong, Da Nang, Ba Ria - Vung Tau. The survey results draw the following conclusions:

“All PwDs need vocational training and employment support”: 120 PwDs surveyed need vocational training and employment support. This is the legitimate need of PwDs. The biggest desire of PwDs is to have good living standards, a stable job and income, and not to be dependent on family and society. Specifically, the number of people who want to receive vocational training to have an income job at enterprises accounted for 45%; the number of people self-organising production and business was 24%; only 1.6% of people attended vocational training to know. 66.6% require counselling and job support after vocational training; 50% demand loans to develop or launch production, business and service establishments.

3. Challenges in accessing employment for PwDs

3.1. Disability status, education level and living conditions of PwDs

According to the results of the 2009 population and housing census conducted by the General Statistics Office, there are apparent differences in labour force participation and employment of PwDs compared with persons without impairment. The more severe the disability, the lower the labour participation rate and the higher the unemployment rate.

According to the results of the 2009 population and housing census conducted by the General Statistics Office, the number of PwDs nationwide is 6.7 million. The majority of PwDs in Vietnam live in rural areas (accounting for 87.3%) with inadequate infrastructure, living conditions, and

specialised means of living, so they face many obstacles in terms of travel and communication with the community and society. About 70% of PwDs cannot live independently and have to live on their families, and only about 25% have income-generating activities; however, generally, the job is unstable, and the income is low.

3.2. Curriculum responsiveness of vocational training institutions

One of the fundamental challenges of vocational training institutions is understanding the characteristics of professional capacity, occupational needs of PwDs and training levels, and knowledge and skills in vocational training for PwDs. There are no statistics to evaluate and classify the number of PwDs by degree, type of disability or by working ability to help vocational training work in accordance with the vocational training and working capacity of PwDs. Training occupations are not suitable to the occupational needs of the labour market for PwDs. According to Tran Thi Thuy Lam, Hanoi Law University, only a few training institutions want to provide vocational training for PwDs because they will have to invest more in facilities due to the disability status and educational attainment of the students with disabilities—vocational training institutions for PwDs need more capital and have better facilities and adequate vocational training equipment. An essential problem of training institutions is that the program content, profession and training form are not appropriate for the abilities, needs, types and degrees of disabilities of PwDs.

The program's structure is often in the direction of vocational training for persons without impairment. Specifically, there is much theory, a lack of practice, program content, and no vocational training textbooks for PwDs. Vocational teachers for PwDs still need to improve in knowledge, skills and awareness in engineering and teaching. In addition, the number of vocational teachers for PwDs still needs to be increased compared to training needs; most of them have yet to be formally trained. This has caused great difficulties for vocational training institutions for PwDs and disadvantages for PwDs.

4. Recommendations for approaching PwDs in employment issues

4.1. Specific regulations on the proportion of employees who are PwDs that enterprises must accept to work for a number of occupations and jobs

The Labor Code has not specified the percentage of employees who are PwDs for a number of occupations and jobs that enterprises must accept to work. Businesses in our country have yet to pay due attention and underestimated the working ability of PwDs. Moreover, the fear of PwDs being unable to take on the job has limited the PwDs' employment by the enterprises.

In order to bind the responsibility for production and business establishments, the regulation of the proportion of employees who are PwDs should be mandatory so that enterprises must accept, which then increases job opportunities for PwDs. International practice and some countries apply this mandatory regulation, although the ratio might vary. The German Social Code, Rights 9, 2002 stipulates that public and private enterprises employing at least 20 employees must ensure that at least 5% are PwDs. Enterprises that do not meet this regulation are required to pay a prescribed fine for each job. The collected fines are used for rehabilitation and employment for PwDs. Some European countries also apply this regulation, like in France; the law allows businesses to apply the compulsory rate of PwDs to work or satisfy it indirectly through purchasing goods or using services of agencies employing employees with disabilities.

Therefore, it is advisable to add the provision on this compulsory rate to the labour code as follows: “The government regulates the labour rate for a number of occupations and jobs that enterprises must accept; otherwise, the enterprise must contribute a sum of money as prescribed by the government to the employment fund to contribute to creating jobs for PwDs. Enterprises that accept PwDs to work over the prescribed rate will be supported by the state to borrow loans at low-interest rates to create

suitable employment conditions for PwDs. On this basis, the implementation guideline should consider raising the 4-5% rate for some industries, such as textiles, garments and traditional handicrafts, instead of only 2-3%.

4.2. Regulations on recruitment and job placement for PwDs: Supplementing the right to receive free job counselling and recommendation and issuing a decree guiding the implementation

Vocational training organisations, production and business establishments dedicated to PwDs should be supported in terms of facilities, schools, equipment and loans with low-interest rates from the employment fund for PwDs.

There should be a policy to create a closed circle to help PwDs exercise their right to work. Specifically, vocational training counselling, job training, job placement, and supporting PwDs in the workplace so they can integrate and be dedicated to their chosen job. Currently, we are investing in short-term vocational training for PwDs, granting certificates, and then letting PwDs find jobs independently. Alternatively, there are counselling and referrals, but they do not care, help or solve difficulties faced by PwDs in the workplace due to inappropriate conditions or discriminatory environments, .etc. Consequently, PwDs quit or lose their jobs.

4.3. Supplementing the right to vocational training

The right to vocational training is one of the crucial rights that PwDs enjoy to help them improve their qualifications suitable for specific jobs. Therefore, the Labor Code should add provisions on the right to vocational training to Article 176 of the Vietnam Labor Code 2012 as follows: The State sponsors the right to vocational training and self-employment for employees with disabilities, have policies to encourage and give incentives to employers to create jobs and receive workers as PwDs in accordance with the Law on Disabilities”.

Based on the provisions of the law, the government needs to concretise the right to vocational training of PwDs through regulations on vocational training by quickly promulgating a Decree detailing and guiding its implementation. There should be ways of supporting policies for PwDs to receive vocational training, such as a 50% reduction of tuition fees for those whose working capacity is reduced by 31-40%, supplementing jobs with a working capacity decreasing of 41% or more. Increase without salary, living expenses or scholarships to suit current conditions instead of 100,000/person/month.

