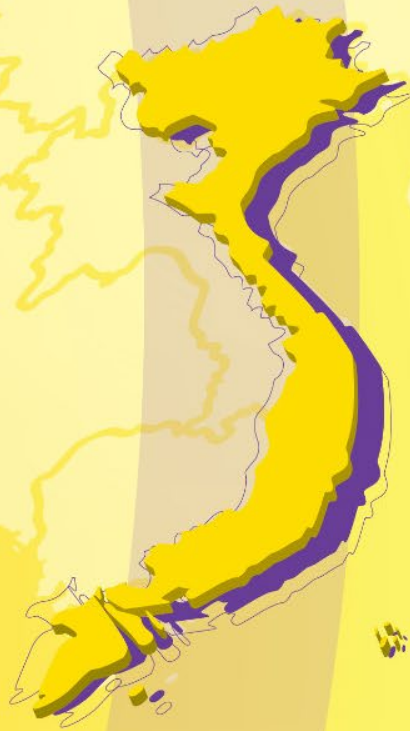




# Intersex Justice in Vietnam

*Inspiring Action through Research*



*Country report on the situation of  
Intersex Rights in Vietnam*

**2024**

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# Table of Contents

■ Preface	4
■ Abbreviation	5
■ Terminology	6
■ Acknowledgements	8
■ Executive Summary	9
■ 1. Introduction	13
1.1. Background Information	14
1.2. Main Problems, Their Scope and Impact on the Society	16
1.3. Goals and Objectives	17
■ 2. Methodology	18
2.1. Literature Search	19
2.2. Meetings and In-Depth Interviews	20
■ 3. Current Civil Society Organisations and Government Efforts	21
3.1. Work Done by Intersex-Led Organisations and Civil Society Organisations So Far	22
3.2. Government Efforts So Far	22
■ 4. Findings from Desk Review	27
4.1. Protecting Intersex People’s Bodily Integrity	28
4.2. Protecting Intersex People from Discrimination in All Areas	32
4.3. Health	35
4.4. Education	37
4.5. Hate Crime and Hate Speech	40
4.6. Gender Marker Registration at Birth	41
4.7. Legal Gender Recognition	42
4.8. Access to Justice and Redress	45
4.9. Data Collection: Addressing Research Gaps	46
4.10. Inclusion in Emergency Policy Response	46
■ 5. Recommendations, Scope and Strategy for Implementation	47
5.1. Recommendations	48
5.1.1. Awareness and Education	48
5.1.2. Access to Healthcare	49
5.1.3. Comprehensive legal or policy framework respecting the right to identity and prevent discrimination on the basis of sex characteristics	50
5.2. Actions at Government Level	51
■ 6. Way Forward	52
■ 7. References & Appendix	54

## Preface

Despite significant progress in the equal rights movement in Vietnam, LGBTI+ individuals, including intersex individuals, continue to face significant challenges due to the absence of necessary regulations to protect them from SOGIESC-based discrimination. This lack of legal protections leaves LGBTI+ individuals vulnerable to exclusion, harassment, and violence in various aspects of their lives. In addition to this, intersex individuals in Vietnam often remain unseen as they encounter major obstacles concerning stigma, discrimination and lack of awareness regarding their needs and experiences. This invisibility can lead to significant harm to intersex individuals, as they may be subjected to non-consensual and irreversible medical interventions that violate their rights to bodily autonomy and self-determination. Moreover, intersex individuals may face discrimination and exclusion in education, employment, and healthcare due to the lack of awareness and understanding of their experiences.

This research report aims to provide a comprehensive overview of the current state of intersex legal rights in Vietnam and highlight both, positive developments and areas, where progress is still needed. It also offers recommendations for how legal frameworks can be reformed to better protect the rights and dignity of intersex people in Vietnam.

## Abbreviation

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CSO	Civil Society Organisation
ICS CENTER	Empowering Vietnamese LGBTI+ communities toward pride and equality
iSEE	Institute for Studies of Society, Economics and Environment
LGBTI	Lesbian, Gay, Bisexual, Trans, Intersex
LGBTIQ	Lesbian, Gay, Bisexual, Trans, Intersex and Queer
MOET	Ministry of Education and Training
MOH	Ministry of Health
MOLISA	Ministry of Labour, Invalids, and Social Affairs
NGO	Non-government organization
OHCHR	Office of the High Commissioner for Human Rights
SOGIESC	Sexual orientation, gender identity, gender expression and sex characteristics
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UPR	Universal Periodic Review
WHO	World Health Organisation

## Terminology

Gender Identity is the gender that people identify with or how they perceive themselves, which may be different from their birth-assigned sex. Gender identity is linked to a sense of self, the sense of being a woman, man, both, neither, or anywhere along the gender spectrum (non-binary). A person's gender identity may not correspond with the sex assigned at birth. Gender identity is completely separate from sexual orientation.

Gender expression is the way people communicate or express their gender identity publicly; often through behaviour and physical appearance, e.g., dressing, the length and style of hair, or by emphasizing, de-emphasizing, or changing physical characteristics. Chosen names and pronouns are also ways in which people express gender. Gender expression is totally separate from sexual orientation.

Gender marker: How a person's gender is recorded on official documents. In Vietnam, gender markers include the designations of 'Male (M)' and 'Female (F)' as well as gendered name titles in the forms of 'Ms.', 'Mrs.', and 'Mr.'

Gender reassignment/gender redetermination: The term used to define the medical process whereby a person is formally recognized legally by the State in their "new" gender role.

Intersex/Sex characteristics: 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. Intersex is an umbrella term used to describe a wide range of natural bodily variations. In some cases, intersex traits are visible at birth while in others, they are not apparent until puberty. Some chromosomal intersex variations may not be physically apparent at all. Being intersex relates to biological sex characteristics, and is distinct from a person's sexual orientation or gender identity. *An intersex person may be straight, gay, lesbian, bisexual or asexual, and may identify as female, male, both or neither, or non-binary.*

It is important to note that intersex people are also frequently subjected to other kinds of human rights violations such as non-medically necessary surgery in infancy, leading to sterility, without informed consent of either the person in question or their guardians

In Vietnam, the term “intersex” (as known as “liên giới tính/liên giới tính” in Vietnamese) has not entered common parlance. Instead, “ lưỡng tính/ lưỡng tính thật” which literally means “true hermaphrodite,” is often used to refer to intersex people, mistakenly implying that they have both female and male genitals.

This report was originally written in English. The vast majority of legal texts/ legal terms have been cited directly from official translations of Vietnamese government agencies and reflect Viet terminology and language conceptions of sexual orientation, gender identity, gender expression and sex characteristics. While the researcher has taken great care to ensure consistency and accuracy in language, often relevant texts use inconsistent or inaccurate language to describe intersex people and issues related to gender identity. In Vietnam, sexual orientation, gender identity, gender expression and sex characteristics are widely conflated with each other.

## Acknowledgement

I would like to express our sincere gratitude to all the individuals and organisations who contributed to the research project in Vietnam. This comprehensive study aimed to shed light on the legal and human rights aspects concerning intersex individuals in the country.

In acknowledging this research, it is important to note that this topic has never been previously explored in Vietnam, presenting inherent challenges in ensuring accuracy and comprehensiveness. Nevertheless, diligent efforts have been made to conduct thorough research and maintain the highest standard of precision. For that reason, we would also like to acknowledge the support and cooperation from various non-governmental organizations, human rights advocates, and legal experts who provided expert guidance and knowledge throughout the research process. Their expertise and commitment to promoting inclusivity and equality were indispensable in uncovering the legal challenges faced by intersex individuals in Vietnam.



## Executive Summary

Intersex Asia commissioned this research intending to enhance understanding of the legal framework about intersex people in Vietnam at the national level and to describe the policy and legal barriers faced by intersex people in Vietnam's context. The study was based on desk review of academic and non-academic sources on intersex persons and online interviews with LGBTI community leaders, medical practitioners and other key stakeholders.

### Key Findings

**Terminology:** In Vietnam, the term “intersex” (liên giới tính/liên giới) is not widely used or recognized by the government or healthcare practitioners. Instead, the term “hermaphrodite” (lưỡng giới/lưỡng tính) is often used to refer to people with intersex variations, which is commonly translated as the *congenital sex defect* (khuyết tật giới bẩm sinh).

**Current Civil Society and Government Efforts:** At present, there are currently no intersex-led organizations in Vietnam, and advocacy efforts for intersex individuals are limited. This deficit of representation and advocacy can create obstacles for intersex individuals to speak out and have their needs recognized and prioritised. While the Vietnamese government has taken steps to promote the rights of the LGBTI+ community, there is a need to address the issue by amending the law in order to align with international human rights standards and ensure effective enforcement.

**Protecting Intersex People's Bodily Integrity:** The medical approach to intersex variations may prioritise conformity to binary gender norms through medical interventions, without fully considering the intersex individual's right to bodily autonomy and integrity. Additionally, the reliance on outdated definitions of gender and sex can further compound the issue by reinforcing rigid and binary gender norms, that may not reflect the diversity of intersex individuals' experiences.

**Protecting Intersex People from Discrimination in All Areas:** There is no specific legislation recognizing intersex rights in Vietnam, and intersex individuals are not explicitly protected under the country's anti-discrimination laws. As a result, intersex individuals may also face bullying, harassment, and violence, and may struggle to access job opportunities or legal support.

**Health:** Intersex individuals in Vietnam may experience health issues due to the lack of awareness and understanding of intersex conditions in the healthcare sector. This can result in difficulties in accessing appropriate healthcare services that meet their specific needs. Currently, there is no research available on the health of intersex individuals in Vietnam, and there are no publicly available reports on the health status (including mental health), of those who have undergone medical interventions. This highlights a significant gap in knowledge and understanding of the health needs and outcomes of intersex individuals in Vietnam.

**Education:** Discrimination and bullying against intersex individuals as well as gender non-conforming children in schools and educational settings can manifest in various ways, including verbal harassment, physical assaults, and exclusion from activities.

**Hate crimes and Hate speech:** Vietnam does not have a specific legal definition for hate speech. While the country has laws that prohibit hate crimes, including those based on race, ethnicity, and religion, there is no specific legislation that addresses hate speech against intersex individuals.

**Gender Marker Registration:** Research on gender marker registration for intersex individuals in Vietnam is lacking, and gender marker registration for intersex individuals is a complex issue due to the country's legal system only recognises two genders, male and female. This means that intersex children may be forced to choose a gender that does not match their gender identity, which can have a significant impact on their lives.

**Legal gender recognition:** The requirement for intersex individuals to undergo medical interventions in order to change their gender marker is a violation of their bodily integrity and autonomy, and limits their right to self-identification and self-expression. This can be particularly challenging for intersex individuals who may not identify with traditional binary gender categories or may not wish to undergo medical interventions to change their gender marker.

**Access to justice and redress:** There is no record of legal cases or documentation regarding the access to justice and the right to redress for intersex individuals in Vietnam. The Law on Legal Aid 2017 does not explicitly include intersex individuals (or LGBTI persons) as a group eligible for legal aid. Intersex individuals may face limitations in accessing legal support and protections due to their exclusion from legal recognition, which can be particularly detrimental in situations where they experience school violence, domestic violence, or workplace discrimination.

