



NEXTGEN
NƠI KIẾN TẠO TỰ HÀO



**JOINT REPORT ON THE HUMAN RIGHTS SITUATION OF THE
COMMUNITY OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND
INTERSEX PEOPLE (LGBTI) IN VIET NAM**

**FOR THE THIRD UNIVERSAL PERIODIC REVIEW OF VIET NAM AT
HUMAN RIGHTS COUNCIL (2019)**

Submitted to OHCHR on 12 July 2018

This submission is endorsed by these following organisations:



**International
Lesbian, Gay,
Bisexual, Trans
and Intersex
Association (ILGA)**



ILGA Asia



COC Netherlands



ICS Center

I. Introduction

This joint report on the human rights situation of the LGBTI community in Viet Nam has been written by the Working Group on LGBTI issues, formed by these following organisations:

1) The Institute for studies of Society, Economy & Environment (iSEE)

The Institute for Studies of Society, Economy and Environment (iSEE) is Vietnamese non-for-profit non-governmental organization working towards the rights of minority groups in Vietnamese society through community building, original research, policy advocacy and public awareness raising. iSEE envisions a more equal, tolerant and free society in which everyone's human rights are respected and individuality is valued.

Address: Room 203, Lake View Building, D10 Giang Vo, Ba Dinh, Hanoi City, Viet Nam

Representative: Ngoc Minh Luong

Phone: (+84) 24 6273 7933; Email: isee@isee.org.vn

Website: isee.org.vn

2) NextGEN Hanoi

NextGEN Hanoi has been established since 25 August 2015 as an organisation of young leaders and enthusiasts. By awareness-raising activities, we focus on stopping discrimination on the basis of sexual orientation and gender identity and ensuring the implementation of human rights of all LGBT persons in Viet Nam.

Representative: Minh Vu Hoang Le

Phone: (+84) 902 135 570; Email: nextgenhn@gmail.com

Website: facebook.com/nextgenhn

3) LGBTQ Education Activists (LEA)

LEA is group for purposes of education and changing social awareness. We are here with tolerance, equality, understanding; following the mission of eliminating prejudice, discrimination against LGBTQ people and the vision of building a society in which everyone looks others as human beings without any labels.

Representative: Giang Bang Nguyen

Email: tuelam.hnt@gmail.com

Website: leaorganization.wordpress.com

And individual activists working on the equal rights of the LGBTI people, including Giang Huong Pham (member of NextGEN Thai Nguyen) as well as other anonymous activists.

During the preparation, our report was consulted with the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), Asian Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA Asia), COC Netherlands and ICS Center.

II. Background

Since 1977, Viet Nam has been a member state of the United Nations. By ratifying the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1982, as well as other treaties on human rights,¹ Viet Nam has demonstrated its commitment to respect, protect and fulfill human rights without discrimination. During the last Universal Periodic Review (UPR) in 2014, Viet Nam accepted a recommendation from Chile to enact a law to fight against discrimination which guarantees the equality of all citizens, regardless of their sexual orientation and gender identity (hereafter referred to as SOGI).² However, the recommendation has not been implemented.

Since then, the political, economic, cultural and social situation in Viet Nam has significantly changed, directly affecting the human rights of lesbian, gay, bisexual and transgender (LGBTI) persons in Viet Nam.

In terms of the economy, Viet Nam successfully organised the APEC summit and reached an agreement on the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). However, labor productivity, public debt and foreign investment dependence are still inherent challenges of the Vietnamese economy.³ This underscores the importance of promoting human rights commitments and equality in order to mobilise all resources that contribute to society, including from the LGBTI people.

In terms of culture and society, the rate of unemployment and underemployment has been reduced to 2.21%, and the rate of health care has improved with health insurance coverage reaching 83%.⁴ Viet Nam has continued to renovate education, reaching the highest level of the Global Innovation Index (GII) among the last few years.⁵ The work for the elderly, families, children and women is directed with attention. All of these factors are related to LGBTI people, especially in terms of equality and integration in the fields of education, health and employment. Also, many LGBTI-themed artworks have been established. During the period 2014-2018, Vietnamese society witnessed many weddings of LGBTI couples.