Conclusion

Along with the development of society, the integration trend of the country, and the increasing awareness of society in general, as well as PwDs in particular, the issue of protecting the rights of PwDs, especially in the field of labour, has become increasingly important. In order to promote the development of industrial relations in the new context of Vietnam, the Vietnamese state needs to make efforts to perfect the provisions of the law on proactively working for PwDs. Production facilities need to be proactive in employing employees with disabilities, providing training and using PwDs. The rights of PwDs at work will be best protected when they have a job, a stable monthly salary and are treated equally. Achieving this requires a solid legal basis, a qualified, enthusiastic and dedicated law enforcement team and especially the employers' sense of law compliance.

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Protection of persons with disabilities in concluding contracts under Vietnam's law

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Abstract:

One of the essential principles of Vietnamese contract law is voluntariness, equality, goodwill, cooperation, honesty, integrity and freedom to enter into contracts. In the context of equitable and sustainable development, Vietnamese law does not restrict persons with physical disabilities from entering into contractual relationships. This is consistent with the CRPD of the United Nations. Although Vietnamese law has paid attention to and has suitable legal corridors for protecting PwDs, the contract law should review the exercise of their legitimate rights and interests to promote their equal contractual relationship with other subjects. This article provides an overview of how PwDs enter into contracts in practice, including two specific types of PwDs who are blind and without hands. The article also analyzes regulations on the protection of PwDs on the basis of CRPD principles and Vietnam's contract law, thereby proposing recommendations on how to enter into contracts with PwDs to ensure their justifiable interests effectively.

Keywords: CRPD; Vietnamese contract law; rights of PwDs; PwDs; contracting.

1. Introduction

In December 2006, the United Nations adopted the CRPD. After being ratified by 20 member states, the Convention entered into force on May 3, 2008. Vietnam ratified the CRPD on February 5, 2015, and became one of 185 member countries ratifying the Convention [1]. The CRPD does not explicitly define “disability”; however, according to the CRPD Preamble, disability is seen as a developing concept resulting from PwDs and attitude and environmental barriers that prevent them from participating fully and effectively in society on an equal basis with others. Article 1 of the CRPD states: “PwDs 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.” PwDs have legal rights and interests protected internationally under the CRPD. The Convention is considered an essential legal framework for countries ratifying the Convention to comply with to ensure that PwDs are their citizens and enjoy the same rights as other subjects. It is worth noting that Article 12 of the CRPD provides for the recognition of equality before the law, whereby the CRPD explicitly states that PwDs shall enjoy “legal capacity on an equal basis with others”. [2]. Legal capacity should be understood as each individual (whether PwDs or persons without impairment) is given legal rights and obligations in accordance with the law. The Convention also stipulates that PwDs should receive “assistance they may require” to exercise their rights in practice. There are many controversies on legal and cognitive capacity from the perspective of international law. However, for the two cases of PwDs mentioned in this article who are physical disabilities (hands and eyes), it is not their legal capacity but the use of their equal legal rights that need to be clarified in the practice of the countries. This article gives an overview of the rights of PwDs in contractual relationships and how PwDs enter into contracts, including two specific types of disabilities, i.e. blind people and people without hand/s.

According to Decree 28/2012/ND-CP guiding the implementation of the number of articles of the Law on PwDs, PwDs are divided into 06 types of disabilities, of which 02 types are motor disabilities and visual disabilities. Specifically:

Firstly, motor disability means partial or total loss of the mobility of the head, neck, legs, lower or upper limbs, or the body, leading to limitations in movement and dexterity [3, Clause 1, Article 2).

Secondly, vision impairment means partial or total loss of sight, colours, images and objects in normal light and environmental conditions [3, Clause 3, Article 2].

Vietnam's Law on PwDs 2010, which took effect on January 1, 2011, has provided necessary protection for PwDs at the national level. PwDs have the right to participate equally in social activities [4, Point a, Clause 1, Article 4]. Like the CRPD, the Vietnam Law on PwDs emphasizes the right to education and health care of PwDs. However, Vietnamese law does not establish principles on the rights of PwDs on the basis of consideration and comparison with those who do not belong to this group. This can lead to limitations and difficulties in enjoying the rights and protection mechanisms of PwDs when the law in specific areas does not have detailed provisions on their rights. Because, in some cases, the rules that apply to all legal subjects are not entirely suitable for PwDs. In current civil transactions, the determination of subject capacity is carried out in accordance with the provisions of the 2015 Civil Code. Specifically, Section 1, Chapter 3 of the 2015 Civil Code stipulates that all individuals have the same civil legal capacity as each other and without restrictions; The establishment and performance of civil rights and obligations of a particular individual depending on their capacity for acts. Accordingly, an individual's civil act capacity is determined based on age, cognitive ability, behaviour control, drug addiction, and other stimulants leading to the destruction of family property. Thus, a person with disabilities who is at least 18 years old, has the ability to perceive and control behaviour and is not addicted to drugs or stimulants will be determined to have total civil act capacity like the border population. However, with their physical defects, PwDs face many difficulties when establishing and performing civil transactions, especially when entering into labour contracts or performing transactions of high value. The absence of regulations and guidelines on entering into a contract if the contract subject is a person with a disability leads to confusion in ensuring this particular group's legitimate rights and interests in the contractual relationship. Although people with mobility and vision impairments have fully met the legal capacity to participate in civil transactions, the protection and enforcement of the rights of PwDs in contractual relationships are still minimal, especially when disputes arise. Therefore, the article also analyzes regulations on protecting PwDs to assess the effectiveness of Vietnam's law enforcement in practice, recommending how PwDs conclude a contract to ensure these vulnerable persons' legitimate interests effectively.

