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# Sexual Rights of People with Disabilities in International Laws and Suggestions for Vietnam from Perspectives of Gender Equality

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## Abstract

In light of the human-centered approach to sustainable development, making the most of the human component as the topic, driving force, and objective of development, serving more and more completely the material and spiritual requirements of people from all walks of life, the Law on People with Disabilities, in particular, and the Vietnamese legal system in general should recognize the sexual rights of people with disabilities as personal rights that are protected by civil, marriage, and family measures as well as criminal measures in accordance with Vietnamese law and international human rights law from the perspective of gender equality.

**Keywords:** *sexual rights; people with disabilities, gender equality, international human rights law, Vietnamese law*

## Introduction

The World Health Organization (WHO) estimates that more than one billion individuals, or fifteen percent of the global population, live with at least one kind of disability. Among women, this rate is estimated to be one woman per year (19.5%)<sup>3</sup>. The phrase "people with disabilities" (PWD) refers to individuals who have continuous physical, mental, intellectual, or sensory impairments that, when coupled with other conditions, may prohibit them from fully and equitably participating in society, according to the United Nations<sup>4</sup>. Significant numbers of PWD are regularly refused access to vital medical services, such as reproductive health care. Their basic rights are frequently violated<sup>5</sup>, such as having sex, building a family, or cultivating intimate relationships. Facing this fact, the sex life of PWD is increasingly studied which confirms that PWD have these important needs as people without disabilities. Sexuality has gradually become an important aspect of the civil rights of PWD<sup>6</sup>. Studies on the sexuality of PWD are increasingly positive when pointing to the fact that PWD have the same sexual needs as other normal people<sup>7</sup>. Not only that, the studies also questioned the sexual needs of PWD in the intersection with feminist theory and the recognition of the gay community as a manifestation of gender diversity<sup>8</sup>. Some critics have claimed that research on the sexuality of PWD has mainly focused on men, heterosexuality, physical disabilities<sup>9</sup>, meanwhile, sexuality of female with disabilities and the same-sex group is still a gap. With the passage of the United Nations Convention on the Rights of Persons with

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<sup>3</sup> WHO, Disability and Health: Key facts, 2021.

<https://www.who.int/en/news-room/fact-sheets/detail/disability-and-health> (November 24, 2021)

<sup>4</sup> United Nation. CRPD 2006.

<sup>5</sup> WHO, World Bank (2011). World report on disability. P.350

<sup>6</sup>HIGGINS Daryl, « Sexuality, human rights and safety for PWD: the challenge of intersecting identities », Sexual Relationship Theory, 25, 3, 2010, pp. 245-257.

<sup>7</sup>ROHLER Poul, SWARTZ Leslie, « Disability, Sexuality and Sexual Health », in AGGLETON Peter et al. (dir.), Understanding Global Sexualities: New Frontiers, New York, Routledge, 2012, pp. 138-152.

<sup>8</sup>TREMAIN Shelley, « Queering Disabled Sexuality Studies », Sexuality and Disability, 18, 4, 2000, 291-299.

<sup>9</sup>DRUMMOND Jennifer, BROTMAN Shari, « Intersecting and Embodied Identities: A Queer Woman's Experience of Disability and Sexuality », Sexuality and Disability, 32, 4, 2014, pp. 533-549.

DOI : 10.1007/s11195-014-9382-4

Disabilities (CRPD) in 2006, the rights of PWD have also been codified in a legally enforceable document at the international level.

The National Survey in Vietnam illustrates that 6.2 million persons, or more than 7% of the population aged 2 and older, are considered to have a disability. The rate of disability inclines to increase with age with the rate of women higher than that of men<sup>10</sup>. The topic is whether international law protects sexual rights and, in response to the distinctive behaviors of disabled persons, protects them from discrimination in general and gender discrimination in particular. At the same time, whether the development of Vietnamese law keeps up with the growth of knowledge on issues related to the sexuality of PWD, which goes beyond considerations related to health and protection of vulnerable people.

## **1. Sexual Rights Of Persons With Disabilities In International Human Rights Law**

### **1.1. Sexual Rights And Sex-Related Rights In International Human Rights Law**

In international law, there is no legal instrument that provides a definition of sexual rights. From the perspective of international organizations, it can be seen that the issue of sexual rights is access to the right to be free from discrimination, violence or coercion, to have access to education and health services, respect for privacy and family life.