¹ OHCHR, Ratification Status of Viet Nam, retrieved from http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=192&Lang=EN, accessed 20 June 2018.

² Human Rights Council, Report of the Working Group on the Universal Periodic Review – Viet Nam (Final version), No. A/HRC/26/6, Twenty-sixth session, established on 02 April 2014, page 19, paragraph 143.88, Recommendation from Chile, retrieved from https://www.upr-info.org/sites/default/files/document/viet_nam/session_18_-_january_2014/a_hrc_26_6_e.pdf, accessed 7 June 2018.

³ VEPR, 2018, “Report on Vietnamese Macro-economy in Q1-2018”, established 10 April 2018, page 29, retrieved from <http://vepr.org.vn/vmm18q1-20180410-bao-cao-kinh-te-vi-mo-viet-nam-quy-1-2018.html>, accessed 20 June 2018.

⁴ As same as footnote #3.

⁵ National Agency for Science and Technology Information, “Global Innovation Index rankings in 2017: Viet Nam increased 12 levels”, published 16 June 2017, retrieved from <https://www.most.gov.vn/vn/tin-tuc/12202/xep-hang-chi-so-doi-moi-sang-tao-toan-cau-nam-2017--viet-nam-tang-12-bac.aspx>, accessed 20 June 2018, based on the report of Global Innovation Index 2017, retrieved from <https://www.globalinnovationindex.org/gii-2017-report#>, accessed 20 June 2018.

In terms of law and policy, great changes have occurred. The Law on Marriage and Family of 2014 has removed the prohibition on marriage between same-sex persons. The Civil Code (Revised) of 2015, in particular Article 37, legalised the right to gender affirmation. In the period 2016-2018, the draft Law on Gender Affirmation has been discussed and consulted by the Ministry of Health, showing that the right is a concern of the State. In 2017, the Government of Viet Nam issued the National Action Plan for the Implementation of the 2030 Sustainable Development Agenda, approving 17 Sustainable Development goals (SDGs) with 115/164 specific targets, demonstrating committed effort to implement SDGs and human rights in Viet Nam.⁶

General Recommendations:

- *In order to implement the recommendation 143.88 from Chile in the second UPR cycle, revise legal regulations and policies to include SOGI as bases of discrimination to guarantee equality for all persons.*
- *Enact necessary legal regulations and policies in consultation with organisations working on LGBT issues to prevent discrimination as well as to ensure the enjoyment of the human rights of everyone in Viet Nam, regardless of SOGI.*

⁶ Decision on The National Action Plan to implement the 2030 Agenda for Sustainable Development Goals, No. 622/QĐ-TTg of the Prime Minister, dated 10 May 2017, currently effective, retrieved from <https://thuvienphapluat.vn/van-ban/Thuong-mai/Quyết-dinh-622-QĐ-TTg-2017-Ke-hoach-hanh-dong-quoc-gia-thuc-hien-Chuong-trinh-nghi-su-2030-348831.aspx>, accessed 01 June 2018.

III. Legal and social issues related to discrimination based on SOGI in Viet Nam

1. Discrimination in Marriage and Family

1.1 In 2014, Viet Nam adopted the Law on Marriage and Family in which the prohibition on marriage between people of same-sex has been removed.⁷ However, with the current regulation that “the State shall not recognise marriage between persons of the same sex”,⁸ same-sex couples are not acknowledged and protected before the law. The enjoyment of rights arising from their relationship is not guaranteed as same as persons in heterosexual marriage, such as ownership of common properties, right to representation, rights and obligations between parents and children, right to inheritance, right to request settlement of divorce.