2. Regulations of Vietnamese law on how PwDs enter into contracts in contractual relationships

2.1. Vietnamese law on how to enter into a contract

According to Vietnamese law, the basis for establishing a contract is that a contract has shown the parties' will and reached an agreement and consensus on the content [5, Article 385]. Thus, entering into a contract is the process of expressing and receiving the will between the parties on the basis of a contract to determine the civil rights and obligations of the parties towards each other. Pursuant to Article 385 of the 2015 Civil Code (BLDS) on the conditions for the validity of a contract, a contract is valid when it fully meets the following factors: civil legal capacity, capacity for civil acts in accordance with the established contract; the voluntariness of the subject to the contract; the purpose and content of the contract do not violate the prohibition of the law, does not violate the morals of society; contract form in line with the provisions of law. In terms of conditions of contract form, it can be seen that the form of a contract is the outward expression of the standard will of the parties to

the contract and is the adequate condition of the contract when the law specifies the forms for each type of contract. Article 119 of the 2015 Civil Code provides for the form of a contract, including oral, written or specific acts. In some exceptional cases, the contract must be established in writing and must be notarized, authenticated or registered, such as a contract for the transfer of land use rights [6, point a clause 3, Article 167], house purchase and sale contract [7, Article 122], security contract [5], agreement on surrogacy between [8, clause 2, Article 96] ... Generally, Vietnamese law allows the parties to agree on the form of the contract unless otherwise provided for by law. In addition, the law also has a number of related regulations on the form, such as signing and stamping. Usually, a civil contract agreed upon by the parties to be established in writing is usually understood as requiring the parties' signatures in the contract document. In addition to traditional wet signatures, now, the law also recognizes the legal value of electronic signatures to create favourable conditions for parties to enter into contracts and especially electronic contracts [9] [10] [11]. With the development of science and technology, the law allows the parties to the transaction to sign contracts with electronic signatures [9, Clause 1, Article 21] in the popular forms of image signature, scan signature and digital signature [12]. However, Vietnamese law only recognizes the validity of contracts made in electronic form and signed with digital signatures, while scanned and image signatures have not been specified in terms of legal value and validity of contracts signed with these two types of signatures [12].

From practice, it can be seen that the standard ways of establishing contracts and transactions can be mentioned as follows:

Firstly, for low-value transactions, serving daily life, the time to perform and complete transactions almost instantaneous, such as buying and selling goods, necessities, and daily healthcare services; specific words or actions often establish contracts.

Secondly, for transactions not required by law to be established in writing but have high value, the transaction execution time is extended, or transactions between individuals and economic organizations are usually established in writing [5, Clause 1, Article 119]. For transactions established in writing, the method of establishment for individuals is to sign and write their full name below the signature and/or fingerprint (left and/or right index finger); for business organizations, the legal representative will be the authorized person to sign, write their full name below the signature and seal.

In disputes resolved at the Court, the signature and/or fingerprints are combined with the recognition of the involved parties, or the expert conclusions determine that the signatures/fingerprint of that person are correct, the Court may consider that the transaction has been established legally unless otherwise provided for by specialized law. Moreover, in some contract disputes, from a practical point of view, the Court has also accepted the legal effect of a contract without one party's signature [13] [14]. This demonstrates that, in reality, the actual will of the parties to the contract becomes more important than the form of expression of the will (e.g. signature). After all, a signature is one of the ways for the parties to a contract to confirm the voluntariness and consensus on the contract's content.

2.2. Practices on the rights of PwDs in entering into contracts according to Vietnamese contract law

People with mobility impairments (people without two hands) and people with visual impairments can use their words to perform contracts and daily civil transactions without difficulty or impediments in terms of legal and behavioural capacity. However, in the case of people without two hands, for written contracts, they face challenges because of physical defects that lead to the inability to sign and/or give a fingerprint only when establishing transactions according to provisions of the law,

although they read and agree with the content in the document as well as meet the conditions of subject capacity and voluntariness to enter into a contract.

Unlike the case of people with two-handed disabilities, people with visual impairments can still sign and/or give their fingerprint when entering into written contracts and transactions. However, they are at a disadvantage in reading the contents of the contract if it is not displayed in Braille. When the law does not have specific provisions on how to enter into contracts for people with vision disabilities, the subject of this particular case will be easily exploited from the limitation of reading ability to enter into the contract with signs of deception or forgery.

According to the Law on Notary 2014, notarization requesters, witnesses, and interpreters must sign contracts and transact transactions before notaries [15, Clause 1, Article 48]. If it is impossible to sign due to a disability, the fingerprint may be substituted for signing [15, Clause 2, Article 48]. Besides, if the notarization requester cannot read, hear, sign, or provide a fingerprint, the notarization must have witnesses [15, Clause 2, Article 47]. The notarization requester has the right to choose a witness who meets the statutory requirements. If the notarization requester is unable to invite the witness, the notary officer will assign the witness. However, this regulation applies to notarized transaction contracts, including notarized documents according to the agreement/request of the parties and notarized documents in accordance with the law. Thus, from a legal perspective, for contracts and transactions that the law does not require to be established in writing, notarization and the parties do not have an agreement on the notarization of the contract, there is still a lack of detailed regulations on how to establish transactions when the contract subject cannot sign, point and read.

Because of their common nature, many types of civil contracts to meet the daily life and consumption needs of organizations and individuals (such as ordinary property purchase and sale contracts, deposit contracts, and service contracts) are not required by law to be established in the form of documents, notarization, authentication or registration or required to be established in writing but without notarization or authentication. For example, in labour relations, in case a person with a disability does not have both hands, it is not possible to sign and point only on an employment contract - one of the common types of civil contracts, and the law requires it to be made in writing [16, Article 14]. Employers may also feel confused in proving the employment relationship between the employer and the employee who is a person with a disability when carrying out procedures at a competent authority such as the social insurance agency and state management agency in charge of labour or proving the labour relationship in labour disputes if there is no written contract established between the parties. Although, according to the contract law, PwDs are not restricted in their labour rights, even the state has policies to encourage and give incentives to employers who employ PwDs and protection of labour rights for PwDs [16, Article 158, Article 159, Article 160], in reality, the mechanism to protect the labour rights of PwDs is still inadequate when they face difficulties right from their fundamental rights, i.e. the right to enter into a contract. The signing of a labour contract usually takes place quickly after negotiating, dealing and reaching an agreement between the parties on the terms of the contract. The labour contract does not require the intervention of agencies and organizations such as notarial organizations in concluding contracts. Therefore, if the law does not provide for it and an ordinary civil contract is not complicated or risky, the parties agree to establish a notarized and authenticated contract only because the defects of PwDs will cause unnecessary disadvantages such as cost, time and effort.