Sexual rights are a set of rights related to sexuality that come from the rights to freedom, equality, privacy, autonomy, integrity, and dignity. The WHO has unofficially acknowledged sexual rights within the context of sexual health<sup>11</sup>, although it has not yet approved a formal definition. Sexual health is not only the absence of illness, dysfunction, or disability.

After the HIV/AIDS epidemic, gay and lesbian groups promoted sexual rights in international forums. The 1994 International Conference on Population and Development (ICPD) tried to add sexual rights to reproductive rights<sup>12</sup>. The Conference Program of Action's paragraph 7.2 defines sexual and reproductive health as an individual's overall well-being in their sexual and reproductive life. Sexual and reproductive health rights encompass freedoms and rights. The ICPD Program of Action states that these freedoms are not new human rights but rather rights contained in international human rights agreements pertaining to sexual, reproductive, and health autonomy.

Furthermore, in 1995, the Beijing Platform for Action expanded this definition to include sex and reproduction, by asserting in section 96 of the Platform for Women's Rights to exercise control over their sexuality without coercion, discrimination or violence in sex and to have decision-making power in this area. Not long after, the content of sexual rights was concretized in the Universal Declaration of Sexual Rights. This document lists sexual rights<sup>13</sup> that have been reiterated in various UN documents<sup>14</sup>, especially in the final documents of the monitoring and evaluation process of the ICPD Program of Action and Beijing's Platform for Action. As such, the aforementioned sexual rights can be linked to a number of rights recognized in international law, including the right to non-discrimination, respect for privacy, freedom of expression and association, universal physical integrity, health and education.

International human rights law has also long recognized some rights related to sex. Specifically, the 1948 Universal Declaration of Human Rights (Article 16) recognized the equal rights of men and women to marry, establish a family and in family relations, and stipulate the fundamental principle that marriage must come from the free decision and consent of both parties. These provisions were subsequently re-written in both the 1966 International Covenant on Civil and Political Rights (ICCPR) (Articles 10 and 23), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Articles 10 and 23). In the following decades, the Conventions on the Elimination of All Forms of Discrimination Against Women of 1979 (CEDAW), the Convention on the Rights of Children in 1989 (with two additional protocols to this convention) and a number of other international human rights treaties broadened the issue by prohibiting exploitation, sexual abuse, and trafficking in women and children, and recognize the reproductive rights of women. Although there are some rights related to sexual rights, protection under international law is mainly

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<sup>10</sup>General Statistics Office, Vietnam National Survey of PWD, Statistical Publishing House, Hanoi, 2018, pp.15

<sup>11</sup>WHO, Defining Sexual Health: Report of a technical consultation on sexual health, 2831 January 2002, Geneva, WHO, 2006.

<sup>12</sup>Section 7.2 of the ICPD Action Agenda.

<sup>13</sup>World Association for Sexual Health (2014). *Declaration of Sexual Rights*.

<sup>14</sup>For example, Committee resolution 2012/1 (in E / 2012/25-E / CN.9 / 2012/8)

concentrated on the health sector, in particular sexual health, sexual well-being and reproductive health. Indeed, it is only in the context of the right to health that the link between sexuality and rights is made unambiguous.

## **1.2. Sexual Rights Of Persons With Disabilities In International Human Rights Law**

According to the CRPD, the right to health includes the right to access reproductive and sexual health (Article 25), realizes the right to protection from sexual exploitation (Articles 16, 17), the right to marry and start a family with voluntary and consent (Article 23), the right to have children and to choose the number and spacing between them (Article 24), and the right to decide whether or not to have children at all. However, the World Program of Action Concerning Persons with Disabilities, established in 1982, and Resolution No. 48/96 came before that. The Code requires States to take steps to prevent sexual abuse and coercion with PWD while also promoting the full participation of PWD in family life and eliminating laws that discriminate against them in areas like marriage, parenthood, and sexual relations. A report published in 2011 titled *Discrimination Law and the practice of violence against individuals because of their sexual orientation and gender identity* affirms that determining the right to enjoy sex belongs to an individual's private life. This right, along with other civil and political rights, applies to everyone, regardless of sexual orientation, gender identity, health status or any other factor. The above documents show a very broad view of the United Nations on rights related to sex, which is based on the principle of equality, non-discrimination on rights holders and starting from marriage/family rights and reproductive rights.