1.2 According to a study in Viet Nam in 2013, 72% of same-sex couples said that most of their difficulties came from being unrecognised and not protected before the law, 68% said because of the lack of social acceptance, and 66.2% said because it was unacceptable to their families.⁹ In addition, the strong relationship between social acceptance and legal inclusiveness has been proved.¹⁰ The lack of recognition in the Vietnamese legal framework is considered as one factor which has made the society and families of LGBTI people oppose people who are attracted to persons from their same gender and the same-sex marriage as well.

1.3 The Constitution of 2013 states that “[a]ll people are equal before the law,” “[n]o one is subject to discriminatory treatment in political, civil, economic, cultural or social life.” Also, “men and women have the right to marry and divorce”.¹¹ In the ICCPR, the similar provisions guarantee “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law” and “[t]he right of men and women of marriageable age to marry and to found a family shall be recognised.”¹² However, in terms of same-sex marriage, the Human Rights Committee did not consider the refusal to provide for marriage between homosexual couples as a violation of human rights in accordance with the principles of the ICCPR, and use of the term “men and women” in the Covenant has been

⁷ Law on Marriage and Family, No. 22/2000/QH10, dated 9 June 2000, currently expired, Chapter II, Article 10, Paragraph 5, retrieved from <http://vbpl.vn/TW/Pages/vbpq-toanvan.aspx?ItemID=6117>, accessed 7 June 2018.

⁸ Law on Marriage and Family 2014, No. 52/2014/QH13, dated 19 June 2014, effective since 01 January 2015, Chapter II, Article 8, Paragraph 2, retrieved from <http://vbpl.vn/TW/Pages/vbpqen-toanvan.aspx?ItemID=11018>, accessed 25 June 2018.

⁹ iSEE, 2013, “Same-sex Cohabitation: Experiences and the pursuit of happiness”, page 45, Section 5.1, retrieved from http://www.thuvien.lgbt/s/iSEE_Nghien-cuu_Song-chung-cung-gioi.pdf, accessed 7 June 2018.

¹⁰ The Williams Institute, UCLA School of Law, 2018, “Examining the relationship between Social Acceptance of LGBT people and Legal Inclusion of Sexual Minorities”, Page 1, Key Findings, retrieved from <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Acceptance-and-Legal-Inclusion-April-2018.pdf>, accessed 7 June 2018.

¹¹ The Constitution of the Socialist Republic of Viet Nam 2013, dated 23 November 2013, effective since 01 January 2014, Chapter II, Article 36 Paragraph 1 and Article 16, retrieved from <http://vbpl.vn/TW/Pages/vbpq-van-ban-goc.aspx?ItemID=32801>, accessed on 7 June 2018.

¹² ICCPR, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, ratified and accessed by Viet Nam since 24 September 1982, Article 26 and Article 23 paragraph 2, retrieved from <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, accessed 7 June 2018.

consistently and uniformly understood as indicating the treaty obligation of States parties is to recognise as marriage only the union between a man and a woman.¹³

1.4 As regulated in the current legislation, the spouses of the same-sex couples are still men and women, have equal rights to marriage, as well as the right to request settlement of issues related to common properties or children arising in the actual cohabitation process. The definition of marriage as an union between a man and a woman only has demonstrated the discrimination and exclusion based on SOGI of persons in the LGBTI community in the current legal framework. This issue contradicts to the commitment that all persons are equal before the law, which is clearly guaranteed in the Constitution 2013 and the ICCPR, and is also a legal gap that we firmly believe the Committee and States parties need to reconsider. Accordingly, the legalization of same-sex marriage is in full conformity with the provisions of the Vietnamese Constitution, the ICCPR, as well as the spirit to fulfill human rights of everyone, regardless of SOGI.