Therefore, in order to effectively protect PwDs (in hands and eyes), the article makes some recommendations in this case as follows:

Firstly, for PwDs who cannot sign point, it is essential to add provisions on witnesses who can sign and/or fingerprint to confirm that the PwDs person has carefully read the entire contract and agreed to enter into a contract in contract law. For people with visual disabilities, it is suggested that the law that applies to contracts and transactions not require to be made in writing, and notarization and the parties do not have an agreement on the notarization of contracts to allow witnesses to sign and/or fingerprint to confirm that the text has been read to the person with a disability and that the person with the disability has agreed to the entire contract. In order to avoid disputes arising and create a basis for the above contract to be legally valid, it is necessary to stipulate that: *Firstly*, the witness is a person invited by a person with a disability to ensure the objectivity of the witnessing; *second*, recognizing the legal effect of the contract and the transaction that is made in written form and is concluded through witness.

Secondly, although a (electronic) signature can be created in the form of words, letters, numbers, symbols, sounds or other forms by electronic means to confirm the person's consent to the content of the contract [9, Clause 1, Article 21], as mentioned, the law currently only specifies details for an electronic signature as a digital signature [17, Clause 6, Article 3]. Moreover, digital signatures are only commonly used for businesses, stemming from the legal regulations for some exceptional cases that businesses must use digital signatures [18], point e, Clause 1, Article 6]. Because digital signatures are created through an asymmetric cryptographic system, they are an excellent support measure for PwDs to actively and freely enter into contracts without limitations from physical defects. Therefore, PwDs should be facilitated, encouraged, supported or required by law to use digital signatures in some exceptional cases, similar to businesses. Furthermore, the law also needs to detail the signatures in the form of words, numbers, symbols and sounds to have a basis for unambiguously recognizing the legal value of these types of signatures. By dint of that, PwDs, depending on their specific characteristics and limitations, will be able to choose and effectively use this diverse support tool in signing contracts.

Thirdly, the law of contracts should also consider allowing PwDs to confirm their agreement to the content of the contract agreement in their voice or by recording their confirmation instead of signing or fingerprinting. This mechanism motivates flexibility for parties to enter into contracts while ensuring freedom and voluntariness in contractual relationships, especially when the Court recognizes the importance of content rather than contract form.

3. Conclusion

Contract law, especially civil contracts, usually does not stipulate the content that must be included in the contract. The signature is not always a mandatory part of the contract. However, in practical terms, the parties to the contract are easily entangled in disputes arising from the fact that one party has yet to sign the contract to show their will and consent when entering into a contractual relationship. Moreover, signatures can be considered ordinary and necessary in concluding a written contract between the parties. However, there are some cases where it is optional by law to have a signature. Although Vietnam's contract law stipulates the form of contract establishment and allows the parties to freely choose the form, unless otherwise provided for by the law, in practice, the method of establishment, performing the contract concluded in some exceptional cases such as the participant being a person with a disability still faces certain hindrances. With the development of science and technology, the conclusion of contracts for PwDs (hands and eyes) can be done in various ways, such as using digital signatures and Braille. However, in reality, PwDs participating in a contractual relationship still cannot avoid barriers for many reasons such as economic conditions, convenience, popularity, and above all, the law has not yet regulated adequately and comprehensively to effectively protect the rights of PwDs on an equal basis with other subjects. Therefore, the contract law needs to

consider adding a number of provisions for PwDs to provide an adequate legal corridor, contributing to the protection of fundamental human rights and equal legal rights as all other subjects.

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The legal framework of Vietnam on employment for persons with disabilities

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Abstract

The article clarifies the role of employment for PwDs; analyzes Vietnam's legal framework on employment for PwDs; evaluates and comments on Vietnam's legal framework on employment for PwDs; thereby, proposing recommendations to improve Vietnam's legal framework on employment for PwDs.

Keywords: PwDs; employment.

1. An overview of PwDs and the role of employment for PwDs

1.1. Overview of PwDs

A person with disabilities is a person who is defective in one or more body parts or suffers functional impairment manifested in the form of disability, causing difficulties in working, living and studying [1]. According to this concept, PwDs have the following characteristics:

- Person disabilities means a person who is defective in one or more body parts or has functional impairment. They lost body parts (amputated arms, legs) or have abnormal body parts (hearing impaired, visually impaired), psycho-physiological functions (mental), or functional impairment (cerebral palsy, intellectual disability).

- Disability manifests itself in various forms such as movement disability (reduced or lost function of movement of the head, neck, legs, arms and torso leading to limitations in movement and travelling); hearing and speaking disability (reduced or lost function of hearing, speaking or both hearing and speaking, vocal pronunciation and clear sentences leading to limitations in verbal communication and information exchange); visual impairment (reduced or lost the ability to see and perceive light, colours, images, things under standard lighting and environmental conditions); neurological and mental disabilities (disorders in perception, memory, emotions, behaviour control, thinking and expression with abnormal words and actions); intellectual disability (reduced or lost cognitive ability, thinking manifested by slowness or inability to think, analyze things and phenomena, and solve problems).

- Working, living and studying of PwDs face difficulties. They have no self-control or cannot carry out their activities of walking, dressing, personal hygiene and other things that serve their daily personal needs and require someone to monitor, assist and fully care for (person with profound disabilities) or need someone to monitor, assist and take care of (people with severe disabilities).

1.2. The role of employment for PwDs

For each individual, employment is not only a source of life but also an essential condition for personality development and self-affirmation. Employment is one of the human rights, "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and protection against unemployment" [2]. At the same time, employment is an influential citizen's right and obligation as enshrined in the Constitution, "Citizens have the right to work, choose a career, employment and place of work" [3]. For PwDs, employment is even more crucial in helping them integrate into the community, confidently rise up, and contribute to their families and society.

Firstly, jobs help PwDs integrate into the community, eliminate guilt, and become more self-confident.

Like the border population, PwDs need to be guaranteed freedom, equality, respect for dignity, dedication and self-worth. However, due to their disability, they have difficulty accessing jobs, leading to low or no income. That makes them stigmatized, despised, or even trampled on dignity.

