
The Right to Access and Rights-Based Approach of People 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 people with disabilities, the right to access should be considered as an unremunerated right, which plays a particularly important role as the prerequisite to the enjoyment of their specific rights. But the right to access has an organic relationship with the rights-based approach of PWDs. The article analyzes legal issues on the right of access and 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

Introduction

Preamble

In the world and in Vietnam, people with disabilities (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 people.[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 severe and extremely severe PWDs represent 28.9 %, about 10% of PWDs belong to poor households, most of 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 in particular 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 not considered 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 just a method or principle in the formulation of United Nations development programs, but has not yet been formally defined as a principle in the organization and operation of the state, a legal and ethical commitment, a guideline of action by non-state actors. The organic relationship in a unified whole between access rights and rights-based approach has also not been 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 PWDs.

Based on the provisions and spirit of the Convention on the Rights of PWDs, the UN's principle of 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.

The Right to Access of Pwds

In terms of 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. As an objective human need, access has existed since ancient times, when there were people in society who had difficulties, obstacles and limitations in access, such as women, children, the elderly, PWDs, etc. who are 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 not a natural process but a result of struggles, advocacy, and persuasion, and have made transition from awareness to action. 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 the concept of human rights in general and the rights of PWDs in particular. In fact, access is the core issue in enjoying and ensuring and promoting the rights of vulnerable groups in general, especially the rights of PWDs. The right to access is considered a basic condition, a “key” to releasing the possibility of enjoying human rights for PWDs. In that spirit, the Convention on the Rights of PWDs 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 Convention on the Rights of PWDs recognizes the importance of access to the physical, social, economic and cultural environment, to health and education, and to information and communication in enabling PWDs to fully enjoy basic human rights and freedoms. Therefore, first of all, the Convention on the Rights of PWDs 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 persons with disabilities 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. [2]

From the above analysis, it is possible to perceive the right of access of 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 social life on an equal basis with others (Article 1).

Second: 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 first and foremost), non-state actors such as social organizations, businesses and other individuals. Here, the concept of obligation should also be conceived in a broad sense, including what is required to do (obligation in the narrow sense) and the legal consequences that 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 PWD as a right of a group of people, so the obligation of PWDs is also understood as the obligation of all non-disabled people to PWDs on the basis of acknowledging that PWDs are 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 themselves also need to have the right awareness and actions to actively participate, improve themselves, and overcome difficulties and obstacles to implement and protect their right to access. 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]

Third: Scope of content of rights: On the general level, according to the principle of equality and non-discrimination, the scope of 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 Convention on the Rights of PWDs 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 the thing in its design and formulation are accessible to PWDs. Indirect access (access to support) is an approach that requires additional adjustment, change or additional adapt 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 both people without disabilities and PWDs (for example, for building entrances, the ramp a slope and roughness suitable for wheelchairs is built instead of stairs). The

Convention on the Rights of PWDs 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 persons with disabilities 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, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed”*. (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, namely explicit rights and unenumerated rights. Unlike explicit rights which are explicitly stated by the United Nations, other international organizations or states (for example, the rights to life; the inviolability of life, body, honor, 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 from the theory and practice of rights (for example, the right of people with serious illnesses to get help to death in order 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, which exists alongside the right to integration or the right to 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 social vulnerable people in general and PWDs in particular to enjoy full, complete and equal human rights. The combination of 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, just and civilized society, and 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’s 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 people with disabilities to live independently and participate in their communities. Any place that is open to the public, including buildings, roads, schools and hospitals, must be accessible by persons with disabilities, including children. If you are in a public building and need help, a guide, reader or professional sign language interpreter should be there to assist you”*. What about technology? He continued: *“Telephones, computer and other technology should be easy to use for people with different disabilities. For example, websites can be designed so that people who have difficulty using keyboards, seeing or hearing can enjoy the information in a different format. A computer can have a Braille keyboard, or it can use a speech synthesizer to speak words that appear on the screen”*. [27]

Recently, a training document on the Convention on the Rights of PWDs, 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, to health and education and to 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, in order 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 on the basis of both comprehensive and specific awareness of access.

Vietnam signed the Convention on the Rights of PWDs in 2008, 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. But The Law on PWDs 2010 was promulgated before the 2013 Constitution and before Vietnam officially ratified

the Convention (2014), so the recognition of the right to access compared to the 2013 Constitution and the Convention on the Rights of PWDs 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 Convention on the Rights of PWDs 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 Convention on the Rights of PWDs, especially the principles of respecting differences and accepting PWDs as part of diversity and humanity; fully and effectively participate and integrate into social life; guaranteed access.

Third, the concept of access under the Law on PWDs 2010 is still limited to a number of specific material objects and fields, consequently the scope of regulations on access rights is limited, while access, in the light of the Convention on the Rights of PWDs, is unrestricted, although it is advisable to focus on some basic approaches in the short term.