Recommendations:

- *Legalise an equal marriage in which the rights as well as obligations of spouses are recognised, regardless of their SOGI.*
- *Revise the Law on Marriage and Family to remove the prohibition on marriage between persons of the same sex and neutralise genders of spouses in the definition of marriage.*
- *Recognise the rights as well as obligations of spouses in marriage, regardless of their SOGI.*

2. Discrimination in Recognition before the law

2.1 Since 2008, there has been a decree that stipulates the gender affirming procedure applied only to intersex people¹⁴, who are defined in Vietnamese legal framework as persons with congenital defect or of unidentifiable sex.¹⁵ According to the current legislation, the procedure is based on the principle of voluntariness. However, to the under-16 persons, the application for the gender affirming procedure is submitted by parents or guardian. This rule has violated the right to health and physical integrity by allowing other persons to determine and force intersex people to undergo unnecessary medical treatments without their consent. On the other hand, the Decree has implied that if the sex of the intersex person - after the operation decided by their parents or guardian - does not match the person's gender identity during their development, they may need another gender affirming procedure in the future.

¹³ CCPR, Communication No. 902/1999, Submitted by Ms. Juliet Joslin, CCPR/C/75/D/902/1999, retrieved from http://www.un.org/en/ga/search/view_doc.asp?symbol=CCPR/C/75/D/902/1999, accessed 7 June 2018.

¹⁴ Intersex people are born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies (UNFE).

¹⁵ Decree on Gender affirmation, No. 88/2008/ND-CP of the Government, dated 5 August 2008, entry into force since 24 August 2008, retrieved from http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10782, accessed 01 July 2018.

2.2 On 24th November 2015, Viet Nam adopted the Civil Code (Revised) which legalised the right to gender affirmation in Article 37.¹⁶ However, Article 37 does not stipulate a specific procedure on gender affirmation, as well as the specific State agencies involved. Therefore, the implementation of this right requires a particular law on gender affirmation and relevant guidelines. Since then, the Ministry of Health has set up the Drafting Committee, the Editorial Group of the Law on Gender affirmation, and held several seminars, consultations on the formulation of the draft Law. However, the draft Law has not been submitted to the National Assembly yet. In the most recent working program of the National Assembly, neither the Law on Gender affirmation nor the issues related to transgender people are mentioned.¹⁷

2.3 By ratifying the ICCPR, Viet Nam has committed to take the necessary steps in accordance with its constitutional processes and with the provisions of the ICCPR, to adopt laws and other measures as may be necessary to give effect to the right to equality before the law enshrined in the Covenant.¹⁸ However, the delay of the process of formulating and adopting a particular law, with specific guidelines on gender affirmation, has made transgender people unable to practice their rights as recognised by law. Currently, the implementation of procedures related to the civil status information of transgender people is difficult. Because the information on the health insurance card, labor contract, ID card does not match their appearances and civil officers are not sensitised on the right to self-determination on gender identity. According to a study conducted in 2015 in Viet Nam, 37% of transgender women and 64.3% of transgender men experienced rejection, harassment, humiliation when they are required to show documents with their name and gender. Transgender people face greater difficulties when they travel by planes or public transportation.¹⁹

2.4 The Yogyakarta Principles, principles on the application of international human rights law in relation to SOGI, says that States shall take all necessary legislative, administrative and other measures to fully respect and legally recognise each person's self-defined gender identity, as well as ensure the procedures reflect the person's profound self-defined gender identity.²⁰ We firmly believe these are principles Viet Nam can refer to in the formulation and the adoption of the particular law on gender affirmation, so that the transgender people in Viet Nam would be able to practice the right to access healthcare services, the right to

¹⁶ Civil Code (Revised) 2015, No. 91/2015/QH13, dated 24 November 2015, entry into force since 01 January 2017, Chapter III, Section 2, Article 37, retrieved from <http://vbpl.vn/TW/Pages/vbpq-toanvan.aspx?ItemID=95942>, accessed 8 June 2018.

¹⁷ The 14th National Assembly, The 5th Session Agenda, dated 21 May 2018, retrieved from <http://quochoi.vn/hoatdongcuaquochoi/cackhopquochoi/quochoikhoaXIV/kyhopthunam/Pages/chuong-trinh-lam-viec.aspx?ItemID=35563>, accessed 7 June 2018.