**Data collection:** The lack of research on intersex people in Vietnam and the data gap on intersex issues in the country are concerning. Without adequate research and data, it can be difficult to fully understand the needs and experiences of intersex individuals in Vietnam and develop effective policies and create interventions that address their needs and rights.

**Inclusion in Emergency Response:** There is currently a dearth of NGO reports and academic research on the inclusion of intersex individuals in emergency policy responses in Vietnam. It is acknowledged that there is currently no policy in Vietnam that specifically addresses the rights of LGBTI+ individuals, including intersex individuals. Urgent situations such as climate change, pandemics, and natural disasters tend to prioritise vulnerable groups, such as women, children., therefore, the specific needs and vulnerabilities of sexual minorities are often not taken into account.

## Recommendations

- To integrate a human rights approach to SOGIESC issues: The government needs to review and amend guidelines, policies, and legal frameworks to reflect international standards that prioritise bodily autonomy and integrity, promote informed consent, and prohibit discrimination.
- Eliminating medical requirements: Legal gender recognition processes should not require intersex individuals to undergo medical interventions in order to change their gender marker. This can be achieved by eliminating medical requirements in legal gender recognition processes and recognizing the right of intersex individuals to self-determination
- Public education and awareness campaigns: LGBTI groups, key stakeholders and medical professionals can launch public awareness campaigns that promote greater understanding and acceptance of intersex variations, including the importance of respecting the bodily autonomy and integrity of intersex individuals.
- LGBTI CSOs should engage with government agencies to develop and implement training materials: Developing training materials that provide accurate and up-to-date information on SOGIESC+ rights and discrimination faced by intersex individuals. Implementing training programs that are tailored to the needs of different sectors, such as civil society, private sector, educational institutions, medical sector, etc. can help raise awareness and understanding of intersex variations and promote greater inclusivity and non-discrimination.

## Way Forward

It is imperative that urgent steps are taken to address the current gaps in legislation and policy related to intersex rights in Vietnam. This includes a commitment from policymakers and civil society to promote inclusivity and equality for intersex individuals, such as: reviewing and updating legal frameworks and policies, improving access to healthcare and education, and raising awareness and understanding of intersex variations. To improve access to healthcare for intersex individuals, various measures can be taken such as conducting awareness campaigns, providing accessible information on diagnosis and treatment options, prohibiting medically unnecessary surgeries by law, reviewing the legal gender recognition processes, and increasing the number of mental health professionals trained in SOGIESC rights.





WE DEFEND **Intersex**  
HUMAN RIGHTS IN ASIA



# Intersex Asia Timeline

Intersex movement in Asia started in the 1990s from Japan, develops internationally since 2008 from Taiwan.

# 1. Introduction

- 1.1 Background Information**
- 1.2 Main Problems, Their Scope and Impact on the Society**
- 1.3 Goals and Objectives**

## 1.1 Background Information

In Vietnam, the term “intersex” (as known as “liên giới tính/liên giới tính” in Vietnamese) has not entered common parlance. Instead, “lưỡng tính thật” which literally means “true hermaphrodite,” is often used to refer to intersex people, mistakenly implying that they have both female and male genitals.

In Vietnamese society, the concept of “gender perfection”<sup>1</sup> is influenced by both external gender identification, such as genital organs and gender expression, and the ability to perform reproductive functions. These expectations can have profound effects on the lives of individuals, particularly those who identify as intersex or do not conform to traditional gender roles. Those whose gender identity lies beyond the binary of male and female are rendered invisible and their naturally occurring biological variations are seen as something that needs to be ‘fixed’. The lack of social recognition for individuals born with congenital sex variations or those who are of unidentifiable sex, as well as the social stigma linked to having children with *congenital sex defects* (synonyms for *disability physical function* – *khuyết tật về giới* in Vietnamese language), can cause shame and embarrassment for intersex individuals and their families.

Regarding gender stereotypes, Vietnamese society also holds expectations about men’s and women’s roles in family construction and reproduction. Therefore, the requirements for gender ‘perfection’ include external gender identification (genital organs, gender expression, anatomical characteristics...) as well as the innate ability to perform reproductive functions. Gender perfection is not only meaningful to the individual but also represents the social responsibility of the individual in mating and ensuring the continuity of lineage. Society has preserved the tradition where men and women must marry each other as a way to legitimize sexual relations and fulfil their social functions, including reproductive, child-raising, and economic functions as a family unit. Such social prejudices also weigh heavily on families, when parents worry that their child’s ‘deviation’ is a type of disease and the family suffers stigma from the surrounding community for having a ‘deviant’.

Vietnamese society and Viet language adopted the term ‘LGBT - Lesbian, gay, bisexual, transgender’ from Western countries and started using it in the late 2000s. The term ‘LGBTQ’, as well as the emergence of queer terminologies and practices, is even more recently imported, first appearing only about five-seven years ago. The slangs like ‘pêđê’ (derived from the French ‘pédéraste’), ‘half man half woman’, ‘third world’, and ‘bóng’ (Shadow/Spirit) are most commonly used to refer to anyone with atypical sex characteristics, or the whole LGBTI+ community without any distinction between homosexuality and transgenderism, and sexual orientation and gender identity. Countryside dwellers posit that “bóng” first entered Vietnamese parlance in the 1990s and was used primarily

<sup>1</sup> According to Article 4, Decree 88/2008 on Sex Assignment: Prohibited acts

in the Southern part of Vietnam to refer to gay men or feminine men (such as transvestite members in Lô Tô troupes). But after this period, “bóng” lost its appeal among the LGBT+ community, who felt offended by its implications since the word was often used by straight people to insult sexual minorities.

The conflation of homosexuality and gender identity (transgenderism, or gender crossing) is quite unique to Vietnamese culture. Prior to 2012, before the gay marriage discussion began, gay men had been referred to by feminine, derisive terms. Even until 2016 when the mass survey “Is it because I’m LGBT”<sup>2</sup> was carried out by iSEE, intersex issues were yet to be included in discussions about gender minority rights in general. Intersex people may commonly be subsumed under the transgender category by the general public and policymakers, who are not sensitized to intersex issues. Falling outside the staunchly held sex binary and LGBTI+ movement results in different traumas for intersex individuals in Vietnam.

### Understanding Intersex

Intersex people are born with physical sex characteristics (such as sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns) that do not fit typical definitions for male or female bodies.

Intersex people use many different terms to describe themselves, their bodies, sex characteristics and identities. Some people consider themselves to be intersex, while others consider themselves individuals who have an “intersex variation”, an “intersex trait”, or are “born with a variation of sex characteristics”. Other terms such as “intersex condition”, and “differences of sex development” (abbreviated as DSD) are sometimes used, though these terms are considered to be medicalized.<sup>3</sup> According to experts, between 0.05 per cent and 1.7 per cent of the population is born with intersex traits.

<sup>2</sup> iSEE, “Is it because I’m LGBT?”: Discrimination based on sexual orientation and gender identity in Vietnam, 2016, <https://thuvien.lgbt/documents/co-phai-boi-vi-toi-la-lgbt-phan-biet-doi-xu-dua-tren-xu-huong-tinh-duc-va-han-dang-gioi-tai-viet-nam> Accessed on 29 May 2023.

<sup>3</sup> OHCHR: Background Note on Human Rights Violations against Intersex, 2019, para 1 & para 2, page 3. People <https://www.ohchr.org/sites/default/files/BackgroundNoteHumanRightsViolationsagainstIntersexPeople.pdf> Accessed on 29 May 2023



## 1.2 Main Problems, their scope and impact on the society

Despite the progress made by the gender minorities movement, LGBTI+ individuals in Vietnam, and intersex individuals in particular, continue to encounter significant challenges due to the absence of necessary regulations to protect them from SOGIESC-based discrimination.

Therefore, although intersex people around the world tend to stand together with the LGBT+ movement to achieve shared goals, in Vietnam, the needs of intersex people are often confused with those of transgender people. Sometimes, intersex people are even considered more 'fortunate and favourable' than transgender people because 'gender re-determination' has been legal for them since 2005.<sup>4</sup>

One of the main problems, this research found was that intersex people have remained mostly invisible all over the LGBTI+ movement and in social dialogue. This deepens the general lack of awareness of intersex people and their rights, it also downplays their role in determining their own identity and reinforces the belief that intersex people have had full enjoyment of rights because the law has allowed them to "fix" their biological variations.

The other main problems include the normalisation of medical interventions on intersex persons from a legal perspective and medical practitioners. Pathologizing the intersex status creates a discriminatory and stigmatising environment for those who have no desire to undergo medical intervention or have undergone sex re-determination surgery. This denies intersex people their rights to freedom and self-determination.

Another significant issue that intersex individuals encounter in accessing healthcare is the lack of knowledge and awareness among medical professionals regarding intersex healthcare. As a result, intersex individuals may not have access to specialised medical care or primary medical care. The limited number of specialists may not be easily accessible, which can further exacerbate the issue. The lack of appropriate healthcare can have detrimental effects on the physical and mental health of intersex individuals, leading to marginalisation and exclusion from society.

In addition, discrimination in education and employment can limit the opportunities available to intersex individuals, making it challenging for them to participate fully in society.

<sup>4</sup> Article 36 in Civil code 2005: The right to re-determination of gender. Full document in English: <https://wipo.lex-res.wipo.int/edocs/lexdocs/laws/en/vn/vn001en.pdf> Viewed on June 18, 2023



## 1.3 Goals and Objectives

The legal framework analysis aims to provide general knowledge of the national legislation and its main characteristics and contents, with particular regard to intersex rights in Vietnam. The report aims to do this by conducting analysis and reviewing existing research reports, media coverage, and documentation on intersex persons in Vietnam. The objectives of this report are:

- To come up with a country-level report aimed at improving the understanding of the experience of the intersex community and mechanisms and protections (or gaps) for intersex persons.
- Place legal developments on intersex issues in Vietnam within a global context by providing a comparative overview of other countries that have legislated on intersex (comparable processes occurring internationally and what can be learned from them).
- Develop a conceptual and analytical framework as a foundation to continue the next steps of addressing the challenges faced by intersex people in accessing health, education, and public services as well as discrimination in other areas.

# 2. Methodology

**2.1. Literature search**

**2.2. Meetings and In-depth interviews**

This research is the result of a scoping review and legal research that includes Vietnamese legislation, regulation, publications and reports of major LGBTI NGOs and institutions in Vietnam; and a focused desk review of available literature and international human rights instruments.

This research is based on both primary and secondary sources of data and is split into two methods:

1. A desk review of media publications, government data and responses, academic journals, international NGO reports, as well as other relevant documents on international human rights and legal provisions.
2. In-depth online interviews with experts on LGBTI rights and key stakeholders.