However, a particularly important right related to sexual rights is the right not to be discriminated against on the basis of sex, gender roles, gender identity and sexual orientation. International law recognizes that women and men have equal rights in consenting to marriage, in marital relations, family planning and parenting responsibilities. For PWD, the CRPD dedicates Article 6 to specifically regulating women with disabilities, acknowledging that they may be discriminated against because of their disability and because of their gender.

International law includes rights relating to family life, and therefore these rights can protect sexual rights. This is a critical right related to sexual rights, but its application must take into account the fact that the rights of PWD are often violated in the private sphere. This is also a right linked to the right to marry and form a family. International law protects the family unit, where each person is supposed to be able to live their sex life freely. This protection is the protection of reproductive and marriage rights, in which each person's sexuality needs to be based on the traditional point of view. CRPD specifically expands reproductive rights and marriage rights by extending other rights on an equal basis with other subjects, relating to marital relations, family relations, parent-child relationships and personal relationships. These provisions are also concerned with the protection of the physical integrity of the individual.

Therefore, in addition to health services and the protection of private and family life, sexual rights protected by international law also contain protection against sexual violence and sexual exploitation. Prior to the CRPD, the protection of human integrity was limited to the prohibition of torture, inhuman and degrading treatment and punishment, which is much narrower than rights that are not compromised. CRPD has filled this gap in international law by explicitly extending safeguards against violence and abuse to PWD. PWD have a right to be free from exploitation, violence, and abuse, including on the basis of sex, according to Article 16 of the CRPD. Additionally, Article 17 safeguards the sexual and reproductive integrity of PWD, including protection from forced abortion, sterilization, and other forms of reproductive violence. This article is primarily focused on the sexual rights and rights associated with the sexual rights of women with disabilities.

Thus, international law has now approached sexual rights in the field of health, and through rights related to sexual rights in order to ensure the enjoyment of sex life by all without any discrimination, including aspects that were previously and are still not acceptable in some societies, such as homosexuality, sex outside of marriage, HIV's sexuality, education of PWD in general and sexuality of women with disabilities in particular. This system of rights set a framework of reference for the revision of sexual rights legislation by countries around the world. Influenced by global debate on this topic and international human rights legislation, state laws in the last several decades have also experienced substantial changes in the direction of "unbinding" and broadening individuals' sexual rights, both in terms of subject and conduct.

## **2. Vietnamese Law On Sexual Rights And Sexual Rights Of People With Disabilities**

### **2.1. Vietnamese Law On Sexual Rights: Implicit Recognition Through The Provision Of Rights Related To Sexual Rights**

In Vietnam, although sexual rights are not officially recognized, rights related to sex have been recognized in a number of provisions scattered in many important legal documents, of which the foundation is the principle of equality and non-discrimination in terms of the rights holders and starting with marriage/family and reproductive rights, specifically:

The 2013 Constitution makes it clear that both men and women have the right to get married and split up. Marriage is based on the ideas that it should be voluntary, progressive, monogamous, equal, and both husband and wife should respect each other<sup>15</sup>. The Civil Code 2015 stipulates the personal rights and obligations of individuals, in relationships formed on the basis of equality, freedom of will, and independence in property and self-responsibility, moral rights in marriage and family, right to gender reassignment, gender reassignment. The Law on Marriage and Family 2014 contains provisions related to sexual rights. This is a progressive step in Vietnam's marriage and family law to recognize the right to sexual freedom, to recognize the cohabitation of people of the same sex, to prohibit discrimination, and to prohibit brutal administrative interference in sexual freedom.

In the field of criminal law, sexual rights are an apparently expressed content, acts of infringing upon human sexual rights are considered crimes and are subject to very strict sanctions. In order to comply with current practical requirements, the Penal Code 2015 has made revisions and supplements to each legislative item for the category of sexual offenses. Many of these regulations demonstrate the new approach to the recognition and protection of sexual rights. According to the provisions of this Code, not only the act of non-consensual sexual intercourse, but also other sexual activities that can form a criminal crime of sexual infringement. On the basis of recognizing other sexual acts, the 2015 Penal Code also expands on the subject of the act as well as the victim who can be either male or female. This is the recognition and guarantee of human sexual freedom, which not only limits to protecting women's sexual freedom as before, but also mainstream gender issues in protecting sexual rights of citizens. For crimes of infringing upon the marriage and family regime, the 2015 Penal Code criminalized two acts of infringing upon sexual rights, namely the right to sexual freedom in marital relations, including the crime of forced marriage, forced divorce or hindering voluntary and progressive marriage and voluntary divorce.