Also, because they are unemployed and have no income to cover their lives, PwDs often feel guilty because they think they are useless and burden their families and society. They live a closed life, with limited or no participation in social relationships, some are dissatisfied, easily angered, and even self-destructive.

Therefore, employment helps PwDs realize their abilities, prove their worth, and gradually remove the stigma and disrespect of people towards them. Concurrently, participating in labour, working and earning income to support themselves and their families also helps PwDs have an equal position in the family and society, integrate and be more confident in life.

Secondly, jobs help PwDs earn income and improve their lives.

Jobs provide PwDs income and stabilize their lives. Having a job will improve their material and spiritual life. They have the income to support themselves, contribute to their families and help society. Since then, the concept and perception of PwDs will change.

Thirdly, jobs for PwDs contribute to promoting the human resources of society.

If enabling PwDs have jobs, they will contribute to society according to their health and capacity. According to the annual report of the Vietnam Coordination Committee for supporting activities for PwDs, out of about 8 million PwDs today, the number of PwDs who are able to work accounts for about 21% (about 2 million PwDs). Thus, the number of employees with disabilities currently makes up nearly 3% of the total number of employees in the country [4]. This figure proves that employees with disabilities are one of the critical labour sources of society. Suppose the state's policies and laws create conditions for all PwDs who are able to work to obtain a stable job, apart from the benefits for PwDs themselves and their families. In that case, society also accumulates more resources for development.

As such, PwDs face many difficulties in life, psychology and finance. Getting a suitable job will help them overcome their circumstances, integrate into the community, reduce the burden on their families and society, and contribute to the country. Therefore, the state has issued many employment and job creation regulations for PwDs.

2. Current status of Vietnam's legal framework on employment for PwDs

Until now, Vietnam has a relatively complete legal framework on employment for PwDs, which is reflected in the following documents: Law on PwDs 2010, Labor Code 2019, Employment Law 2013, and Law on Education. Vocational education and training in 2014 with four fundamental pillars: vocational training for PwDs, job creation for PwDs, employment of PwDs, and incentives for enterprises employing PwDs.

2.1. About vocational training for PwDs

Vocational training for PwDs assists PwDs in restoring their operational function, accessing the labour market, having job opportunities, having stable incomes, creating a sustainable life, and limiting discrimination against PwDs. The Law on PwDs 2010 stipulates that the state ensures that PwDs are provided with free advice on vocational training, job selection and learning according to their capability and ability on an equal basis to other persons. (Clause 1, Article 32).

In order to create conditions for PwDs to learn vocational skills, the state has preferential policies for PwDs according to each vocational level: for elementary or short-term qualifications with a duration of fewer than three months, PwDs are subsidized vocational training costs with specific rates for each profession and actual study time, up to a maximum of 6 million VND/person/course; for intermediate

level, PwDs are considered for direct admission; for college level, people with severe disabilities are entitled to priority policies when applying for admission, people with profound disabilities are considered for direct admission.

Like other workers, PwDs have the right to register for assessment exams and be granted national certificates of vocational skills in order to be recognized for the professional knowledge and practical capacity that they have acquired during their studies, work as well as the ability to apply that knowledge and capacity to real work.

2.2. About creating jobs for PwDs

The Law on PwDs 2010 articulates that the state creates favourable conditions for PwDs to restore their work function, receive free job counselling, and get a job and work suitable to the health and characteristics of PwDs (Clause 1, Article 33). The 2013 Employment Law affirms that the state supports employers who employ many PwDs (Clause 6, Article 5). The Labor Code of 2019 stipulates that the state sponsors the labour rights and self-employment of employees with disabilities, adopts appropriate incentives and preferential policies for employers in creating jobs and accepts employees with disabilities to work in accordance with the law on PwDs (Article 158).

With the view for PwDs to have equal employment opportunities, the Law on PwDs 2010 refrains agencies, organizations, enterprises and individuals from refusing to recruit PwDs who meet the recruitment criteria or setting recruitment standards in contravention of the law in order to limit employment opportunities for PwDs (Clause 2, Article 33). Violations will be fined from 5 million to 10 million dong.

2.3. About employing PwDs

The Law on PwDs 2010 requires agencies, organizations, businesses and individuals that employ PwDs, depending on specific conditions, to arrange work and ensure suitable working conditions and environment for PwDs. In addition, the law also requests agencies, organizations, enterprises and individuals employing PwDs to fully comply with the provisions of the law on labour for employees with disabilities. (Clause 4, Article 33).

The Labor Code 2019 explicitly stipulates the responsibilities of employers when employing PwDs: to ensure working conditions, working tools, occupational safety and hygiene, and to organize periodic health checks for employees with disabilities; must consult employees with disabilities when deciding on issues related to their rights and interests (Article 159). In order to protect the health of PwDs, the Labor Code 2019 identifies prohibited acts when employing PwDs: Assign employees with work capacity reduction of at least 51%, severe or very serious disabilities to work overtime or work at night, unless otherwise agreed by the employees; Assign employees with disabilities to laborious, toxic or dangerous works on the list promulgated by the Minister of Labor, War Invalids and Social Affairs without their consent after they are adequately informed of the works (Article 160).

2.4. Incentives for enterprises employing PwDs

In order to motivate enterprises to employ PwDs, the Law on PwDs, 2010 stipulates that production and business establishments which employ PwDs accounting for 30% or more of their total employees may receive support for the improvement of their working conditions and environment suitable to PwDs; 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 (Article 34).

In case the enterprise does not employ 30% or more of the total number of employees who are PwDs, but there are ten or more PwDs, they will be supported with funding to improve working conditions

and environment suitable for PwDs; get preferential loans to serve production and business development projects in order to recruit more workers who are PwDs.

3. Results of implementation of the Vietnamese legal framework on employment for PwDs and recommendations

The implementation of the legal framework on employment for PwDs has achieved some positive results as follows:

- The number of vocational training institutions for PwDs has increased in quantity, size and quality of training. As of the beginning of the third quarter of 2018, 156 vocational training institutions participated in vocational training for PwDs, including 55 specialized vocational training institutions, and 200 establishments participated in vocational training for PwDs. In addition, associations and unions also organize vocational training and create jobs for thousands of PwDs. In 2017 alone, the country had about 20,000 PwDs supported in vocational training and job creation through the vocational training program for rural workers [5].