## 2.1 Literature Search

Desk review: To understand the context and create a baseline for the legal framework research, the researcher reviewed the following legal documents and materials:

- International convention, UN treaties body reports, international human rights instruments:
- Vietnamese policies and legal regulations in relation to sexual orientation, gender identity and the rights of intersex people in the areas of health care approach, legal recognition, civil status, gender equality, Law on Marriage & family affairs; and children's rights.
- Studies, reports and articles by local NGOs and LGBTI+ CSOs in relation to sexual orientation, gender identity and the rights of intersex children in the same areas. In Vietnam, there has been a huge volume of research from many organizations on homosexual, bisexual, and transgender groups individually or the LGBTI as a whole community between 2012-2023.

The following keywords/terms were used for the desk review in English and in the Vietnamese language: 'LGBTI in Vietnam', 'intersex in Vietnam,' disorder of sex development in Vietnam, "lưỡng giới/lưỡng giới thật" (*true hermaphrodite*), "khuyết tật" (*disability*), "khuyết tật bẩm sinh về giới" (*congenital sex defect*), rối loạn biệt hóa cơ quan sinh dục (*disorders of sexual differentiation*), "cơ quan sinh dục mơ hồ" (*ambiguous genitalia*), "xác định lại giới tính" (*gender reassignment/sex reassignment*).

### Data Limitation

There is also a lack of research material on intersex status and intersex rights in Vietnam, as well as data on intersex populations. Before this research, no comprehensive overview of relevant laws and policies related to intersex people had been undertaken. The invisibility of non-binary and gender non-conforming intersex people also remains an issue. As a result, the researcher has not been able to include non-binary and intersex people’s perspectives in this research.

## 2.2 Meetings and In-depth interviews

A total of four interviews with key informants were carried out in Vietnam. The key informants are well-informed on intersex issues, including human rights activists, lawyers, medical practitioners, and community leaders. One informant was based in Ho Chi Minh City, and the other three were based in Hanoi, as indicated in Table X. Although we aimed to interview five key informants, we were unable to do so as one medical professional from the MOH did not respond to our email.

Date	Name	Designation	Institution	Topic of Discussion
May 31, 2023	Dr. Nguyễn Tấn Thủ / HCMC	Depth interview	Nhà Minh clinic/ HCMC	Intersex children’s rights and consequence of intervention in very young age
June 20, 2023	Dr. Ngô Hải Sơn/ Hanoi	Email interview with prepared question	Việt Đức hospital/Hanoi	Data on intersex surgency in Viet Duc hospital per year Professional Perspective on medical term ‘gender redetermination’
June 23, 2023	Lawyer Trương Hồng Quang/ Hanoi	Email interview with prepared question	Consultant of MOLISA and member of Drafting team on revised Law on Gender Equality	Professional Perspective on legal recognition of intersex people
July 2, 2023	MD. Đoàn Thanh Tùng/ Hanoi	Email interview with prepared question	Director Lighthouse - LGBTI social enterprise	Intersex engagement in LGBTI advocacy: Difficulties and Challenges

Please refer to Appendix A for details\*

# 3. Current Civil Society Organisations and Government Efforts

- 3.1. **Work done by Intersex-led organisations and Civil Society organisations so far**
- 3.2. **Government efforts so far**

## 3.1 Work Done by Intersex-led Organisations and Civil Society Organisations So Far

Till 2021, Vietnam had about 10 registered organisations and more than 50 unregistered organizations/community groups working for LGBTI+ rights. However, none of these organisations work on intersex rights<sup>5</sup>. Despite the growing attention (and even resources) that LGBT+ issues have received in recent years, intersex people have remained mostly invisible all over the LGBT+ movement and in social dialogue.

In terms of research, there is no intersex-focused research but they are sometimes highlighted in research surrounding LGBTQ+ issues. For instance, in the study titled “The Prevalence of Sexual Orientation and Gender-based Violence Among LGBTI+ People in Vietnam and Related Factors” conducted by Light House Social Enterprises with 528 participants, only 0.8 per cent of respondents identified themselves as intersex<sup>6</sup>. Furthermore, the study did not explore the experiences and requirements of intersex individuals in responding to gender-based violence. The first factsheet about intersex information was uploaded to the website: Thuvienlgbt.com in mid-2020, and the document was translated by the ICS Center from Intersex Asia resource.

## 3.2 Government Efforts So Far

Vietnam has never criminalised homosexuality, yet never enacted specific provisions using terms such as sexual orientation, gender identity or sex characteristics. The human rights of Vietnamese people and intersex persons are protected in The Constitution of the Socialist Republic of Vietnam under Chapter 2: “Human Rights and Citizen’s Fundamental Rights and Duties”, which guarantees fundamental human rights and liberties<sup>7</sup>.

Some fundamental provisions mentioned in the Constitution are:

**Article 16** – No one shall be discriminated against in his or her political, civic, economic, cultural, and social life;

**Article 20** – Everyone shall enjoy inviolability of the individual and the legal protection of his or her life, health, honour and dignity; and is protected against torture, harassment and coercion, and any forms of violation of his or her life and health, and offence of honour and dignity.

<sup>5</sup> COC Netherlands, A Context Analysis on the State of the LGBTI Movement in Vietnam, 2020: <https://tvlgbt.s3.ap-southeast-1.amazonaws.com/352c6056-367e-493e-b311-4b49f3b448a8.pdf> p.28. Accessed on 1 July 2023

<sup>6</sup> Download PDF version of research in Hai Dang website: <https://lighthousevietnam.org/en/library/>, “The Prevalence of Sexual Orientation and Gender-based Violence Among LGBTI+ People in Vietnam and Related Factors”, 2023. p. 9 Accessed on July 14, 2023

<sup>7</sup> Full text of The Constitution of Socialist Republic of Vietnam: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=94490&p\\_country=VNM&p\\_classification=01.01](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=94490&p_country=VNM&p_classification=01.01) Accessed on July 14, 2023

**Article 26**

1. Male and female citizens have equal rights in all fields. The State has a policy to guarantee equal gender rights and opportunities.
2. The State, the society, and the family create conditions for women's comprehensive development and promotion of their role in society.
3. Sex discrimination is strictly prohibited.

**Article 37**

Children enjoy protection, care and education by the family, the State and society; and are allowed to participate in children's affairs. Infringement, maltreatment, abandonment, abuse, and exploitation of labour and other forms of violating children's rights are strictly prohibited.

The Constitution of the Socialist Republic of Vietnam is the supreme law of the land so all the other laws are subordinate to the Constitution. This means that any law that contravenes these principles can be declared unconstitutional and must be struck down. These provisions of the Constitution 2013 set many requirements for the enforcement of the legal system to promote human rights and LGBTI+ rights in particular, especially the implementation process at grassroots levels.

The following is a brief list of legal documents containing laws on aspects related to issues most commonly encountered by LGBTI+ people which are analysed in this document:

- The Civil Code of 2015 legalized the rights of people to change their gender identity, which was banned before. Although the Civil Code took effect in 2017, it will need a Law on Gender affirmation to implement these regulations, which is scheduled in the law-making agenda of the National Assembly in 2024-2025.
- Law on Medical Examination and Treatment 2023 related to medical guidelines for intersex status and health care service for intersex people based on non-discrimination principle.
- Regarding marriage, the laws of Vietnam are yet to recognize marriage between people of the same sex. In 2014, the Law on Marriage and Family removed the ban on same-sex marriage without recognising it, and removed all fines related to same-sex weddings or ceremonies as popular misconduct before.

- Pursuant to the Law on Gender Equality Law 2006, “sex” is understood as biological differences between males and females, which must be shown on an individual’s personal identification card or his/her citizen identity card. It seems apparent that legal provisions have equated sex and gender, construed as differences in terms of roles and social relations between males and female.
- The Law on Civil Status and Administrative Procedures related to transgender and intersex people pertains to the legal recognition of gender identity and sex characteristics in civil status registration.

### At The Government Level

As a member of the United Nations since 1977, Vietnam became a member of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention to Eliminate All Forms of Discrimination Against Women (CEDAW<sup>8</sup>) in 1982 and the Convention on the Rights of the Child (CRC) in 1990. Vietnam also ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2015.

In 2016, as a member of the Human Rights Council, Vietnam voted in favour of the resolution “Protection against violence and discrimination based on sexual orientation and gender identity (SOGI)” which appointed the first-ever Independent Expert on protection against violence and discrimination based on SOGI. The Vietnamese delegation also made a statement to show their support before the vote.

In its 2019 UPR, Vietnam rejected recommendations to include sexual orientation and gender identity in the Labour Code and to legalize same-sex marriage. However, the government accepted three recommendations:

- Develop legislation against discrimination on the grounds of sexual orientation and gender identity<sup>9</sup>.
- Take further steps to ensure the protection of all vulnerable groups in society including lesbian, gay, bisexual, transgender and intersex persons<sup>10</sup>.
- Enact legislation to ensure access to gender affirmation treatment and legal gender recognition<sup>11</sup>.

<sup>8</sup> In General Recommendation No. 28, the Committee described the discrimination facing older women as ““The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity ... States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them.”” General Recommendation No. 28; at para. 18. Viewed at June 8 2023

<sup>9</sup> United Nations Human Rights Council, Universal Periodic Review – Viet Nam, 3rd cycle, 2019, Recommendation 38.109, <https://lib.ohchr.org/HRBodies/UPR/Documents/Session32/VN/Recommendations.docx> Accessed November 14, 2019

<sup>10</sup> Ibid, Recommendation 38.97

<sup>11</sup> Ibid, Recommendation 38.93



In September 2019, the Prime Minister’s Office issued an order specifying how various government agencies should implement Vietnam’s UPR recommendations. The order included:

- Instructions to the Ministry of Justice (MOJ) to undertake: “Promulgating and implementing national action plans and programs to eliminate stigma and discrimination against women (to increase women’s participation in all fields and eliminate gender violence) and vulnerable groups...[including] LGBTI people.”
- Assigning to the Ministry of Health (MOH) the responsibility to “examine legal gender recognition procedures without medical requirements” and to “allocate sufficient human and financial resources to implement effective plans, national action programs to eliminate prejudice, discrimination toward vulnerable groups...[including] LGBTI people.”
- Assigning to the Ministry of Labour, Invalids, and Social Affairs (MOLISA) the responsibility to “review and recommend improvements to legal standards to ensure equality between men and women, non-discrimination on the basis of gender (including LGBTI).”<sup>12</sup>

### At the ministry level

The MOLISA of Vietnam is currently undertaking an update to the Law on Gender Equality 2006. Because the country’s current legal framework refers to gender equality in binary terms- male and female-without reference to inclusion based on sexual orientation, gender identity and expression, and sex characteristics (SOGIESC), this update presents a great opportunity and critical entry point to broaden the scope and definition of gender equality to include SOGIESC.

### *The revision of Law on Gender Equality 2006 (Luật Bình đẳng giới)*<sup>13</sup>

In 2006, the first-ever Law on Gender Equality of Vietnam was enacted with a view to mandating governmental agencies to fulfil their responsibilities for gender equality and laying a legal foundation for the handling of violations in the field of gender equality. The main purpose of this instrument is to prohibit anyone from practices that discriminate against someone because of their gender.