There are also other legal documents that deal with sexual rights. The 2006 Law on Gender Equality defines gender equality as men and women holding equal positions and responsibilities, receiving favorable circumstances and opportunity to increase their potential for community and family development, and equally enjoying the results of such development. Although this law does not directly regulate gender equality, it has nonetheless implicitly acknowledged it in society. The 2007 Law on Domestic Violence Prevention and Control regulates domestic violence acts related to sexual rights, including forced sex, divorce or obstruction of voluntary and progressive marriage. The Law on Persons with Disabilities 2010 prohibits obstructing the marriage and child custody rights of PWD, so this Law indirectly acknowledges the sexual rights of PWD.

The above provisions indicate that Vietnam has a fairly advanced legal framework on rights related to sexual rights, through which sexual rights are implicitly recognized. However, in the next section, it can be seen that there is still a gap in Vietnamese law in timely access to international law to ensure the protection of sexual rights of all people, including PWD, women as well as men in terms of gender equality.

## **2.2. Vietnamese Legislation On Sexual Rights Of People With Disabilities: The Sexual Rights Gap In Association With Sexual Health And Sexual Well-Being**

The first is the promulgation of the Law on PWD 2010 on June 17, 2010 to replace the Ordinance on PWD 1998, which marked a change in awareness about PWD and created a crucial legal corridor in recognizing their rights. However, up to now, Vietnam's law on the sexual rights of PWD still has some limitations.

### **2.2.1. Limitations In The Policy And Enforcement Of The Sexual Rights Of People With Disabilities**

*First*, there is still a gap in Vietnamese law regarding sexual rights as a human right to sexual health and sexual happiness, specifically as follows:

*One is*, Vietnamese legislation does not fully formalize this recognition of the CRPD. The 2010 Law on Individuals with Disabilities does not explicitly recognize the sexual rights of PWD; instead, it just forbids interfering with their ability to be married and have children (Article 14). Since that time, this Law has mostly focused on sexual rights in

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<sup>15</sup>Article 36 of the 2013 Constitution.

terms of reproductive health and rights, only tangentially acknowledging the sexual rights of individuals with disabilities by defining rights connected to sexual rights. In terms of both sexual health and sexual well-being, the idea of sexual rights for individuals with disabilities is hazy.

**Two is**, the regulation of liability for non-contractual damages in the Civil Code in 2015 has not yet recognized and protected citizens' sexual rights through protection of sexual health and sexual happiness. There are cases that a person's health is infringed which affect the physiological function, entailing the decline of their sexual health. While the right to sex is a moral right of the individual recognized by international law in the area of sexual health and well-being, the legislation of the European Community and a number of countries have recognized damage to sexual health is a type of mental damage that is compensated independently of other types of emotional damage when physical abuse affects sexual function. It is the WHO definition of sexual health that is now the ground for the implementation of public health programs in a number of countries. The National Institute for Sexual Prevention and Education (Inpes, previously CFES) is in charge of carrying out this purpose in France, a country in the European Union where sexual health is highly regarded, as it is in all other EU member states<sup>16</sup>. Sexual loss is determined according to the "proportion of damage to sexual function" similar to any other function of the human body part, compensated in cash, not a fixed amount but varies according to the age, sex, marital status of the aggrieved and above all according to the rate of sexual dysfunction. In addition to the direct victim being compensated for sexual health damage, the indirect victim who is the legal spouse of the direct victim is also entitled to compensation for sexual mental damage, due to the loss of sexual well-being. In Italy, the term "biological damage" is used for emotional damage in the event of physical abuse. The concept of biological damage includes damage to the pain suffered, aesthetic damage, sexual damage, loss of the opportunity to establish a family life, independently compensated for the direct victim. For indirect victims, similar to French, Italian and Luxembourgian laws also acknowledge that indirect victims as spouses of the main victims are eligible for compensation for mental damage due to physical inversion of living conditions of the primary victim of abuse, which includes the reversal of sexual living conditions<sup>17</sup>.