- The State and social community have facilitated PwDs to access preferential capital for vocational training and job search. The Bank for Social Policies has effectively maintained credit programs for social policy beneficiaries, including PwDs, allocating preferential capital to thousands of projects of PwDs and production and business establishments that employ many PwDs. The bank's annual loan turnover is VND 400 - 450 billion, with 25,000-30,000 loans being processed. Many localities have established and allocated funds from the Employment Fund for PwDs to support and create jobs for PwDs [6].

- Many PwDs find jobs, gradually take control of their lives, and reduce the burden on their families and society. In particular, many PwDs become heads of efficient production and business establishments, creating jobs for many other people in the same situation in the locality.

In addition to the above positive results, some limitations need to be considered and fixed:

Firstly, the form of assessment and issuance of national vocational skills certificates does not take into account the accessibility of PwDs. According to the provisions of Decree No. 31/2015/ND-CP, there are three types of multiple-choice tests on paper or computers, written tests on paper, and a combination of multiple-choice tests and written tests on paper or the computer. Not all PwDs can attend these forms. Therefore, it is necessary to have more suitable forms, such as oral exams or allow blind people to use Braille and electronic reading devices to take the exam.

Secondly, it is complicated for PwDs to access preferential loans for vocational training or inaugurating production and business establishments. According to a report from the Bank for Social Policies, the total number of PwDs who have borrowed capital to create jobs is only about 11,000 out of a total of 2.4 million working-age PwDs in Vietnam (about 0.46%) [7]. The reason is that the Bank for Social Policies only uses revolving capital; there is no capital specifically for PwDs to borrow to develop production and business. Therefore, it is essential to supplement capital from the state specifically for PwDs to borrow to develop production and business.

Thirdly, the percentage of PwDs refused employment because of their disability is relatively high (53%) [8]. Meanwhile, the acceptable level for enterprises that do not accept qualified PwDs to work (fines from 5 million VND to 10 million VND) needs to be higher. Therefore, we should increase the penalty for this behaviour.

Fourthly, the rate of PwDs recruiting to work in agencies and enterprises could be a lot higher. According to statistics, only 15% of PwDs “work for a salary”; the rest are self-employed [4]. The reason is that the conditions for enterprises to enjoy preferential policies for using many employees with disabilities are currently too high (enterprises must employ 30% or more of the total number of employees with disabilities). For enterprises that do not reach the percentage of 30% or more of the

total number of employees who are PwDs, although the state has incentives if they employ ten or more PwDs, this incentive is not attractive enough for businesses to hire PwDs, except for large enterprises with thousands of employees. In addition, these preferences do not increase commensurate with the rate and number of PwDs employed. For example, a business employing 10 PwDs receives the same incentives as a business employing hundreds of PwDs [9]. Therefore, it is necessary to give incentives and support to all businesses that employ PwDs (instead of just supporting businesses that employ 30% or more PwDs at present) and have preferential policies to be adjusted in parallel with the rate and number of PwDs employed by enterprises.

Conclusion

The legal framework for employment for PwDs has been well developed in Vietnam, creating many opportunities for PwDs to study, find work and get a job. However, there are still some limitations that impede PwDs from accessing jobs. Therefore, Vietnam should study and perfect the legal framework on employment for PwDs further to facilitate the participation of PwDs in the labour market.

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Current job creating a situation for employees with disabilities in Vietnam

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Abstract:

After two years of being heavily affected by the Covid-19 epidemic, many workers lost jobs or faced difficulties maintaining employment. This situation is much more profoundly challenging for employees with disabilities. Currently, Vietnam has more than 6.2 million PwDs. Creating jobs for employees with disabilities not only improves their lives but also helps to reduce the burden on the state budget in the subsidies and support for PwDs.

Therefore, the article focuses on clarifying the theoretical and legal basis and assessing the current job creation situation for employees with disabilities in our country by using the integrated approach combined with data analysis and processing methods.

Keywords: workers, employees with disabilities, job creation

1. Some fundamental theories about solving jobs for employees with disabilities

- Employment Concept:

According to the ILO (International Labour Organization), “jobs are activities that are paid fairly in money and kind”. According to the ILO, people with jobs do something that is paid wages, benefits or paid for in kind or those engaged in self-employment activities for the benefit or because the family income is not entitled to receive public money or in-kind.

According to article 9 of the Labor Code in 2019, employment is an income-generating labour activity that is not prohibited by law.

From a legal perspective, it can be seen that three factors constitute employment:

+ Labor activity: showing the impact of labour power on production materials to create products or services. The labour factor in employment must be systemic, regular and occupational. So ordinary employed persons must demonstrate labour activities within a specific range of professions and during a relatively stable period.

+ Income generation: means a direct income and the ability to generate income.

+ This activity must be legal: labour activities that generate income but are illegal and not recognized by law are not considered jobs. Depending on each country's socio-economic conditions, customs, and moral conceptions, the law has different provisions in determining the legality of labour activities considered employment. This is a characteristic of the legality of employment.

- The concept of solving employment:

According to article 9 of the Labor Code in 2019, employment settlement is understood as: “The State, employers and society have the responsibility to create employment and guarantee that everyone who is able to work has access to employment opportunities”.

Solving employment is improving the quality of employment and creating jobs to attract workers to engage in the productive machinery of the economy. Creating jobs is not only to create more jobs but also to improve the quality of employment. The latter issue goes unnoticed; meanwhile, the former is paid attention to.

According to the ILO, underemployment is expressed in two forms:

+ Firstly: Visible underemployment

Visible underemployment comprises workers who work fewer hours than usual. They need more jobs, are looking for part-time jobs and are ready to work. Specifically, in Vietnam, if an employee works less than 40 hours per week or less than 22 days per month, he/she is underemployed.

+ Secondly: Invisible underemployment

This type of underemployment refers to people who have enough jobs, work enough time, or even more time than usual but earn low incomes which do not afford life, and they want to work more for income.