<sup>12</sup> Socialist Republic of Vietnam, Prime Minister’s Order No. 1252/QĐ-TTg on Approving the plan on strengthening the effectiveness of the implementation ICCPR and the UN human rights committee’s recommendations. Full text in English version: <https://moj.gov.vn/ttp/tintuc/Lists/CongUocQuocTe/Attachments/13/3.%20ENG-Ph%E1%BB%A5%20%E1%BB%A5c%201.pdf>

<sup>13</sup> Full text of Law on Gender Equality 2006: [http://ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=76089&p\\_cout=96243&p\\_classification=05&p\\_classcount=3262](http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=76089&p_cout=96243&p_classification=05&p_classcount=3262)

However, after nearly 17 years of implementation, the Law on Gender Equality is still approached based on the ideology of Gender binarism, which only recognizes two genders - male and female. The current Law on Gender Equality also lacks any non-discrimination clauses based on SOGIESC; instead, it defines gender as a strictly binary concept - “characteristics, positions and roles of man and woman in all social relationships. This leaves those with diverse gender identities and sexual orientations unrecognised, including transgender and intersex people.

***The Ministry of Health (MOH) made an official announcement on ‘Homosexuality Is Not A Disease’***

On August 3, 2022, the MOH issued Official Dispatch 4132/BYT-PC to correct medical examination and treatment for gay, bisexual, and transgender people <sup>14</sup>. According to the Official Dispatch, in the face of the situation of some medical examination and treatment facilities and some doctors claiming to cure homosexuality, the MOH said that the American Psychiatric Association and the WHO have confirmed that homosexuality is not a disease, so it cannot be “cured”, does not need to be “cured”, and cannot be changed.

Furthermore, the MOH directed that the inspection and examination of medical examination, treatment establishments and practitioners, be strengthened in order to ensure that the principles of medical examination and treatment practice are followed.

However, the target protected in this dispatch still focuses on people with same-sex orientation and transgender people without mentioning intersex people who are suffering from a lot of stigma and discrimination.

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<sup>14</sup> Full text of document in English version, Ministry of Health of Vietnam: Homosexuality, bisexuality is not a disease, Lawnet, 2022, available at: <https://lawnet.vn/judgment/en/tin-tuc/ministry-of-health-of-vietnam-homosexuality-bisexuality-is-not-a-disease-7222>.

- The MOH requires medical examination and treatment facilities to strengthen propaganda and dissemination so that doctors, health workers, and people who come for medical examination and treatment understand properly about gay, bisexual, and transgender people. Medical examination and treatment for homosexual, bisexual, and transgender people must be organized equally, with respect for gender, without discrimination against these subjects.

- In particular, do not consider homosexuality, bisexuality, or transgender as diseases, and do not intervene and force treatment on these people. Only psychological support is provided by people with knowledge of gender identity.

# 4. Findings from Desk Review

- 4.1. **Protecting Intersex People's Bodily Integrity**
- 4.2. **Protecting Intersex People from Discrimination in All Areas**
- 4.3. **Health**
- 4.4. **Education**
- 4.5. **Hate Crime and Hate Speech**
- 4.6. **Gender Marker Registration at Birth**
- 4.7. **Legal Gender Recognition**
- 4.8. **Access to Justice and Redress**
- 4.9. **Data Collection: Addressing Research Gaps**
- 4.10 **Inclusion in Emergency Policy Response**

The results section of this report presents detailed findings according to each theme, as outlined in the Intersex Asia research framework. The specific findings for each theme are first described from the systematic desk review, highlighting what exists in the current knowledge base and what doesn't. Then, we identify gaps in the current literature for each theme and attempt to fill those gaps through the key informant interviews that we have conducted.

## 4.1 Protecting Intersex People's Bodily Integrity

### Lack of legal protection for Bodily integrity of Intersex children

In Vietnam, the age of consent for medical treatment varies depending on the type of medical treatment and the age of the child. For general medical treatment, there is no specific age of consent in Vietnamese law. However, the Civil Code 2015 (Article 20) provides that individuals who have reached the age of 18 years are considered to have full legal capacity to perform civil acts, including consenting to medical treatment. For individuals under the age of 18, the consent of their parents or legal guardians is typically required for medical treatment (Article 21).

Decree No. 88/2008 only allows "sex reassignment" procedures only for individuals having specific intersex characteristics, which are described as "persons with congenital sex defects or of unidentifiable sex."

This document even allows: "The medical examination and treatment establishment shall decide on the age for performing surgery of the person requesting sex assignment, **ensuring the earliest age** (point 3 Article 9, Decree 88/2008)". In such conditions, they violate multiple human rights standards, including intersex children's rights. According to these provisions, intersex infants and children are not safeguarded against medically unnecessary and non-consensual surgeries since they are not legally capable of providing consent for any medical treatment. As a result, the responsibility falls entirely on the parents or legal guardians of intersex children to make decisions about any medical treatment or surgery until the child reaches 18 years of age in Vietnam.

Vietnam was the first state in Asia and the second, globally, to ratify the UN Convention on the Rights of the Child (on February 20 1990) and is committed to protecting the rights and interests of children.

Vietnam has obligations to fulfil through the reporting on the CRC as well as international human rights treaties and conventions that Vietnam has ratified including the CEDAW, the Convention on the Rights of Persons with Disabilities, and the UPR process. The Committee on the CRC likewise interprets the right to non-discrimination in Article 2 of the CRC to include sexual orientation<sup>15</sup> and gender identity<sup>16</sup>.

This underlines how the Vietnamese legal system sets out to protect child rights, which are further recognized in its Constitution and numerous legal documents such as the Civil Code, Criminal Code, Law on Children, Labour Code, Law on Education, and Law on Persons with Disabilities.

### **Normalisation of Unnecessary Medical Surgeries in Healthcare Sector**

Two main government legal documents recognize and outline the medical management of intersex persons, the Civil Code 2015 (Article 36 on the **Right to re-determine gender identity**) and the Decree 88/2008 by the Vietnamese Government on Sex Reassignment.

While the majority of infants born, appear to have characteristics which can be clearly grouped into categories we call ‘male’ or ‘female’, however, for some infants it is not so clear.

For some parents, it can be confusing and perhaps even frightening to find out their child is intersex. In Vietnam, parents or legal guardians are empowered to consent to medical care on behalf of their children, so they often decide on the advice of medical experts that their children undergo “normalizing” medical operations which have only cosmetic purposes. Parents of an intersex child may experience a lot of pressure to make life-changing decisions about their child. They might believe that children must conform to the gender categories of “girl” and “boy” in order to avoid being stigmatized or discriminated against or in order to obtain identity documents for their children.

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<sup>15</sup> Committee on the Rights of the Child, General Comments No. 4 (Adolescent health and development in the context of the Convention on the Rights of the Child) at para. 6; and No. 3 (HIV/AIDS and the rights of the child), at para. 8. Viewed at June 20 2023

<sup>16</sup> Committee on the Rights of the Child, General Comment No. 13 (The right of the child to freedom from all forms of violence), at paras. 60 and 72(g) (stressing that States parties must address discrimination against vulnerable or marginalized groups of children including children who are lesbian, gay, transgender or transsexual).

Under Vietnamese Social Security policy, children under six years old are provided with free health care services. For children, from 6-14 years old, there are two main health insurance programs, which are operated by Vietnam Health Insurance Organization (VHI) on a not-for-profit basis.<sup>17</sup> There was no specific information available on whether children who are intersex under six years old are provided with free healthcare services in Vietnam. The policies and practices related to healthcare services for intersex children may not have been widely addressed or specified in the available information. Therefore, benefiting from insurance policies during medical examination and treatment is also a motivation for parents to go ahead with medical interventions with intersex children, especially for children under six years old. Parents of intersex children may be pressurised into agreeing to “normalizing” and unnecessary medical interventions in order to obtain identification documents for their children, for example: When children start primary school at the age of six, parents also want all of their children’s identity documents to be completed, including gender information for compliance with administrative procedures.

For these reasons, unnecessary medical interventions may take place deliberately before children are old enough to understand the nature of a procedure. In addition, parents frequently lack psychological support services. Such support would allow them to adequately face parenthood of intersex children, and better respond to the challenges posed by the social expectations, and legal and medical requirements.

Dr. Nguyen Tan Thu (technical advisor at Nha Minh Clinic), a medical expert with extensive experience in working with the LGBTII+ community in Vietnam, has a different opinion:

*“Emergency surgery, however, is only necessary in rare cases - for example, if a child can’t urinate properly. Interventions on infants or under 18 months old children are mostly life-saving interventions to help the child’s external genitals perform excretory and digestive functions”.*

However, the mass media often fails to provide clear, comprehensive information about intersex by putting the emphasis merely on the critical cases or the negative complications. Consequently, intersex bodies have been regulated informally by the medical profession which has constructed a biomedical narrative of intersex through a catalogue of sex development ‘disorders’ and ‘diseases’ that (despite their often benign nature) are portrayed as requiring medical intervention.

<sup>17</sup> According to Point b Clause 1 Article 14 of the [Decree No. 146/2018/NĐ-CP](#) of Vietnam’s Government, children under 6 years of age shall be entitled to the health insurance fund’s coverage of permissible medical costs at the rate of 100% of medical costs, and no restrictions on the rate of payment of medical costs such as medicines, chemicals, medical supplies and medical technology services as regulations of the Minister of Health.

On the same page, MD Ngo Hai Son (Doctor of Maxillofacial, Plastic and Aesthetic surgery Department, Viet Duc University Hospital), said:

*"Currently, there are no official statistics or medical data on how many sex reassignment surgery cases that hospitals are allowed to conduct each year. At Viet Duc Hospital, on average, we conduct about 50 sex reassignment surgery cases for intersex children and adults each year. In my experience, medical intervention is not necessary in case the intersex status does not affect function, physical health or mental well-being. Surgery for intersex infants should be delayed until individuals can decide for themselves, except where it is a medical necessity".*

The Committee on the Rights of Persons with Disabilities (CRPD) has issued several recommendations calling for regulation or ban on medically unnecessary surgeries on intersex persons as a violation of their bodily integrity (CRPD Art. 17) and as exploitation, violence, and abuse (CRPD Art. 16). Vietnam signed the CRPD in 2007 and ratified it without reservations in 2014.

### **Domestic violence with intersex children or gender non-conforming children**

Vietnam, like many Asian societies, adheres to conservative values and traditional notions of the family that have governed surface-level expressions of gender and sexual identity. One of the signs of society's compliance with gender roles is gender-based violence. In public discourse, the term 'domestic violence' (Bạo lực gia đình/Bao luc gia dinh) is commonly used to refer to violence that occurs within families or intimate relationships. The Law on Domestic Violence Prevention and Control 2007 gives a general definition of violence in the home as "purposeful acts of certain family members that cause or may cause physical, psychological, emotional or economic injuries to other family members".