The current Vietnamese civil law does not distinguish between general health and sexual health. Therefore, the protection of sexual rights through civil means forcing violators to compensate for damage to sexual health and sexual happiness to direct victims has not been mentioned in Vietnamese civil law, at the same time, indirect victims who are spouses of direct victims are also not entitled to compensation for mental damage in terms of sexual rights and sexual happiness due to the decline in the sexual health of their loved ones (Article 590 of the 2015 Civil Code). Meanwhile, the practice of trial at the Court in Vietnam shows that there has been a case where a petition has been filed for compensation for indirect sexual damage, but compensation for damage has not been resolved<sup>18</sup>.

**Second**, the principles of "non-discrimination," "equality of opportunity," and "equality of men and women" for PWD have been indirectly prescribed in documents like the 2013 Constitution; the Law on Gender Equality 2009, and some related Laws. Vietnam has gradually internalized the eight principles under Article 3 of the CRPD. However, the Law on PWD 2010 and other pertinent legal texts do not seem to have incorporated all of the CRPD's principles.

**One is**, the principles in the CRPD on "Respect for difference and acceptance of PWD as part of human diversity and humanity", "Full and effective participation and inclusion in society" (points c, d, Article 3 CRPD). The issue of "accessibility" in Article 9 of the CRPD should be considered a principle used in all disability policies including access

<sup>16</sup>Le Pennec, Anne. "Santé sexuelle, la définition de l'OMS." *L'ecole des parents* 602.3 (2013): 37-37.

<sup>17</sup>Marie Denimal, "La réparation intégrale du préjudice corporel : réalités et perspectives", Thèse, Université du Droit et de la Santé - Lille II, 2016. France.

<sup>18</sup>In this case, in 2008, the People's Court of Mo Cay Bac district, Ben Tre province received a lawsuit filed by Ms. Dung (37 years old) for a rare reason asking to be compensated for a loss of "family happiness" for her and her husband, the cause stems from a work accident in 2007 of Mr. Phuong, and her husband Dung fell from a spear, causing his spine to shrink, losing 60% of his working capacity, affecting physiological functions. Ms. Dung sued the company because she thought she was also the one who suffered damage, so her husband's company had to reimburse an additional amount of "family happiness" for the two. The company said that the conflict between Mrs. Dung and her husband was due to the inability to reconcile the relationship with the couple, and had nothing to do with Mr. Phuong's loss of physiological capacity due to a work accident. The People's Court of Mo Cay Bac district was forced to bring the case to trial, the Trial Panel found that the plaintiff could not provide evidence to prove that the husband and wife suffered losses in the fact that Mr. Phuong lost his physiological capacity. Therefore, it is not possible to claim compensation from the company. See Thanh Huong, Wife demands compensation from the company for her husband's physiological weakness, Ho Chi Minh City Women's Electronic Newspaper published on November 17, 2015.

to education, access to transport, public facilities and even access to medical equipment and services, however, the Law on PWD 2010 currently partly regulates access traffic, public works<sup>19</sup>, and lacks access to health care, medical services, including sexual health and well-being. Meanwhile, reports indicate that the rate of PWD accessing programs and information about reproductive and sexual health care is very low. According to the Research Report on Eliminating Stigma - Perspectives and Evaluations of PWD, 78% of PWD have never been examined or consulted about sexual health and 76% of people have never been examined or consulted about reproductive health. Regarding reproductive and sexual health counseling and care, one study found that access to sexual and reproductive health among PWD is very low, especially for men, because the program concentrates on providing information for women<sup>20</sup> and ignores men with disabilities.

*Two is*, recognize that women and girls with disabilities experience a variety of forms of discrimination; accordingly, measures must be taken to ensure that they can fully and equally enjoy all human rights and fundamental freedoms, including sexual rights from the perspective of sexual health and sexual happiness, which is a fundamental principle of the CRPD that has not yet been reflected in the Law on PWD 2010 or other legal documents. In the field of marriage and family, Vietnamese law has provisions to protect the rights of women with disabilities, including rights related to sexual rights, but only provides principles without detailing into clear provisions in the 2013 Constitution, the 2014 Family Law, the Law on Persons with Disabilities in 2010. Meanwhile, due to heavy social prejudice, a large part of women with disabilities encounter difficulties in getting married and having children. On the other hand, even when they are married, women with disabilities continue to face barriers from family and society when they want to have children. The survey results revealed that 13.4% of women with disabilities were discouraged from having children, 7.5% were criticized for wanting to have children and 6% were forbidden to have children<sup>21</sup>. Disabled persons are compelled to marry or cohabitate. According to a 2016 study, about 2.3% of women with disabilities have been forced to marry or live with someone else. The rate of forced marriage often falls into the category of hearing and speaking disabilities<sup>22</sup>.