¹⁸ ICCPR, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, ratified and accessed by Viet Nam since 24 September 1982, Article 2 paragraph 2 and Article 26, retrieved from <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, accessed 7 June 2018.

¹⁹ iSEE, 2015, "Is this because I am LGBT?", page 72, Table 10, retrieved from http://www.thuvien.lgbt/s/iSEE_SOGI-Discrimination-in-Viet-Nam.pdf, accessed on 7 June 2018.

²⁰ Yogyakarta Principles, 2007, Principle 3 on The right to Recognition before the law, retrieved from http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf, accessed 7 June 2018.

change civil information and other human rights, under the support of State and relevant agencies.

Recommendations:

- *Immediately establish a specific law on gender affirmation as well as relevant legal documents and guidelines, in order to ensure the right to gender affirmation recognised in the Civil Code (Revised) of 2015, and the right to self-determination of gender identity of all persons.*
- *Prohibit unnecessary medical interventions and genital surgery on intersex children under 16 years old and revise relevant regulations to let intersex children decide whether they want to undergo gender affirmation with their own fully and informed consent.*
- *Develop and implement capacity building programs for public officials and health workers on intersex and transgender people as well as the right to bodily integrity and self-determination of gender identity.*

3. Discrimination in other aspects of political, economic, cultural and social life

3.1 According to the Constitution of Viet Nam, all people are equal before the law, and no one is subject to discriminatory treatment in political, civil, economic, cultural or social life.²¹ In particular laws, there are provisions that ensure no citizen has to face discrimination on limited bases. The Education Law of 2005 stipulates that "[a]ll citizens, regardless of their ethnicity, religion, belief, gender, family background, social status or economic conditions, are equal in learning opportunities."²² In the Labour Code of 2012, one of the prohibited acts is "[d]iscriminating on the basis of gender, race, colour, social class, marital status, belief, religion, HIV status, disabilities or for the reason of establishing, joining trade union and participating in trade union activities."²³ In fact, one person would face discrimination for many other reasons beyond those bases. Listing limitedly the bases of stigma and discrimination leads to the fact that some bases are not considered and respected in social life – in this case, they are SOGI.

In Education:

3.2 In 2016, the Ministry of Education and Training established the Action Plan on Gender Equality in the Education Sector, in the period 2016-2020, with specific objectives to ensure gender issues and gender equality are integrated into the overall educational program, the

²¹ As same as footnote #11.

²² Education Law 2005, No. 38/2005/QH11, dated 14 June 2005, entry into force since 01 January 2006, Chapter I, Article 10, retrieved from http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=5484, accessed 01 July 2018.

²³ Labour Code 2012, No. 10/2012/QH13, dated 18 June 2012, entry into force since 01 May 2013, Article 8, Paragraph 1, retrieved from <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/91650/114939/F224084256/VNM91650.pdf>, accessed 01 July 2018.

curriculum as well as the learning materials.²⁴ In 2017, the Government issued a decree regulating a safe, healthy, friendly and non-violent educational environment, with requirements of documentary and instructional materials to educational facilities as well as independent classes "without gender prejudice, discrimination".²⁵

3.3 According to a survey conducted by UNESCO in 2015, self-identified LGBTI students were exposed to violence in all forms and significantly more than non-LGBTI students. Particularly, 71% of LGBTI students experienced physical violence, 72.2% verbal abuse and 65.2% psychological violence.²⁶ Data from another research paper showed that 9.8% of LGBTI participants skipped classes and 5% have dropped out of school due to stigma and discrimination.²⁷ The discrimination based on SOGI against LGBTI students is detrimental to their right to education, guaranteed in the Constitution,²⁸ the Education Law and the ICESCR that Viet Nam has ratified.²⁹

Recommendations:

- *Revise educational materials and sex education in consultation with organizations working on LGBTI issues in order to ensure the inclusiveness of gender and sexual diversity, so as to educate students about human rights issues related to SOGI in general education.*
- *Establish accessible counseling and support services for students who face violence and discrimination on the basis of SOGI in educational facilities.*

In Employment:

3.4 Results from a study conducted in 2015 indicated that nearly 30% of LGBTI participants were denied job applications because of their SOGI although they were qualified. The percentage of transgender people with rejected job applications (59.0%) is thrice higher than those of homosexual and bisexual people (19.6%). Not only that, 13.8% of LGBTI people

²⁴ Decision Approving the Action Plan on Gender Equality in the Education Sector (2016-2020), No. 4996/QĐ-BGDDT of the Ministry of Education and Training, dated 28 October 2016, currently enforced, Goal 3, Goal 4 and Goal 5, retrieved from <https://thuvienphapluat.vn/van-ban/Van-hoa-Xa-hoi/Quyết-dinh-4996-QĐ-BGDDT-Ke-hoach-hanh-dong-ve-binh-dang-gioi-cua-nganh-Giao-duc-2016-2020-331140.aspx>, accessed 19 May 2018.

²⁵ Decree on Stipulating Safe, Healthy, Friendly and Counter-Violent educational environment, No. 80/2017/ND-CP of the Government, dated 17 July 2017, entry into force since 5 September 2017, Chapter II, Article 4, retrieved from <http://vbpl.vn/TW/Pages/vbpq-toanvan.aspx?ItemID=128348>, accessed 7 June 2018.

²⁶ UNESCO, 2015, "Reaching Out: Preventing and Addressing SOGIE-related School Violence in Viet Nam", page 30, section 5.3.1., paragraph 1, retrieved from <http://unesdoc.unesco.org/images/0024/002469/246928E.pdf>, accessed 7 June 2018.

²⁷ iSEE, 2015, "Is this because I am LGBT?", page 51, Table 5, retrieved from http://www.thuvien.lgbt/s/iSEE_SOGI-Discrimination-in-Viet-Nam.pdf, accessed on 7 June 2018.

²⁸ The Constitution of the Socialist Republic of Viet Nam 2013, dated 23 November 2013, entry into force since 01 January 2014, Chapter II, Article 39, retrieved from <http://vbpl.vn/TW/Pages/vbpq-van-ban-goc.aspx?ItemID=32801>, accessed on 7 June 2018

²⁹ ICCPR, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force since 23 March 1976, ratified and accessed by Viet Nam since 24 September 1982, Article 13 paragraph 1, retrieved from <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, accessed 7 June 2018.

reported that they were underpaid compared to their peers with the same capacity and 22.6% felt they were restricted in promotion and hardly achieved higher positions.³⁰

3.5 This situation shows that Viet Nam has not fulfilled the commitments in accordance with the ICESCR on the right to work of everyone in the territory of Viet Nam. According to Article 7 of the ICESCR Viet Nam has ratified, the State shall ensure fair wages and equal remuneration for work of equal value without distinction of any kind, as well as equal opportunity for everyone to be promoted.³¹

Recommendations:

- *Develop and implement awareness-raising programs on anti-discrimination based on all backgrounds and status, including SOGI, for all employees and employers in Viet Nam.*
- *In the latest revision of the Labor Code, include discrimination based on SOGI in the list of prohibited acts.*

In Healthcare:

3.6 According to the Law on Medical Examination and Treatment of 2009, patients have the right not to be discriminated against or forced into medical examination and treatment. In addition, the law regulates the obligations of practitioners in the field of medical examination and treatment, not to let personal interests or discrimination affect their professional decisions.³² However, discrimination in the medical environment is primarily focused on ignoring standard medical procedures.

3.7 A study conducted in 2015 in Viet Nam found that 36% of LGBTI people said they faced overcuriosity about their personal stories from medical workers, whilst 21.9% reported that they experienced verbal abuse. The percentage is higher in transgender group (over 30%). Moreover, 6.7% of LGBTI people reported that they were forced to perform involuntary psychological examinations.³³ In 1990, the World Health Organization (WHO) removed homosexuality as a mental disorder from the International Statistical Classification of Diseases and Related Health Problems (ICD-10), and has given warnings about the so-

³⁰ iSEE, 2015, "Is this because I am LGBT?", page 56, Table 6, retrieved from http://www.thuvien.lgbt/s/iSEE_SOGI-Discrimination-in-Viet-Nam.pdf, accessed on 7 June 2018.