Fourthly, in terms of approaches, the 2010 Law on PWDs does not comprehensively and fully focus on direct and indirect approaches, [23] while the Convention on the Rights of PWDs stipulates both “universal design” and “reasonably accommodation” in order 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 number of discriminatory acts of individuals and does not stipulate discriminatory acts of organizations. .

The above-mentioned shortages 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.

Access Based On The Rights Of PWDs

To highlight the obligations and responsibilities towards human rights in general, the United Nations (through the Office of the High Commissioner for Human Rights) has adopted a human rights-based approach (HRBA). [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 in the formulation and implementation of development programs or projects. Up to now, HRBA has been adopted by countries as a principle in public policy making and enforcement. HRBA is not only interested in achieving the set goals, but also in the processes and procedures to achieve those goals. [9] Therefore, HRBA is an advanced approach and has many advantages over other approaches, such as needs-based approach. [10] In relation to 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 first 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) is a law enacted by the Ontario Legislature in 2005. The purpose of the Act is 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 design 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, 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 non-disabled people into vehicles so that PWDs can also easily control. 3-wheeled motorcycles MP3 of Piaggio, Tricity of Yamaha ... not only for people without disabilities 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 in a reasonable way so that people with different types and levels of disabilities can also participate in according to their actual health and capacity. In the US, in 1993, the House of Representatives passed a law called 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, 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 contribute to putting pressure on and forcing 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 of goods and services 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 in itself, 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: Non-disabled people's motorized vehicles (people without disabilities) have been renovated or fitted with additional auxiliary equipment so that PWDs can also 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 (sustainable basis for stability and development), that is creating opportunities for PWDs to enjoy human rights on an equal basis with other members. In fact, 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 first 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, etc. (Article 14). According to Vu Cong Giao (2019), the 2013 Constitution has clearly 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 the process of 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] But perhaps the provisions of the Constitution, the Law on the Promulgation of Legal Documents and the laws in general in Vietnam are not precise and complete about HRBA in general, HRBA of PWDs in particular in development, issuance and enforcement of policies and laws. 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, there are still no clear and specific orientations or regulations on the application of HRBA in the process of developing policies and laws. In the process of 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, so from awareness to practical action, HRBA in Vietnam is still lacking a fundamental approach in the process of formulating and implementing policies and laws. The researchers also have only few analyses on HRBA, which are 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 approach based on human rights and citizenship has been analyzed in terms of organization and operation of the state apparatus as prescribed for the first 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, and 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 in accordance with the principles prescribed by the Constitution. However, in order to build national governance in the current conditions, there should be a provision in the Constitution on HRBA as a constitutional basis for the implementation of 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 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 the visually impaired. 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%. With a networked computer with support software and speakers installed, PWDs can easily exploit and look up information like normal people. This is an important factor that helps PWDs to have access to most documents of agencies and in libraries. At the same time, it is also a measure to remove the confusion of information agencies and libraries in how to serve PWDs while those units do not have documents specifically for them. The current trend of information agencies and libraries is to gradually develop a modern search engine, digitize documents, build electronic libraries and digital libraries. Therefore, being able to serve PWDs in a modern way will ensure fairness in accessing information. In the form of indirect search, PWDs ask librarians or 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 been offering scientific and practical arguments to promote HRBA's obligations and responsibilities of the state and society, and enhance the accessibility of PWDs. Legally, the promulgation of general principles as well as specific regulations to ensure access for PWDs is an important and necessary requirement. With the spirit of proactive and active enforcement of international commitments, Vietnam has now issued and organized the implementation of policies and laws to ensure the access rights of PWDs. According to the Law on PWDs 2010, access is understood as “usable” and across a range of 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 in socio-political life fields such as elections, access to justice (legal aid), access to their rights in civil fields, marriage and family, administrative procedures...

But 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 Convention on the Rights of PWDs 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 so as to ensure the meanings and values of the approach in a substantive, complete and comprehensive manner in the spirit of the Convention on the Rights of PWDs.

The implementation of policies and laws to ensure the right of access for PWDs in Vietnam has attained remarkable achievements so far, but 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 obviously 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, tall ballot box, voter list posted at a high position, 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 to 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 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 poses challenges to the social integration of PWDs, especially those who are 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 has great significance and role. This activity needs to be conducted on a regular basis in order 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 in a practical way.

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 it demonstrates many advantages and advances in Vietnamese policies and laws, it is still incomplete and incomprehensive in the spirit of the Convention on the Rights of PWDs. *Secondly*, as a relatively new issue in Vietnam, HRBA in general and HRBA for the rights of PWDs in Vietnam have not yet 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.

Third, in fact, besides the remarkable achievements, the access to enjoy 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 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 Convention on the Rights of PWDs, to improve accessibility and social integration for PWDs, it is necessary to focus on a number of 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 Convention on the Rights of PWDs. It is necessary to directly recognize the right of access and HRBA to the rights of PWDs to all duty bearer, not just state agencies, organizations, cadres and civil servants.