Vietnamese law has no specific provisions on the prevention and combat of gender-based violence against women with disabilities while the issue of sexual violence against women in general and women with disabilities in particular is an alarming problem in Vietnam. In 2019, within the framework of the national survey on violence against women, 62.9% of Vietnamese women reported having experienced at least one form of violence in their life (physical, sexual, economic and/or psychological) by their spouse or sexual partner<sup>23</sup>. Four out of 10 women with disabilities have experienced some form of sexual violence<sup>24</sup>.

The 2015 Penal Code revised in 2017 has specified a group of sexual offenses but has not demonstrated special protection for women and girls with disabilities in marriage and family relationships. In a marriage relationship, having sex can be considered as one of the important factors to maintain the relationship between husband and wife. The 2014 Family Marriage Law stipulates that husband and wife have the obligation to love, be faithful, respect, care for, and help each other; have the obligation to live together unless otherwise agreed<sup>25</sup>, the moral obligations between husband and wife can be understood to include sexual obligations and rights based on the principle of husband and wife equality. Thus, although having sex can be considered as one of the important factors to maintain the husband and wife relationship, however, for the subject of rape, it is not excluded that the person performing the act has a marital relationship with the victim. Therefore, if a spouse uses force, threatens to use force, etc. to force the other to have sexual intercourse against their will, depending on the nature and extent, they may be prosecuted for criminal liability, because the 2015 Penal Code<sup>26</sup> stipulates that the crime of rape does not distinguish whether the relationship between the victim and the offender is a marital or extramarital relationship, while women in general and women with

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<sup>19</sup>Access is defined as the ability for PWD to use public accommodations, modes of transportation, information technology, cultural, sporting, and recreational opportunities, as well as other services that are appropriate for integrating them into the community, according to Law on Persons with Disabilities 2010 Article 2, Clause 8.

<sup>20</sup> UNDP (2017), Eliminating stigma - Perspectives and assessments of PWD, Knowledge Publishing House, Hanoi, p. 96.

<sup>21</sup> Vietnam Federation of PWD, "Field Study Report on the Status of CRPD Implementation," 2016, pp. 45.

<sup>22</sup> UNDP, Eliminating Stigma - Perspectives and Assessments of PWD, Knowledge Publishing House, Hanoi, 2017, p. 95-97.

<sup>23</sup> MOLISA, GSO and UNFPA, National study on Violence against Women in Viet Nam in 2019, 2019.

<sup>24</sup> ACDC, Research report on sexual violence against women and girls with disabilities in Hanoi and Da Nang funded by the United Nations Democracy Fund UNDEF, 2018.

<sup>25</sup>Article 19 of the Law on Family Engagement 2014.

<sup>26</sup>Clause 1, Article 141 of the Penal Code 2015, as amended in 2017.

disabilities in particular belonging to the disadvantaged group, especially in the marriage and family relationship, which is subject to a lot of gender discrimination. Thus, the issue of gender mainstreaming in the Vietnamese Penal Code has not been implemented for the crime of rape in marital relations. This Code also lacks provisions specifically describing lewd and sexually harassing acts against children, including children with disabilities.

Around the world, several countries have regulated sex crimes between husband and wife or between partners with a civil commitment. Some countries (have pioneered the criminalization of marital rape, such as Sweden outlawing conjugal rape in 1965, Norway in 1971<sup>27</sup>, Socialist Republic of Slovenia as a part of the Federal State of Yugoslavia in 1977<sup>28</sup>, and now the Penal Code in 2008 in Article 170. Israel's Supreme Court banned marital rape in a 1980 ruling<sup>29</sup>.

*Third*, the 2006 Law on Gender Equality, 2014 Law on Family Contract, do not specifically address gender-based violence against women with disabilities, even though women and girls with disabilities are more likely to experience violence and "dual" sexual violence than those without disabilities (due to gender and disability). Although gender-based violence is a prohibited act<sup>30</sup>, some relevant legal documents lack a definition or explanation of the substance of acts of gender-based violence at various levels, such as "gender violence", "sexual harassment", "sexual assault", and "lewdness against individuals under 16".