³¹ ICESCR, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, ratified and accessed by Viet Nam since 24 September 1982, Article 7, retrieved from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, accessed 7 June 2018.

³² Law on Medical Examination and Treatment 2009, No. 40/2009/QH12, dated 23 November 2009, entry into force since 01 January 2011, Article 3, Article 9 and Article 36, retrieved from http://www.moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10471, accessed 01 July 2018.

³³ iSEE, 2015, "Is this because I am LGBT?", page 61, Table 7, retrieved from http://www.thuvien.lgbt/s/iSEE_SOGI-Discrimination-in-Viet-Nam.pdf, accessed on 7 June 2018.

called treatments that are believed to be capable of changing SOGI without scientific evidence.³⁴

3.8 In fact, the discrimination in healthcare has shown that the provisions of the Law has not proved its effectiveness in ensuring LGBTI people are treated equally when accessing healthcare services. On the other hand, under the ICESCR principles that Viet Nam has ratified, this situation is impeding the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.³⁵

Recommendations:.

- *Develop and implement a training program for health workers and staff on gender and sexual diversity as well as the needs for healthcare services of LGBTI people, in consultation with organizations working on LGBTI issues.*
- *Develop and implement public health interventions to support and promote the physical and mental health of LGBTI people.*
- *Immediately review and establish a report on cases in which LGBTI people have been suggested or forced to undergo treatments aiming at changing their SOGI.*

In Freedom of Association:

3.10 For many years, the development of the LGBTI movement in Vietnam has gone along with the establishment of non-governmental organizations (NGOs) and community based groups (CBOs). They make significant contribution into different areas, from providing trainings about SOGIE, building community, raising awareness to networking and lobbying. The CBOs in provinces and underrepresented groups such as bisexuals and asexuals recently become more empowered and active. However, the challenges of registration, project approval and funding access are barriers for these organizations to survive and work effectively.

3.11 Within UPR process in 2014, Vietnam accepted total 10 recommendations related to the right to freedom of association of its people.³⁶ In 2016, the draft Law on Associations was publicly discussed and consulted.³⁷ Nonetheless, civil society criticised that the draft law

³⁴ Susan D Cochran and colleagues, WHO, "Proposed declassification of disease categories related to sexual orientation in the International Statistical Classification of Diseases and Related Health Problems (ICD-11)", paragraph 3, retrieved from <http://www.who.int/bulletin/volumes/92/9/14-135541/en/>, accessed on 7 June 2018.

³⁵ ICESCR, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, ratified and accessed by Viet Nam since 24 September 1982, Article 12 Paragraph 1, retrieved from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>, accessed 7 June 2018.

³⁶ Human Rights Council, Report of the Working Group on the Universal Periodic Review – Viet Nam (Final version), No. A/HRC/26/6, Twenty-sixth session, established on 02 April 2014, from page 17 to 24, Paragraph 143.53, 143.145, 143.148, 143.162, 143.165, 143.169, 143.172, 143.173, 143.174 and 143.178, retrieved from https://www.upr-info.org/sites/default/files/document/viet_nam/session_18_-_january_2014/a_hrc_26_6_e.pdf, accessed on 7 June 2018.

³⁷ Draft Law on Associations, submitted in the second session of the 14th National Assembly, retrieved from http://duthaonline.quochoi.vn/DuThao/Lists/DT_DUTHAO_LUAT/View_Detail.aspx?ItemID=1110&TabIndex=1&anID=1111, accessed 25 June 2018.

imposed and intervened strictly into their activities, rather than giving more opportunities for people to practice the right to freedom of association.³⁸ Throughout seven amendments, on 17th November 2016, due to 443/460 refusals from delegates, the progress of the draft Law on Associations has been postponed.³⁹ Since then, the State has not taken any further efforts to fulfill the freedom of associations of people in Viet Nam.