Second, the strategy of building a society that respects the law, the rule of law, 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 as violations of human rights and civil rights.

Third, 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, 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.

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

References

- [1] Ministry of Labour, Invalids and Social Affairs, International Day of Disability (December 3): Forum to listen to the voices of PWDs , <http://www.molisa.gov.vn>
- [2] Convention on the Rights of PWDs (Vietnamese version), <https://www.globaldisabilityrightsnow.org>
- [3] Tran Thai Duong, Human rights to environment and corporate responsibilities in administering human right to environment in Vietnam, Journal of Law and Political Science , Vol .31.2021. 1.special issue.Vietnam.conf . p 226 , <https://journal-law.com/english-volumes>
- [4] Tran Thai Duong, On regulations to create favorable conditions for PWDs to exercise their right to access information, State and Law Journal No. 12, 2017
- [5] Tran Thai Duong, “Modern and competitive national governance in Vietnam today”, Vietnam Journal of Social Sciences, No. 1, 2022.
- [6] Tran Thai Duong and Tran Thi Thanh Mai, Completing the law on the rights of vulnerable social groups in Vietnam today , Journal of Jurisprudence, Hanoi Law University, No. 7, 2015
- [7] The Accessibility for Ontarians with Disabilities Act, Canada , <https://vnesse.wiki>
- [8] Motivated Voters Act/National Voter Registration Act 1993 (NVRA) Laws and legal definitions, <https://definitions.uslegal.com>
- [9] Vu Cong Giao, Human rights-based approach and applicability to policy and law development in Vietnam today, Journal of Legislative Studies , No. 18, September 2019, <http://www.lapphap.vn>
- [10] Vu Cong Giao and Ngo Minh Huong (co-editors), Human rights-based approach: Theory and practice (reference book), Hanoi National University Publishing House, 2015
- [11] Phan Thi Lan Huong, Ensuring the rights of disadvantaged groups - legal gaps and recommendations for Vietnam (monograph); National Political Publishing House, Hanoi, 2020
- [12] Interaction Council, Universal declaration human responsibilities , <https://www.interactioncouncil.org>
- [13] Faculty of Law, Hanoi National University, Textbook of theory and law on human rights, Hanoi National University Publishing House, 2011
- [14] Thu Lan, Promoting the rights and role of PWDs in the post-Covid-19 world , <https://dangcongsan.vn>
- [15] Office of the United Nations High Commissioner for Human rights, Frequently asked questions on a human rights-based approach to development cooperation , <https://www.ohchr.org>
- [16] Nguyen Thanh Thanh, Outreach Journey in Thailand , <http://bandotiepcan.wordpress.com>
- [17] General Statistics Office, Press release on socio-economic situation in the fourth quarter and 2021 , <https://www.gso.gov.vn>
- [18] Le Xuan Tung, Practical application of human rights-based approach to development policy making in Vietnam , Journal of Political Theory, <http://lyluanchinhtri.vn>
- [19] Center for Education Promotion and Empowerment of Women (CEPEW), Report on Access to Public Administration Services for PWDs towards Inclusive Design , <https://www.cepew.org.vn>
- [20] Action to the Community Development Institute (ACDC), Initial Survey Study of Project of Enhancement of Opportunities and Empowerment of PWDs , <https://pdf.usaid.gov>
- [21] Hanoi Independent Living Center for PWDs (Hanoi ILC), Accessible Voting for PWDs in Vietnam, <https://www.cepew.org.vn>
- [22] Hanoi Law University, Textbook of Vietnamese Constitutional Law, Publishing House. Justice, 2020
- [23] UNDP Viet Nam, Report on the assessment of the Law on Disabilities in comparison with the International Convention on the Rights of PWDs (CRPD) and the monitoring experience of some countries , <https://www.vn.undp.org>
- [24] USAID, Department of Labour, Invalids and Social Affairs, VNAH, Convention on the Rights of PWDs Training Manual , p.14, http://pdf.usaid.gov/pdf_docs/PA00WK2T.pdf
- [25] Tran Thi Thanh Van, “Researching the information needs of the visually impaired in order to expand the service of information users at Vietnamese libraries”, Vietnam Library Journal, 4th issue, 2018
- [26] Vuong Tan Viet, Human obligations in international law and Vietnamese law - Doctoral thesis in Law, Hanoi Law University, 2021
- [27] [http:// www.unicef.org](http://www.unicef.org) , ISBN 978-92-806-4301-5 (English); <http://chinh sach.dmpvc.gov.vn:8045/Uploads/Thu%20vien%20tai%20lieu/Tai%20lieu%20truyen%20thong/Chung%20ta%20co%20the-%20cong%20uoc%20.pdf> _ updated January 24, 2022, p.10-11 (in Vietnamese).
- [28] <http://www.kempf-usa.com> ; <http://www.auto-handcontrols.com> ; <http://www.autoadapt.com> ; <http://www.pgo-scooter.com> ; <http://www.drdvietnam.org...>