- The concept of employees with disabilities:

According to the World Health Organization classification, there are three degrees of impairment: impairment, disability and handicap. Impairments refer to the loss or abnormality of body structures related to psychological and/or physiological. Disability refers to restricting activity functioning, a consequence of the defect. Handicap refers to the adverse or disadvantaged situation of a person carrying a disability under the impact of the surrounding environment on their disability.

According to the International Organization for PwDs, PwDs becoming disabled is due to the lack of opportunities to participate in social activities and have a life like the other member. Therefore, disability is a complex phenomenon, reflecting the interaction between a person's body features and the social features in which he or she lives.

In Vietnam, Clause 1, Article 2 of the Law on PwDs 2010, which came into effect on January 1, 2011, defines PwDs as follows: “A person with a disability is a person who is impaired in one or more body parts or has a functional impairment that is manifested in the form of a disability that causes difficulties to his/her work, living and studying”.

According to the Labor Code 2019, *an employee is a person who works for the employer under an agreement, is paid and is subject to the management, administration and supervision of the employer.*

Thus, an employee with disabilities is a person who works with a disability or multiple or impaired body parts for the employer under an agreement, is paid and is subject to the management, administration and supervision of the employer.

The concept of solving jobs for employees with disabilities:

From the above concepts, we can generally draw on the employment solution for employees with disabilities as *the state, employers, and society are responsible for participating in job creation, ensuring that employees with disabilities have the opportunity to have jobs.*

2. The current situation of employment for employees with disabilities in Vietnam

2.1. Some legal bases for employment for employees with disabilities in Vietnam

In Vietnam, job creation, especially for employees with disabilities, is of great interest to the state. This is reflected in the system of legal documents as follows:

The CRPD is an international human rights instrument prepared by the United Nations to protect the rights and dignity of PwDs. States parties to the Convention must ensure the equal enjoyment of all public services by PwDs. Vietnam is the 118th party to sign the Convention on 22/10/2007;

Decree 20/2021/ND-CP dated March 15, 2021, of the Government stipulating social assistance policies for social protection beneficiaries;

Labor Code No. 45/2019/QH14, dated November 20, 2019, of the National Assembly;

Consolidated Document No. 763/VBHN-BLDTBXH dated February 28, 2019, of the Ministry of Labor – Invalids and Social Affairs shall detail and guide the implementation of a number of articles of the Law on PwDs;

- Decree No. 103/2017/ND-CP dated September 12, 2017, of the Government regulating the establishment, organization, operation, dissolution and management of social assistance establishments;
- The Government's Decree No. 113/2015/ND-CP dated November 09, 2015, stipulates specific allowances, preferential allowances, allowances for work responsibilities and allowances that are heavy, toxic or dangerous for teachers in public vocational education institutions;
- Joint Circular No. 29/2014/TTLT-BLDTBXH-BTC dated October 24, 2014, of the Ministry of Labor, War Invalids and Social Affairs and Ministry of Finance on guiding the implementation of a number of articles of the Government's Decree No. 136/2013/ND-CP dated October 21, 2013, stipulating social assistance policies for social protection beneficiaries;
- The Government's Decree No. 28/2012/ND-CP dated April 10, 2012, detailing and guiding the implementation of a number of articles of the Law on PwDs (This Decree is invalidated partly by Decree 113/2015/ND-CP stipulating specific allowances, preferential allowances, work responsibility allowances and heavy-duty allowances, toxic, dangerous allowances for teachers in public vocational education institutions);
- Decision No. 1019/QĐ-TTg dated August 5, 2012, of the Prime Minister approving the project on assistance to PwDs for the period 2012 – 2020;
- Law on PwDs No. 51/2010/QH12 dated 17/06/2010 of the National Assembly (This Law expires partly due to the repeal partly by the document Law 32/2013/QH13 amending and supplementing a number of articles of the Law on Corporate Income Tax).

Employees with disabilities are also one of the essential labour resources of society. Suppose the state's policies and laws create conditions for the total number of PwDs who are able to work with stable employment in addition to the benefits for PwDs and their families. In that case, society also has more resources for development. The state's policies have created incentives for enterprises employing PwDs and enterprises of PwDs, specifically as follows:

- Provide financial support for the renovation of suitable working conditions and environments for PwDs in accordance with the regulations of the Ministry of Labor, War Invalids and Social Affairs. The level of support is based on a percentage of PwDs working stably at production and business establishments, the degree of disability of employees and the size of production facilities in accordance with the Prime Minister's regulations.
- The Chairman of the People's Committees of provinces and centrally-run cities shall decide on the level of funding to support the renovation of working conditions and environment for production establishments employing 30% or more of the total number of employees who are PwDs;
- Exemption from corporate income tax in accordance with the provisions of tax law;
- Preferential loans under production and business development projects from the Bank for Social Policy.
- Exemption from rent for land, premises and water surface for production and business for production and business establishments employing 70% of employees be a person with a disability

or higher. 50% reduction in rent for land, premises and water surface for production and business establishments if the business employs between 30% and less than 70% of workers who are PwDs.

Despite synchronization of disability policies, including regulations on employment settlement and employment policies for employees with disabilities, Vietnam has not yet issued specific guidelines for PwDs, sectors, and occupations.

2.2. Assessing the current state of employment for employees with disabilities in Vietnam

As of 2021, according to the National Commission on PwDs of Vietnam, our country has about 6.2 million PwDs aged two years and older, equal to more than 7% of the total population, of which nearly 3 million people have certificates of disability.

Before being affected by the Covid-19 epidemic, the labour market increasingly set high requirements on the capacity and quality of workers. In particular, businesses aim to develop and operate products through digital transformation. This ambition is challenging even for ordinary people, so employees with disabilities find it even more difficult. Especially nowadays, the majority of employees with disabilities are manual workers without qualifications. Thus, they are easy to be excluded from the labour market.

In the last two years, due to the impact of the Covid-19 pandemic, the problem of jobs suitable for employees with disabilities has undergone challenges. According to statistics from the Ministry of Labor, War Invalids and Social Affairs, only 31.7% of PwDs engage in the labour force. However, the employment rate for PwDs aged 15 and over accounts for only 36%, while the figure for persons without impairment is 60%. PwDs are the most affected by the Covid-19 epidemic as they lose their jobs.