### **3. Conclusions And Suggestions For The Improvement Of Vietnamese Law On Sexual Rights Of People With Disabilities From The Approach In International Law**

The principle of equality as well as its consequences that is the prohibition of discrimination can be expressed in a variety of ways in legislation that applies to all people, including disabilities. In terms of laws and principles, the United Nations Convention grants the same rights to PWD as persons with physical disabilities. In the field of sexuality and health, PWD have the right to sexual satisfaction, without discrimination. Countries that have signed the CPRD shall provide PWD with free or inexpensive health care and programs, including sexual and reproductive health and population-based public health programs. According to the orthodox view of equality, people in similar circumstances should be treated the same. This view often fails to take into account individual and situational differences and disadvantages as if these factors are irrelevant. Therefore, this view is not appropriate when it comes to meeting the needs of some vulnerable groups such as PWD, especially when the disabled are women or girls. Equality can be defined in another way, that of equality of opportunity. This perspective acknowledges the important role that individual and collective differences and identifies the external barriers that PWD face that may impede them from participating in society. In this view, disability is not an important issue, but prejudices are the basis for the problem to be solved, and these prejudices must be taken into account if changes are to be made for the social environment as well as the physical environment to create conditions for PWD to access and integrate into society. Therefore, Vietnamese law needs to internalize the CPRD's progressive provisions on the sexual rights of PWD approached from a gender perspective as analyzed above. Specifically:

Vietnamese law needs to supplement the concept of "sexual rights" in the direction of a rights-based approach in the field of sexual health instead of just the current approach to reproductive health. The concept of "sexual rights of PWD" needs to be clearly recognized in the Law on PWD 2010. Acknowledging sexual emotional harm as a type of compensatory damage in civil law means recognizing sexual rights as the right of citizens to sexual health and sexual well-being, thereby protecting the rights of PWD.

The National Assembly should supplement principles when developing and implementing provisions of the law related to PWD such as "full and effective participation and inclusion in society", "respect for difference and acceptance of PWD as part of the humane diversity and humanity", "access", including access to health services, in which sexual health and sexual well-being are the connotations of sexual rights.

Women and children who are PWD are vulnerable to discrimination owing to societal stigmas. When creating and implementing legal provisions for PWD, Congress should recognize that women and girls with disabilities are

<sup>27</sup> R. Amy Elman (1996), *Sexual subordination and state intervention: comparing Sweden and the United States*, ISBN 978-1-57181-071-7, p. 90

<sup>28</sup> Tatiana Greif, *Spolnost in človekove pravice*, dnevnik, <https://www.dnevnik.si/104222760/vec-vsebin/1042227600>

<sup>29</sup> David Kauzlarich, *Introduction to Criminology*, 2008, p. 79

<sup>30</sup> Clause 3, Article 10 of the Law on Gender Equality 2006.

vulnerable to discrimination and must take steps to ensure their full and equal enjoyment of their fundamental human rights and freedoms, including sexual rights in terms of sexual health and well-being.

The Government and the Ministry of Health and other relevant Ministries and sectors review and promulgate documents stipulating that health facilities (public and private) must provide or have a roadmap for providing knowledge and services to take care of reproductive health and especially sexual health in particular for PWD on the basis of the principle of equality and suitability for PWD. Attention should be paid to gender mainstreaming in providing information and counseling on reproductive and sexual health for PWD, avoiding the priority of women with disabilities and ignoring the group of men with disabilities. The system of training in specialized fields of rehabilitation for PWD needs to pay attention to the synchronous development of all 04 groups of physiotherapy, activity therapy, speech therapy and psychotherapy, including psychotherapy for sexual health.

It is necessary to integrate gender in specific policies on preventing and combating gender-based violence against women and girls who are PWD, especially sexual violence in the field of marriage and family. Specifically: supplementing definitions and clarifying the content of acts of gender violence such as acts of “gender violence”, “sexual assault”, “sexual harassment”, “lewdness” which are currently used in the Law on Gender Equality in 2006, the Law on Prevention and Control of Domestic Violence 2007, the Law on Domestic Violence 2014. It is necessary to review to carry out gender mainstreaming in the 2015 Penal Code for the group of sex crimes in which the offender and the victim have a marital relationship, or a kinship relationship in the family.

Achieving sexual and reproductive health for all, including PWD, including women with disabilities and girls with disabilities, requires significant changes in policy, legislation and practice, as well as norms, attitudes, beliefs, and behaviours. Therefore, it is critical to ensure a focus on gender equality and human rights throughout the process of developing and perfecting international and national laws, including Vietnam’s, on sexual and reproductive health.

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