At the operational level, the law specifies that domestic violence occurs when another family member commits any of the following precisely defined acts, inclusive of emotional, physical and sexual violence:

- Corporal beating, ill-treating, torturing or other purposeful acts causing injuries to one's health and life.
- Insulting or other intended acts meant to offend one's pride, honour and dignity.
- Isolating, shunning or creating constant psychological pressure on other family members, causing serious consequences.

In Vietnam, instances of domestic violence against intersex or gender non-conforming children resulting from gender stereotypes may be linked to parents' views on the use of physical force in disciplining children. Parents do not consider what they do as perpetration of violence, but rather the right thing to do, which is to educate their children to express and behave in accordance with social standards and expectations. This 'right thing to do' approach is also how parents of intersex children deal with their child's intersex condition, through treating the 'sex disease' as well as through complying with existing gender norms. LGBTQ+ people are less likely to seek support and face significant barriers in accessing affirmative family violence support services. Along with this, the local authorities have limited understanding of sexual orientation and gender identity and rarely intervene to stop such violence, believing it is right for families to "correct" their children.

In the two most recent national reports of Vietnam on domestic violence, there is no data on gender-based violence against children who are intersex, but mainly spousal violence or intimate partner violence, with children described as indirect victims when witnessing violence between parents.

## 4.2 Protecting Intersex People from Discrimination in All Areas

In Vietnam, there are currently no legal protections against discrimination based on intersex status. Intersex individuals are not specifically recognized as a protected group under Vietnamese law, and there are no laws or regulations that prohibit discrimination against intersex persons.

### **Non-discrimination article in Labour Code 2019**

The amended Labour Code of Vietnam, which was passed in November 2019 and came into effect on January 1, 2021, includes provisions on non-discrimination in employment based on gender and health status. Article 6 of the Labour Code states that "employers shall not discriminate against employees on the basis of gender, age, marital status, pregnancy, maternity, health status, HIV/AIDS infection, or other personal characteristics unrelated to the work performance of employees." Although the Labour Code 2019 in Vietnam prohibits discrimination based on health status, including intersex status, there is a potential conflict as intersex individuals may still face discrimination and stigma due to the medicalization of their condition and the lack of legal protection for their sex characteristics, which are not explicitly protected under the Labour Code or other laws.



## Non - Discrimination against intersex people in the medical field

In September 2020, the Vietnamese government issued Decree No 117/2020<sup>18</sup> on sanctioning administrative violations in the health sector. This decree includes a new regulation that mentions the term ‘discrimination’ and requires violators to apologize to intersex individuals who have experienced discrimination and compensate with the amount of about 5,000,000 VND.

However, it’s important to note that the decree does not provide any clear definition or description of what constitutes ‘*discriminatory behaviour*’. This lack of clarity can make it difficult for enforcement officers to identify discriminatory behaviour.

Additionally, it’s worth noting that the decree applies to individuals who have undergone sex reassignment surgery or hormone therapy which means intersex people are still considered ‘patients’ under the law and thus, protected from discrimination in the medical field.

## Discriminatory portrayals and limited media representation of Intersex people

A search on the internet with the keywords “intersex” and “sex reassignment” mainly leads to articles describing medical conditions, disorders, and reproductive complications caused by intersex variations. The illustrations for such articles mainly depict doctors performing surgeries or medical professionals examining patients. The articles also mostly cite doctors with medical expertise instead of community representatives, LGBTI+ rights activists, or intersex individuals themselves. This causes worries for parents of intersex children and leads the general public to believe that intersex is a medical condition that requires serious intervention and that medical interventions are the only way for the ‘patients’ to get rid of birth defects and disorders. Overall, discriminatory portrayals and limited media representation of intersex individuals can have significant negative impacts on their lives and well-being.

Recently, in a newspaper under the management of the People’s Committee of Ho Chi Minh City, an article titled “Finding your children’s true gender”, published in March 2023 cites a doctor’s comments:



*‘If children with misassigned sex don’t receive timely intervention, they may develop psychological problems from being made fun of or from feelings of insecurity. Particularly, in some cases, figuring out one’s true sex in adulthood proved to affect their lives adversely. Therefore, if there are any concerns about a child’s sex, parents should take their child to the hospital for screening for them to receive timely treatment. This*

<sup>18</sup> Full text Decree 124/2021 on Amending and supplementing several articles of the Government’s Decree No. 115/2018/ND-CP and Decree No. 117/2020/ND-CP  
<https://english.luatvietnam.vn/decreed-no-124-2021-nd-cp-214952-doc1.html> Accessed on July 14, 2023

*is because the best time to intervene with birth defects is within 8-18 months,' Dr Thach emphasized<sup>19</sup>. On average, the National Children's Hospital receives 40-70 cases of 'sex development disorders' each year. The National Children's Hospitals 1 and 2 in HCMC receive about 10 cases per year. 'Disorders of sex development is a very complex medical condition that must be diagnosed and treated early, since in some cases, the children's lives could be threatened by germ cell cancers or their future fertility could be affected due to sex development not matching the body' – as mentioned by Dr Thach.*



## Intersex versus Transgender Dichotomy

In the period from 2012 to 2014, the media in Vietnam, including the press, widely reported on the case of teacher Pham Le Quynh Tram (birth name Pham Van Hiep) as the first 'transgender person' in Vietnam to change their legal gender. In the media, the term 'gender reassignment' was used to describe her surgery<sup>20</sup>. In public interviews, Pham Le Quynh Tram said she identified as intersex and provided pictures proving her intersex status<sup>21</sup>. However, the mass media still labelled her as "transgender", revealing the lack of awareness of the difference between transgender and intersex.

Five years later, in October 2019, another article about an ethnic minority child with intersex characteristics was shared on Vietnamese social networks<sup>22</sup>. The child was assigned female at birth, but as puberty came around, their body did not develop female characteristics. They met with discrimination, and physical and mental abuse at school and in their village and were even seen as a demon due to religious beliefs held by their community.

Two stories about intersex individuals gained public attention in Vietnam, highlighting the natural variations in biological attributes of intersex people and their right to body autonomy and identity self-determination. However, during 2012-2014, the media often conflated intersex people with transgender people, while in 2019, it focused on genital defects and malformations in intersex children, promoting the need for early intervention and treatment. These approaches perpetuated common misconceptions about intersex people and failed to recognise the importance of respecting their rights and well-being<sup>23</sup>.

<sup>19</sup> A newspaper under the management of the People's Committee of Ho Chi Minh City, an article titled "Finding your children's sex", published in March 2023: <https://mld.com.vn/suc-khoe/tim-lai-gioi-tinh-cho-con-20230313203909424.htm>

<sup>20</sup> Photo: <https://thanhnien.vn/mot-truong-hop-duoc-chinh-quyen-cai-chinh-gioi-tinh-18554197.htm> Accessed on July 1, 2023

<sup>21</sup> Pham Le Quynh Tram, Transgender Vietnamese Woman, Loses Government Recognition (CCIH/ HN2013\_1), 2013, <https://ccihp.org/archive/39/331/pham-le-quynh-tram-transgender-vietnamese-woman-loses-government-recognition.html> Accessed on July 1, 2023

<sup>22</sup> The article about ethnic minority children has intersex characteristic: <https://kenh14.vn/me-oi-con-la-quy-that-sao-sao-me-lai-sinh-ra-mot-con-quy-tren-coi-doi-nay-20191030114457019.chn>. Accessed on July 1, 2023

<sup>23</sup> Hyu Hau, Thousands of people transferred money to support Ka Nhits and the Thien Nhan Fund, touched with the amount of 32,000 VND out of a total of more than 600 million VND, 2019, <https://soha.vn/nghin-nguoi-chuyen-khoan-ung-ho-ka-nhits-xuc-dong-voi-so-tien-32000-dong-tren-tong-so-hon-600-trieu-dong-2019110611170436.htm> Accessed on July 1, 2023

## 4.3 Health

Under Vietnamese medical regulations, the term “*congenital sex*” refers to people who are born with real anatomical differences that are visible to the naked eye or under examination. Decree 88/Np-CP by the Vietnamese Government stipulates that: Congenital sex defect means abnormalities in the genitalia of a person right at birth, which is expressed in one of the following forms: female pseudo hermaphroditism, male pseudo hermaphroditism or one hermaphroditism. The definition of hermaphroditism according to the Government decree is:

- Male pseudo hermaphroditism (the genitalia have a small penis, the testis can or cannot be touched but can be seen by ultrasound or endoscope, there is no uterus nor ovary; the sex chromosome is XY or the testis differentiation gene is tested positive or both).
- Female pseudo hermaphroditism (the genitals have an enlarged clitoris resembling a penis but testis cannot be touched, and the uterus and ovary but non testis can be seen by ultrasound or endoscope; the sex chromosome is XX).
- True hermaphroditism (the genitalia are indistinguishable as male or female. The gonads have both testis and ovary; the sex chromosome can be any of the forms: XX/YY; XXX/XY; XX/XXXXY or other forms of chromosome already identified as true hermaphroditism)<sup>24</sup>.

One of the international articles of the National Children’s Hospital (under the MOH) in the period 2012-2015, used the definition of Disorders of sex development (DSD) to define intersex status. DSD is defined as a congenital condition in which the development of chromosomal, gonadal, or anatomical sex is atypical<sup>25</sup>.

In Decision No. 4128/QD-BYT dated July 29, 2016, on approval of the national guidelines for reproductive health services by MOH, the section “Malformations in newborns that need an early intervention” defines ‘Genitourinary malformation’s as: Ambiguous sex, testicular torsion, undescended testicle (in term infants)<sup>26</sup>.

Through all these definitions, the state problematizes intersex bodies by referring to intersex variation or traits as an ‘abnormality’ and the medical practitioners also pathologize intersex persons through the diagnosis of ‘DSD’. This administrative guideline such as Decree 88/2008 is also problematic on many levels when it stigmatizes the depiction of intersex variations, or so-called ‘ambiguous genitalia’, as abnormalities that should be surgically corrected. This is at stark odds with a growing body of international human rights evidence that such surgeries are typically performed before an intersex person is old enough to give informed consent.

<sup>24</sup> Article 5, Decree 88/NP-CP: <https://luatminhkhue.vn/en/decree-no-88-2008-nd-cp-dated-august-05--2008-of-the-government-on-sex-reassignment.aspx>

<sup>25</sup> Nga, P.T., Dung, V.C., Thao, B.P. et al. The pattern of disorders of sex development in Vietnamese children. *Int J Pediatr Endocrinol* 2015 (Suppl 1), P115 (2015). <https://doi.org/10.1186/1687-9856-2015-S1-P115>. Viewed on 19, July 2023

<sup>26</sup> Full text in Vietnamese version: [https://file.medinet.gov.vn/Data/soytehcm/suckhoesinhsan/Attachments/2017\\_8/dvcsskss\\_48201712.pdf\\_p.216](https://file.medinet.gov.vn/Data/soytehcm/suckhoesinhsan/Attachments/2017_8/dvcsskss_48201712.pdf_p.216) Accessed on 20 July 2023.