3.12 The current regulations pose many redundant and unnecessary procedures for an organization to obtain legal status. There are 3 compulsory paperworks, including (i) having a mobilisation board which is approved by the Government, (ii) submitting registration files and asking for Government's approval, and (iii) organizing a conference with the chapter and the leader must be approved by the Government.⁴⁰ Clearly, this administrative procedure shows a lack of respect to the right of freedom to association of Vietnam people as regulated in ICCPR, and create more barriers for them to exercise their rights.

3.13 A study conducted in 2016 shows that many organizations faced difficulties and even found it impossible to register legal status because they either (i) belonged to no governing body, or (ii) had other organisations working in the same field, or (iii) had been requested to join with other existing organizations, or (iv) were deemed “unnecessary, unsuitable”, or (v) got no response from authorities. Even obtaining legal status, the CSOs working on LGBTI rights still meet enormous troubles when asking approval of their projects and activities. The study also indicated that 63% of respondents said they had encountered at least one difficulty including (i) applying for an operation license (40%), (ii) being required by authorised agencies to report about associations' activities (26%), (iii) being dissolved or prevented by authorised agencies from operation (23%), or (iv) being interfered by local authorities in changing operation content and method (20%).⁴¹

Recommendations:

- *Immediately develop and promulgate the Law on Associations to improve the legal framework for association rights in Viet Nam in line with the principles and standards contained in the ICCPR as well as in consultation with civil society.*

³⁸ VUSTA, “The Draft Law on Associations still has many inadequacies?”, published 11 January 2016, <http://www.vusta.vn/vi/news/Trao-doi-Thao-luan/Du-thao-Luat-ve-Hoi-con-nhieu-bat-cap-59381.html>, accessed 25 June 2018.

³⁹ Thuy Hanh, “The National Assembly postponed to adopt the Law on Associations”, published 18 November 2016, VietnamNet News, retrieved from <http://m.Viet Namnet.vn/vn/thoi-su/quoc-hoi/qh-lui-thong-qua-luat-ve-hoi-340581.html>, accessed 01 July 2018.

⁴⁰ Decree on the Organization, Operation and Management of Associations, No. 45/2010/ND-CP, dated 21 April 2010, entry into force since 01 July 2010, Article 6, 7, 9, 10, 12, 13, retrieved from <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/84259/93533/F1158441545/VNM84259.pdf>, accessed on 25 June 2018.

⁴¹ ISEE, 2016, “Associational life from citizens' perspectives”, page 36, Section D and page 41 paragraph ii, retrieved from <http://isee.org.vn/Content/Home/Library/501/associational-life-from-citizens-perspectives..pdf>, accessed 25 June 2018.

IV. Conclusion

In the spirit of the Universal Declaration on Human Rights (1948), as the activists for the human rights of the LGBTI community in Viet Nam, we reaffirm the principle of universality of human rights and that "all human beings are born free and equal in dignity and rights".

The LGBTI community is the community of lesbian, gay, bisexual, transgender persons and persons with diverse gender expressions as well as persons of sexual minorities. LGBTI persons live, study and work in every society and every culture around the world. Therefore, no one on earth can deny a reality that the LGBTI persons are also subject to all international human rights norms and standards, together with covenants, conventions, resolutions, and unlimitedly any human rights programs established by the United Nations and signed by its member States, including Viet Nam.

According to that, we realise that Viet Nam has the responsibility to respect, to protect and to fulfill the human rights guaranteed in the Constitution, as well as in the ICCPR and ICESCR, of all persons within its territory, without discrimination. Consequently, the State needs to take necessary steps to enact legislation and other necessary measures to ensure the implementation of the recognised human rights.

In addition, we would like to offer an invitation to the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity to visit Viet Nam to facilitate and support the State in terms of reducing the discrimination and ensuring the implementation of human rights towards all persons, regardless of sexual orientation and gender identity.