According to a quick assessment of the impact of Covid-19 on PwDs by the United Nations Development Programme in Vietnam (UNDP), PwDs are among those most affected by the epidemic; 72% of respondents have a monthly income of less than 1 million VND, 30% of respondents reported being unemployed because of the pandemic, 49% reported having reduced working time; of those still employed, 59% said incomes were reduced.

Vietnam is a country with a reasonably good welfare policy for PwDs. Specifically, 100% of PwDs are eligible for access, Despite social security policies. Notably, in 2021, the state budget allocates VND 18,546 billion to implement monthly subsidies and purchase health insurance cards for social protection beneficiaries; At the same time, more than VND 356 billion was allocated to implement the support policy on education for this particular group of subjects.

Not only caring about life, but PwDs are also supported with access to transportation, information and communication, legal assistance, and participation in cultural and sports activities... Through a variety of assisting measures, the lives of PwDs are improving. Currently, more than 90% of families whose members are PwDs in our country no longer have to live in poverty; nearly 90% of children with disabilities attend primary school at the right age...

However, there are still many difficulties for PwDs to rise and integrate into society to obtain suitable jobs, which is a long-term problem.

According to Mr. Pham Viet Thu (Deputy Minister of Labor - Invalids and Social Affairs), from 2016 to 2021, the association levels of the visually impaired have just opened 66 classes of acupressure massage, informatics, animal husbandry, crafts, making incense, knitting... for 850 learners. The system of 393 centralized production facilities and 139 manual production groups at all levels of the visually impaired association attracted 4,483 employees to work with the average income of the craft is 1.9 million VND/month, the acupressure massage profession reaches 2.5 million VND/month...

Also, to educate for the integration of employees with disabilities, according to Mr. Nguyen Van Hoi (Deputy Minister of Labor - Invalids and Social Affairs), the authorities and the social community need to focus on career counselling and vocational training for employees with disabilities, thereby helping them expand their job opportunities. The Ministry encourages more than 1,900 vocational education institutions to participate in vocational training for PwDs, paying attention to fostering and improving qualifications and expertise for more than 3,300 teachers directly providing vocational training to this particular group of workers. In addition, the authorities prioritize the implementation of the vocational training model associated with employment at enterprises and production facilities and; the vocational training model associated with livelihoods for PwDs... In this direction, in 2021, the country settled for 1,138 projects for employees with disabilities to get loans, creating jobs for about 10,000 employees with disabilities.

At the grassroots level, localities implement a variety of solutions to create jobs for employees with disabilities by organizing specialized job trading session topics for PwDs, encouraging organizations and enterprises to take the initiative in vocational training for this particular group of workers. Counselling and career orientation activities are the frequent tools helping PwDs realize their abilities, thereby choosing a career accordingly.

In Hanoi, according to the Association of PwDs, the city currently has more than 100,000 PwDs, about 30% of whom are of youth age. Thus, they need employment. Regarding career guidance, vocational training and employment support for PwDs in Hanoi, The City Association of PwDs has encouraged PwDs to participate in the general labour market. At the same time, the association cooperates with the Hanoi Employment Service Center to transmit the contents of recruitment information for employees who are PwDs by various channels, such as sending dispatches to district associations by email, so that PwDs can grasp the opportunities to find a job and participate directly in disability integration sessions (According to Mr. Nguyen Hong Ha - Vice Chairman of Hanoi Association of PwDs).

PwDs own many successful businesses and enterprises, employing the majority of employees with disabilities, such as the Green Vitality Cooperative (Tan Dan commune, Soc Son district), Crumb Art Cooperative (Van Phuc ward, Ha Dong district), We-Edit Vietnam Company (Dong Mai Ward, Ha Dong District), Fagi Joint Stock Company (District 1, Ho Chi Minh City).

Some problems:

- Legal policies are not specific in terms of specific industries, business fields and employees with disabilities;
- Businesses are not yet interested in employing employees with disabilities;
- Vocational training for employees with disabilities is not practical as expected. Vocational training for PwDs has yet to be associated with employment. If trained PwDs are unable to find a job, they might suffer psychological stalemate;
- Many PwDs are psychologically inferior, not actively access job opportunities. Therefore, although businesses are willing to recruit employees with disabilities, it is still difficult to recruit;
- Currently, the majority of businesses publish recruitment information on online platforms, while the majority of PwDs cannot afford access to information on the labour market;
- The majority of PwDs suffer mobility difficulties, so they are only suitable for jobs from home or close to home. If the workers work far from home, the employers should arrange accommodation.

3. Proposed solutions to the current situation of employment of employees with disabilities in Vietnam

- It is necessary to synchronize legal policies on incentives and conditions for each specific industry, business field and enterprise in creating employment for employees with disabilities;
- Localities should take proactive measures to create favourable conditions for employees with disabilities to work, i.e. not only career orientation and job accessibility but also facilities and working conditions.
- Along with the support of the authorities, employees with disabilities themselves need to actively overcome difficulties and actively learn information about the labour market in order to seize job opportunities;
- Vocational training institutions for PwDs should pay attention to outputs for workers, create psychological stability, and nurture the will to strive, improving the working skills of PwDs immediately after the end of the training courses;
- Communication is vital in changing social perceptions and influencing public thinking and behaviour. The choice of words, images and messages can help shape the perceptions, attitudes, and behaviours of society in general and PwDs in particular;
- PwDs must also equip themselves with professional knowledge and skills, willing to take on the job of employers to assert themselves as “down, but not out”.

Conclusions

Solving jobs is always an important problem in the social security of every country. However, creating jobs for employees with disabilities makes even more sense when it comes to helping PwDs integrate into the community, avoid discrimination and stigma from people and helping to ease the burden of the state budget. Therefore, Vietnam has always emphasized creating jobs for PwDs. However, the results are still under expectation. The reasons are objectively due to the impact of the Covid-19 epidemic and also partly because of the policy system, employer organizations, and disability workers themselves.

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