### Lack of knowledge about SOGIESC and understanding of intersex

According to the latest medical regulations, one of the obligatory requirements for medical practitioners working in Vietnam is to continuously update medical knowledge <sup>27</sup>. However, with the medical content related to intersex status, Vietnam's medical sector still only has procedural guidance from 2008 (Decree 88/2008), which has existed for more than 15 years. Until 2019, there was only an extension to private hospitals with surgery and obstetrics or paediatrics departments that could conduct the 'gender reassignment' surgery, with no further updates on intersex knowledge and intersex people's rights.

In 2013, MoH allowed three hospitals in Vietnam, which are Ho Chi Minh Children's Hospital 2, Vietnam National Children's Hospital, and Viet Duc Hanoi Hospital, to qualify for sex reassignment for people with 'congenital sex defects or of unidentifiable sex'. According to statistics of the MoH, as of 2008 in Vietnam, there were about 7,000 people who were born with congenital sex defects or of unidentifiable sex.

Until 2018, the conditions for hospitals to conduct medical interventions for gender reassignment have been expanded, when meeting the following conditions:

- Being a public hospital specializing in surgery, obstetrics, paediatrics, provincial, central, or
- Private hospitals with surgery and obstetrics or paediatrics departments.
- To be approved by the competent authorities for the scope of professional activities on medical intervention for gender reassignment.

<sup>27</sup> "Continuous updating of medical knowledge means the supplementation of medical knowledge and skills relevant to the scope of practice as prescribed by the Minister of Health" (Point 14 Article 2 Law on Medical Examination and Treatment 2023).

Indeed, many Vietnamese medical professionals are not even aware of the term “intersex” and still associate those with intersex characteristics with having “disabilities at birth.” “Intersex” is also often mistaken as being synonymous with “transgender,” which is more about gender identity. That’s why doctors often advise parents to perform surgical and other medical interventions on intersex newborns and children, to make their body (seemingly) conform to male or female characteristics. In most cases, such interventions are not medically necessary and can have extremely negative consequences on intersex children as they grow older. This violates one of the principles of medical practitioners in Vietnam when providing medical examination and treatment, as *“Infringing upon a patient’s rights”* (Point 1 Article 7 ‘Prohibited acts in medical examination and treatment activities’ - Law on Medical Examination and Treatment 2023<sup>28</sup>).

## 4.4 Education: Education rights and bullying in school with gender non-conforming students

According to an assessment by Kaleidoscope Australia Human Rights Foundation and iSEE, Vietnam, currently, there is no anti-discrimination legislation to protect sexual and gender minority students as well as gender non-conforming students from discrimination and violence in educational settings<sup>29</sup>.

A recent study on school violence based on gender with LGBTI+ students (UNESCO, 2015) in 20 countries in Asia, including Vietnam, showed that 70% of responses experienced verbal bullying (name calling and teases), the highest compared to other countries in the survey being Australia, China, Hong Kong, Japan, Korea, Thailand<sup>30</sup>. In Vietnam, results of the mass survey ‘Is it because I am LGBT’, iSEE 2016 showed that more than half of responses reflect that these children had been bullied by friends, and nearly a quarter of students had been harassed, bullied by teachers, and school officials because they were considered to be LGBT.

<sup>28</sup> Full text in English version, Law on Medical Examination and Treatment 2023, available at: <https://english.luatvietnam.vn/law-on-medical-examination-and-treatment-no-15-2023-qh15-242305-doc1.html> Accessed on July 23 2023

<sup>29</sup> Submission to the UN Universal Periodic Review regarding the protection of the rights of LGBTI persons in Vietnam, 32nd session of the Universal Periodic Review (January–February 2019), Compiled by the Kaleidoscope Human Rights Foundation and iSEE: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=5972&file=EnglishTranslation>, Accessed on July 23 2023.

<sup>30</sup> UNESCO, Reaching Out, Preventing and Addressing SOGIE related school violence in Vietnam, Volume II, 2016, <https://tvlgbt.s3.ap-southeast-1.amazonaws.com/1b609143-c59a-43aa-8811-f25b0277fb76.pdf>

Bullying can directly and immediately result in physical injury and significant emotional distress. Findings on studies above point out that gay, bisexual and gender non-conforming male and male-to-female transgender (GBT) students faced highly significant increases in risk for all kinds of violence compared to lesbian, bisexual and gender non-conforming female and female-to-male transgender students. This appeared to be influenced by factors including perpetrator motivations of punishing ‘feminine’ expressions on male bodies, and increased respect for ‘masculine’ expressions on female bodies – within the context of a Confucian culture that broadly privileges masculinity. Intersex people share some common concerns with LGBT+ people due to shared experiences of harm arising from dominant societal sex and gender norms. Moreover, intersex students may face direct discrimination at school and in further education if their gender expression, stature or other parts of their appearance do not conform with the female or male norm.

The Vietnamese Ministry of Education and Training has not yet acknowledged any form of school violence based on GIESC, nor has any official data reports of school bullying and violence against LGBTI+ students. In 2021, Vietnam’s MOET produced guidelines for an LGBTQ+ inclusive sex education curriculum, but it has not yet been implemented in schools <sup>31</sup>.

In the international context, homophobic bullying has been defined by UNESCO as:

“Homophobic bullying is a social and systemic phenomenon that occurs in particular kinds of institutions, including schools, colleges, universities and other places of learning. It involves clearly differentiated roles (e.g. victim, perpetrator, witness) and reinforces or creates power-based relationships and existing social norms, with victims selected on the basis of (negatively perceived and culturally defined) differences. Homophobic or transphobic bullying is learned behaviour. It represents one (among many) manifestations of violence and intimidation driven by prejudice. The sources of such prejudice are complex and multiple, including elements of the educational institution itself” <sup>32</sup>.

<sup>31</sup> Full Action Plan, MOET 2021: <https://luatvietnam.vn/chinh-sach/quyet-dinh-383-qd-bgddt-bo-giao-duc-va-dao-tao-216295-d1.html> Accessed on July 23 2023

<sup>32</sup> UNESCO: Review of Homophobic Bullying in Educational Institutions, 2012: <https://unesdoc.unesco.org/ark:/48223/pf0000215708>

The right to education is protected in international law, notably in the International Covenant on Economic, Social and Cultural Rights, and the CRC, ratified by Vietnam in 1982 and 1990, respectively<sup>33</sup>. The Law on Children 2016 incorporates and broadens the principles of the CRC, including the principles of “non-discrimination against children” and the prohibition of “stigma and discrimination against children on the grounds of personal characteristics, family circumstances, sex, ethnicity, nationality, belief and religion. The CRC specifies that education should be directed toward, among other objectives, “the development of the child’s personality, talents and mental and physical abilities to their fullest potential,” “the development of respect for human rights and fundamental freedoms,” and “the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.”<sup>34</sup>

Like other forms of school-related violence, violence based on SOGIE can occur in classrooms, playgrounds, toilets and changing rooms, around schools, on the way to and from school, and bullying online.

The quality and safety of toilet rooms/restrooms at schools is an obsession with students in Vietnam in general and LGBTI students in particular, especially in elementary and middle school students. Transgender or intersex students are more potential targets of discrimination and violence when using the toilet. Most toilet rooms do not have a separate compartment, without a door, and not separated from the next by partitions sufficiently high to assure privacy. Places where the student’s body becomes visible to others, such as toilets and changing rooms, are common areas of anxiety and reported harassment.

<sup>33</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 13; CRC, art. 28. In addition, the UNESCO Convention against Discrimination in Education, which Vietnam has not ratified, provides that states have an obligation to eliminate and prevent discrimination in education based on sex, among other grounds. Convention against Discrimination in Education, arts. 2, 3.

<sup>34</sup> Convention on the Rights of the Child, art. 29(1).



## 4.5 Hate Crime and Hate Speech

Intersex people often face discrimination and marginalization because their bodies do not conform to traditional binary understandings of male and female. The idea that there are only two distinct sexes, male and female, is a deeply ingrained gender norm in many societies, including Vietnam, which can lead to stigma and discrimination, hate speech and prejudice against intersex people.

Vietnamese law allows an individual to initiate a lawsuit against someone for defamation or sharing false information, but only when specific damages can be proven. The Penal Code 2017 criminalizes certain acts that can be considered hate speech such as *“inciting national, racial, ethnic, or religious hatred”* or *“publicly insulting or defaming an organization, a person, or a group of persons.”* However, these provisions do not specifically address hate speech based on sexual orientation, gender identity, or other characteristics.

While Vietnamese law does not explicitly prohibit hate speech based on sexual orientation or gender identity, some provisions in the law could be used to address such issues. However, enforcement of these provisions can be inconsistent, and there have been cases where LGBTI+ individuals have been subjected to hate speech without any legal recourse <sup>35</sup>.

The lack of a clear and specific definition of hate speech in Vietnamese law can make it difficult to hold people accountable for discriminatory or hateful speech directed towards marginalised groups, including LGBTI+ individuals. It can also contribute to a climate of intolerance and discrimination, and hinder efforts to address hate speech and promote equality and non-discrimination.

To address this issue of hate speech and discrimination based on sexual orientation, gender identity, and other characteristics, there have been calls for the Vietnamese government to develop clearer definitions and legal frameworks. This includes working with civil society organizations, legal experts, and other stakeholders to develop effective strategies for addressing hate speech and promoting equality and non-discrimination.

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<sup>35</sup> The article is about Vietnamese transgender singer Lynk Lee, who faced cyberbullying and body shaming after her first stage appearance since undergoing gender reassignment surgery. Several Vietnamese celebrities and influencers spoke out against the negative comments and defended Lynk Lee on social media: <https://tuoitrenews.vn/news/society/20200617/influencers-celebs-defend-vietnamese-transgender-singer-against-body-shaming/55132.html>. Accessed on July 21 2023



## 4.6 Gender Marker Registration at Birth

In Vietnam, when a child is born, the hospital where the birth takes place typically issues a certificate of live birth (*giấy chứng sinh*). This is the first unofficial document issued upon a baby's birth and is used for record-keeping and contains information such as the child's name, gender, date of birth, place of birth, the names of the parents and their address. The parents can then use the certificate of birth to obtain the official birth certificate (*giấy khai sinh*) from the People's Committees of communes, wards or district towns (Clause 1, Article 14 Law on Civil Status 2014). The section for 'gender' in the birth registration form is a required field and must not be left blank. The parents or guardians are expected to select one of the two gender options (male or female) for the newborn and record it in the birth registration form.

The Law on Civil Status 2014 does not specifically address the registration of gender for intersex individuals. However, it does provide that the determination of citizenship, ethnicity, and gender of a person whose birth is registered must comply with the law on Vietnamese nationality and civil law which only recognises the male and female gender.

If parents do not identify their children as male or female and choose to leave the gender field blank, they may encounter difficulties in obtaining the birth certification. However, this is not a common practice in Vietnam and may not be recognised by all institutions or government agencies and the relevant authorities will typically refer to other information provided in the other form (such as a birth document from the hospital) to determine the applicant's gender.

## 4.7 Legal Gender Recognition

*Personal rights specified in Vietnamese legislation are civil rights inherent to each natural person, which cannot be transferred to other persons unless otherwise provided for by other laws (Civil Code 2015).*

On 24 November 2015, Viet Nam approved a new Civil Code <sup>36</sup> which amends the 2005 Civil Code. Under the old Civil Code, Article 36 stated that “the re-determination of the gender of a person shall be performed in cases where his/her gender is affected with inborn defects or has not been properly shaped, which needs the medical intervention to clearly determine the gender”. After three years of establishing the Civil Code 2005, Vietnam has issued Decree No. 88/2008/ND-CP “On Sex Reassignment”. In 24 November 2015, the Vietnam National Assembly approved a new Civil Code which amends the 2005 Civil Code and maintains the spirit of Article 36: **Right to re-determine gender identity.** <sup>37</sup>

Vietnam had not implemented specific legal gender recognition procedures for intersex individuals. In Vietnam, legal gender recognition is generally based on a binary understanding of gender, allowing individuals to change their legal gender marker from male to female or vice versa through a process that requires medical documentation, including proof of sex reassignment surgery.

Under current Vietnamese law, intersex children who were recognized as having “congenital sex defects or of unidentifiable sex” at birth and underwent surgery to “normalize” their genitals to conform to their identified gender are allowed to change the gender marker on their birth certificate. Furthermore, while some intersex individuals may be able to amend their registered sex on civil documents such as ID cards and passports, this option is only available to those who were identified as intersex at birth (the term used is ‘diagnosed’) and who have undergone so-called “sex normalizing” surgeries to conform to dominant ideas of male or female bodies. This requirement for invasive and irreversible surgery violates the intersex person’s right to self-determination and bodily autonomy. Therefore, the current legal framework in Vietnam places significant limitations on the rights of intersex individuals to self-determination and bodily autonomy.

<sup>36</sup> Article 36, Amended Civil code 2015 stated that: An individual has the right to re-determine gender identity. The re-determination of the gender identity of a person is implemented where the gender of such person is subject to a congenital defect or has not yet been accurately formed and requires medical intervention in order to identify clearly the gender.

<sup>37</sup> Article 36: Right to re-determine gender identity

1. An individual has the right to re-determine his/her gender identity. The re-determination of the gender identity of a person is implemented where the gender of such person is subject to a congenital defect or has not yet been accurately formed and requires medical intervention in order to identify clearly the gender.
2. The re-determination of the gender identity of a person shall comply with regulations of law.
3. Each individual undergone re-determination of gender identity has the right and obligation to apply for change of civil status affairs as prescribed in law on civil status affairs and has the personal rights in conformity with the re-determined gender identity as prescribed in this Code and relevant laws.

In 2009, a teacher named Pham Le Quynh Tram became the first intersex person to be recognized by the law. However, in the beginning of 2013, the local authority at Binh Phuoc province spoke up in order to cancel the decision to recognize the gender of Quynh Tram, as they claimed there had been a violation during the administrative process<sup>38</sup>. They also wanted to discipline the staff directly involved in the case.

### Right to change gender marker and given name in Law on Civil Status (Luật Hộ tịch)<sup>39</sup>

Article 36 of the 2015 Civil Code allows a person whose gender has been redetermined to register for a change of their civil status information and have their personal rights adjusted to the reassigned gender in accordance with the Law on Civil Status and its procedures. This includes the right to change one's name, gender marker, and other personal information to reflect their gender identity. As per the Law, civil status events include birth, marriage, guardianship, parent and child recognition, civil status change and correction, ethnicity re-determination, civil status information addition and death. However, this article once again limits the right to self-identification of intersex people, because it continues to impose another strict condition that they must undergo medical intervention to change their gender marker.

### Legal consequences after gender reassignment

An individual after undergoing gender reassignment ends up undertaking a few obligations; such as changing or terminating several rights, obligations and responsibilities in some of the following legal situations:

- An individual who has undergone gender reassignment has the right to change their given name<sup>40</sup>. The changing of a given name shall not change or terminate the civil rights and obligations which were established in the former given name. This means that an individual who changes their given name due to gender reassignment will still be legally recognized as the same person with the same rights and obligations as before. They need to update legal documents such as identification cards, passports, and birth certificates to reflect their new name.

<sup>38</sup> The Ministry of Justice later on ordered a temporary break in the proceeding of cancelling this decision to consult with the Prime Minister.

<sup>39</sup> Full text in English version. Law on Civil Status, 2014, available at: <https://vbpl.vn/TW/Pages/vbpgen-toamvan.aspx?ItemID=11031#:~:text=Pursuant%20to%20the%20Constitution%20of,the%20Law%20on%20Civil%20Status.&text=Scope%20of%20regulation-,L.,state%20management%20of%20civil%20status> Accessed on 11 July 2023

<sup>40</sup> Right to change given names in Vietnam. According to Article 28 of the <https://lawnet.vn/vb/Bo-luat-dan-su-2015-48517.html>, an individual has the right to request a competent authority to recognize the change of a given name in any of the following cases: (...) Changing of given name of a person whose gender identity is re-determined or a transgender person'

- Even after undergoing gender reassignment, an individual is still entitled to inherit property and maintain a relationship with their parents under Vietnamese law. Gender reassignment should not affect an individual's legal rights and obligations in these areas.
- Undergoing gender reassignment may result in changes or termination of certain civil rights and legal obligations for an individual, for example:
  - Vietnamese law does not provide detailed regulations on adjusting the marital status of individuals who undergo gender reassignment surgery. It's important to note that Vietnam does not currently recognize same-sex marriage<sup>41</sup>, which can further complicate matters for intersex individuals who are married or in a civil partnership. For their new gender to be legally recognized, a married intersex person may be required to go through a divorce. This requirement can have significant consequences, including potential loss of custody of children, access to state benefits, and healthcare.
  - Military service: There is no law forbidding transgender people/ intersex people from serving in the Vietnam People's Army. If an intersex individual has legally recognized their gender as male, they would be required to fulfil their duty to serve in the military in accordance with Vietnamese Law on Military Service (which men from 18 to 27 are eligible for military service and women may register if they are members of the Ho Chi Minh Youth League).
  - Employment and non-discrimination protections: After gender reassignment, individuals may experience changes in employment-related matters. This includes issues related to workplace uniforms, restroom facilities, gender-specific health services and potential discrimination or harassment based on gender identity/gender expression.

<sup>41</sup> Clause 2, Article 8 in Law on Marriage and Family 2014:  
The State shall not recognize marriage between persons of the same sex.  
Full text of document in English version: <https://vietnamlawenglish.blogspot.com/2014/06/vietnam-marriage-and-family-law-2014.html> Accessed on June 8 2023

## 4.8 Access to Justice and Redress

Although Vietnam has a Law on Legal Aid in place, LGBTI individuals, including intersex people, are not eligible for legal aid under this law. The availability of legal aid in Vietnam is limited, and resources are often directed towards other marginalised groups. As a result, LGBTI individuals may not be prioritized for legal aid services. On the other hand, children are considered a priority group for legal aid services (Clause 3 Point 7, Law on Legal Aid 2017). Legal aid services can provide legal counsel and representation to intersex individuals and their families to help them understand their legal rights and options, as well as assist them in filing legal claims or complaints, if necessary. However, this desk review found that there are no known legal cases or documentation of intersex individuals' access to justice and right to redress in Vietnam.

In 2015, the World Health Organization, UNICEF, OHCHR, UN Women, UNAIDS, UNDP and UNFPA explained, that intersex children “are often subjected to cosmetic and other non-medically indicated surgeries performed on their reproductive organs, without their informed consent or that of their parents, and without taking into consideration the views of the children involved [...] As a result, such children are being subjected to irreversible interventions that have lifelong consequences for their physical and mental health.”<sup>42</sup> The statement called for accountability, participation, and access to remedies for intersex people.

<sup>42</sup> WORLD HEALTH ORGANIZATION, Eliminating forced, coercive or otherwise involuntary sterilization: An interagency statement (OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO) (2014), available at: [http://apps.who.int/iris/bitstream/10665/112848/1/9789241507325\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/112848/1/9789241507325_eng.pdf?ua=1) Accessed on June 8 2023

## 4.9 Data Collection: Addressing Research Gaps

There is little information available in the media regarding medical interventions for intersex individuals in Vietnam, and no official reports or studies have been published on the matter. In addition, the Vietnamese government doesn't collect any data or statistics on intersex individuals and the broader LGBT+ population.

In an interview, Mr. Doan Thanh Tung, the director of Lighthouse Social Enterprise, a non-profit organization that works for LGBTI+ rights, discussed the underrepresentation of intersex individuals in the LGBTI movement in Vietnam and stated:

*"The absence of intersex individuals in research and community dialogue is primarily due to their underrepresentation. This underrepresentation hinders the ability to gain a comprehensive understanding of the issues affecting intersex individuals, which in turn impedes effective communication and advocacy efforts. When intersex individuals are not involved in research or advocacy, their experiences and needs may not be accurately reflected, and the challenges they face may not be addressed effectively."*

## 4.10 Inclusion in Emergency Policy Response

There are no known NGO reports or academic research on the inclusion of intersex individuals in emergency policy responses. For example, in the last COVID-19 pandemic, the Vietnamese government's emergency response measures during the pandemic did not prioritize the provision of support to the wider LGBTI+ community, including intersex individuals.

# 5. Recommendations, Scope and Strategy for Implementation

- 5.1. Recommendations
- 5.2. Actions at Government Level



## 5.1 Recommendations

### 5.1.1. Awareness and Education

- **Issue:** There is a significant lack of awareness, and understanding on issues related to SOGIESC in Vietnam. This lack of education and awareness is particularly acute when it comes to issues faced by intersex individuals, including discrimination and human rights violations.
- **Recommendation:** Integrating a human rights approach to SOGIESC issues within the education system, with a particular focus on medical education and training for all doctors, can help to address the lack of education, awareness, and understanding of these issues in Vietnam and promote a more inclusive and supportive society for intersex individuals.
- **Scope:** Ministry of Education and Training, Ministry of Labour - Invalids & Social Affairs, Ministry of Health, Public and Private Universities, Vietnam Television.
- **Implementation:** To further address the lack of education, awareness, and understanding of issues surrounding (SOGIESC) in Vietnam, several steps can be taken:
  - a. **Develop education and training programs:** Education and training programs can be developed for healthcare providers, educators, and policymakers to increase their knowledge and understanding of intersex and SOGIESC issues. This can include training on how to provide culturally sensitive care and support to intersex individuals, as well as guidance on how to create inclusive policies and practices in their respective fields. In addition, capacity-building training can be provided to existing doctors to increase their knowledge and understanding of intersex healthcare and to provide them with the skills necessary, to provide appropriate care and support to intersex individuals.
  - b. **Increase public awareness:** Public awareness campaigns can be developed to increase understanding and acceptance of intersex individuals and SOGIESC issues among the general population in Vietnam. This can include media campaigns, community events, and social media outreach to promote positive messages and counter negative stereotypes and misinformation.
  - c. **Foster intersex-led advocacy:** Intersex-led advocacy can be supported and encouraged to ensure that the voices and experiences of intersex individuals are heard and are prioritised in efforts to promote education, awareness, and legal protections. This can include supporting the development of intersex-led organizations and providing resources and training to intersex individuals to help them become effective advocates and leaders.

### 5.1.2. Access to healthcare

- **Issue:** Intersex individuals in Vietnam face a significant challenge in accessing specialized medical care that upholds their bodily autonomy and self-determination, while also being free from pathologisation and coercion.
- **Recommendation:** The government should develop guidelines and standards of care for intersex healthcare, train healthcare providers on how to provide culturally sensitive care and support to intersex individuals, and provide funding and resources to support the development of specialized medical services and support programs for intersex individuals.
- **Scope:** Ministry of Health, Vietnam Medical Association, Vietnam Paediatric Association, Public and Private Universities.
- **Implementation:** To address the issue of limited access to specialised medical care for intersex individuals in Vietnam, the government should take several steps. These include:
  - a. Developing guidelines and standards of care for intersex healthcare: The government should develop guidelines and standards of care that prioritise intersex individuals' bodily autonomy and self-determination, while also ensuring that healthcare providers are equipped to provide culturally sensitive care and support.
  - b. Ensuring that intersex individuals have access to the necessary support and resources to make informed decisions about their bodies and identities, including access to counselling, peer support, and comprehensive information about all available medical and non-medical interventions.
  - c. Training healthcare providers: Healthcare providers should be trained on how to provide culturally sensitive care and support to intersex individuals. This can include providing education on the diversity of sex characteristics, guidance on how to provide informed consent for medical interventions, and training on how to recognise and address discrimination and human rights violations related to intersex healthcare.
  - d. Integrate a human rights approach on SOGIESC issues within the entire medical education system and in particular, training for all doctors.

### 5.1.3. Comprehensive legal or policy framework respecting the right to identity and prevent discrimination on the basis of sex characteristics

- **Issue:** Intersex persons in Vietnam may face discrimination and bias in the legal system, as well as in society more broadly. This can include discrimination in employment, education, and healthcare, as well as in access to justice and legal protections, due to the lack of awareness and understanding of their needs and experiences.
- **Recommendation:** There is a need for increased awareness and understanding of intersex issues in Vietnam, as well as for the development of legal and policy frameworks that recognize and protect the rights of intersex persons.
- **Scope:** Ministry of Justice, Ministry of Health, Ministry of Public, Ministry of Labour - Invalids & Social Affairs, Ministry of Education and Training, The People's Court, People Committee at the local level, Media channels.
- **Implementation:**
  - a. The Vietnamese health sector has never officially confirmed the globally recognised scientific knowledge about intersex status or intersex rights and has never prohibited acts trying to “cure” intersex status. This is extremely significant and urgent that the health sector must take the initiative to address this problem. Regulations and medical guidelines for intersex knowledge should be quickly issued to protect intersex rights.
  - b. It is necessary to develop legal and policy frameworks that explicitly prohibit discrimination based on sex characteristics and provide protections for intersex individuals. This can include advocating for changes to existing laws and policies, as well as promoting the development of new legal frameworks that explicitly protect the rights of intersex individuals and prohibit discrimination based on sex characteristics.
  - c. Removing the requirement for intersex people with ambiguous genitalia to undergo surgical procedures aimed at conforming their bodies to dominant notions of male or female bodies in order to have their gender recognized.
  - d. Develop regulation or policy enabling intersex people to amend their gender marker based on their self-defined gender identity, as confirmed by a witnessed medical council without requiring evidence of gender-affirming surgeries or a medical diagnosis.
  - e. Increase the number of mental health professionals who are trained in SOGIESC rights, so that more intersex persons and their families can access mental health care.

f. Expand the Definition of gender in the revised Law on Gender Equality 2006: The scope of protection provided by the Law on Gender Equality includes only the gender binary and does not recognize gender-diverse people (that is, people who identify with a gender or genders outside of male or female). Evidence shows, however, that many forms of discrimination against both cisgender people, particularly women, and sexual and gender minorities have similar roots- for example, gender bias, stereotypes regarding gender roles, and so on (van den Brink and Dunne 2018<sup>43</sup>). Therefore, adding SOGIESC inclusion in gender equality legislation will not only guarantee equal conditions and opportunities for sexual and gender minorities but also ensure gender equality between men and women.

## 5.2 Actions at Government level

The right to bodily integrity is recognized as a fundamental human right in several international human rights conventions and treaties. This right is an integral part of the broader framework of human rights that seeks to protect the dignity, autonomy, and physical well-being of individuals. As a member of the UN Human rights mechanisms, UN International conventions and UN Treaty Bodies, in line with human rights standards, Vietnam Government needs to translate these commitments on protecting human rights and promoting LGBTI rights into concrete actions, as per these comments of the UN Treaty Bodies:

- “States must adopt legislation to prohibit the performance of surgical or other medical treatment on intersex children unless such procedures constitute an absolute medical necessity, and until they reach an age at which they can provide their free, prior and informed consent.
- States must protect intersex persons from violence and harmful practices such as intersex genital mutilation.
- States must ensure that intersex people’s personal integrity and sexual and reproductive health rights are respected<sup>44</sup>.
- States have to comprehensively safeguard intersex children’s rights.”

<sup>43</sup> European Commission, Directorate-General for Justice and Consumers, Brink, M., Timmer, A., Dunne, P., et al., Trans and intersex equality rights in Europe : a comparative analysis, Timmer, A.(editor), Burri, S.(editor), Publications Office, 2018, <https://data.europa.eu/doi/10.2838/75428> Accessed on June 8 2023

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# 6. Way Forward

This report sheds light on the significant human rights violations faced by intersex individuals in Vietnam, related to their bodily autonomy, including pressure to undergo medical interventions that violate their rights to bodily autonomy and self-determination. The right to bodily integrity is fundamental to respecting and protecting the autonomy, dignity, and well-being of individuals. It emphasizes the principle that individuals have the right to make decisions about their own bodies and medical treatment, free from coercion, discrimination, or non-consensual interventions. Furthermore, intersex individuals in Vietnam often face difficulties in obtaining legal recognition of their gender identity, which can further exacerbate their experiences of discrimination and marginalization.

To address these challenges, it is necessary to develop a comprehensive legal or policy framework that explicitly prohibits discrimination on the basis of sex characteristics and respects the rights of intersex individuals to bodily autonomy, self-determination, and legal recognition of their gender identity. Education, awareness, and support for intersex individuals and their families are also crucial to reducing stigma and discrimination and creating a more inclusive and supportive society. With concerted efforts from policymakers, healthcare providers, educators, and the public, it is possible to protect and promote the rights and well-being of intersex individuals in Vietnam.

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## Appendix A

The term “trans” and its linked concepts of gender identity and expression are distinct from the term “intersex,” which is about sex variations in Vietnam

	<b>Right to gender redetermination (Intersex people)</b>	<b>Gender affirmation rights (transgender people)</b>
Sexual characteristics	Atypical genitalia (Ambiguous genitalia that is neither clearly male nor female)	Typical genitalia (obviously male or female biological sex characteristics)
Desired gender vs assigned gender at birth	Depends on the individual (can identify themselves as male, female, non-binary or satisfied with the current condition)	their gender, or gender identity, is different from the sex they were assigned when they were born
Desire for sex reassignment surgery	Depends on individual’s opinion	Depends on individual’s opinion
Regulations on sex reassignment surgery	Allow (Article 36, Civil code 2015); Decree 88/2008	Allow (Article 37 Civil Code 2015 but hasn’t come into effect);  Point 1 Article 4, Decree 88 Prohibited conducting sex assignment for persons who have become perfect in their gender.
Methods to ‘correct’ gender	There must be medical intervention	With or without medical intervention
After gender reassignment	The gender matches or does not match with the assigned gender	Gender different with assigned gender

## Appendix B

**The legal system of Vietnam has all the characteristics of a civil law tradition, which is essentially based on the written law, as following:**

### **Constitution**

The Constitution is promulgated by the National Assembly and is the basic legal normative document, having the highest legal validity in Vietnam. The Constitution is the ground for promulgating other legal normative documents, such as the Code and Law. All other documents must be consistent with the Constitution, and it is prohibited to promulgate legal documents contradictory with the Constitution.

### **Code and Law**

Code and Law have similar functions and are issued by the National Assembly. The main difference between Code and Law is that the governing scope of Code is usually broader. Accordingly, the Code includes the totality of legal norms governing social relations in one or more different fields, for example, the Civil Code, the Labour Code, Law on marriage and family, etc.

The promulgation of the Code/Law must undergo a stringent process (specified in the Law on Promulgation of Legal Documents); normally, this process includes formulating a law-making program; drafting laws; verification of the law project; public consultation; discussing, internalizing, revising, and approving the law program; law publication.

### **Decree**

Decrees issued by the Government usually detail the articles, clauses and points assigned in the Code and Law, stipulating specific measures to organize the implementation of the Code and Law.

In some cases where there are necessary issues within the competence of the National Assembly or Standing Committee of the National Assembly but they have not satisfied the conditions of formulating a Code/Law to meet the requirements of State management or socio-economic management, the Government also promulgates decrees to regulate these issues in case the National Assembly Standing Committee approved.

### **Circular**

Circulars are usually issued by Ministers and Heads of Ministerial-level agencies to set out articles, clauses in the Code, Laws and Decrees, as well as prescribe measures to perform the State management function of Ministers, Heads of Ministerial-level agencies (such as detailed regulations on procedures, forms).

## Official letters and other similar documents

Official letters and other similar documents are not legal normative documents, so they are not commonly used as a legal basis in courts. However, these documents contain specific directives and instructions of superior State agencies sent to lower State agencies, so in practice, lower State agencies still comply with these documents.

However, a Law adopted by the National Assembly is not able to be implemented without the guidelines on implementation issued by other competent state agencies. Consequently, the legal system of Vietnam is quite complicated because it includes 12 types of statutory documents issued by different competent agencies. These types of documents are defined as the sources of law if the content of these documents include legal norms.

In reality, Decrees and Circulars are the most important part of the legal system and have both positive and negative impacts on social development. In general, Government of Vietnam plays important role in legislative processes through the main areas as follows:

- Drafting the laws and ordinances.
- Providing guidelines on implementations of laws and ordinances.
- Providing specific actions to implement policies.
- Specify tasks, authority and organizational structures of Ministries and Ministerial level Agencies.
- Providing legal norms for applying the new issues which are not yet regulated by laws or ordinances (decree-laws). (Article 14, Law on Laws 2008).





Intersex Asia is an autonomous regional network of intersex-led organizations and individuals from Asian countries that work to support, educate and advocate for the rights and lives of intersex individuals and raise awareness on human rights violations and discrimination faced by intersex communities. It envisions a world where the beauty of intersex people is celebrated, and where intersex persons can love themselves and grow together as a community. It seeks to create a space for intersex people where they can come forward and act as a stakeholder of the global intersex rights movement.



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