

# Vietnamese Laws Governing the LGBT Community – Legal Regulations and Some Recommendations

NGUYỄN THỊ PHƯƠNG THẢO

Vietnam – Korea University of Information and Communication Technology, University of DaNang

---

## Abstract

It can be noticed that in any era, social life always has a certain diversity and richness. Expressions of emotions, affection, or sexual orientation are no exception to that rule. In the past, we almost exclusively referred to a society whose families were the union of one male and one female for the purpose of maintaining the race. At that time, the fact that a person loves someone of the same sex or desires to have a different sex is very strange, even considered sick. In fact, gay, bisexual and transgender (LGBT) is a phenomenon that has existed for a long time in society and is clearly portrayed in today's modern society. LGBT people are facing many challenges, such as: discrimination and violence from within the family; stigma, discrimination and violence in schools and workplaces; Experience poor health services in quality and quantity. Their rights are restricted in many areas of social life, which can be considered as disadvantaged groups in society. However, today, the LGBT community has grown stronger and stronger as more and more people "dare" to reveal their sexual orientation to others as well as with the development of science that has proven LGBT is completely normal. Accordingly, it is necessary to have legal mechanisms and institutions so that their rights are guaranteed.

---

Date of Submission: 07-01-2024

Date of acceptance: 20-01-2024

---

## I. Vietnamese laws in protecting LGBT.

**First, Vietnamese law recognizes gender transition.** The 2015 Civil Code has its own provisions for LGBT people. Specifically, the Code enshrined provisions for name change, gender reassignment and the right to gender reassignment. Accordingly, an individual will have the right to request recognition by the competent State authority for a name change when he or she has reassigned or has changed gender. And gender reassignment is also recognized by law as one of the human rights. Sex reassignment shall be carried out in accordance with the law. And after gender reassignment or sex change, that individual will have the right and obligation to register for change of civil status in accordance with the law on civil status; have moral rights consistent with the new gender as prescribed by law.

**Second, Vietnamese law does not prohibit marriage between people of the same sex.** In the past, the 2000 Law on Marriage and Family prohibited same-sex marriage. Specifically, in Clause 2, Article 8, the Law on Marriage and Family stipulates: "2. The state does not recognize marriages between persons of the same sex." However, the 2014 Law on Marriage and Family has changed when the current Law on Marriage and Family does not prohibit people of the same sex from marrying each other, nor does it recognize marriage between them. That means, if people of the same sex want to get married, they will not be registered at the competent authority, will not be issued a marriage certificate, and, of course, relations arising from the marriage of people of the same sex such as property, about the divorce,... nor will it be regulated by law. The marriage of these subjects will only be a de facto marriage, and legally this marriage will not exist. This is also considered a positive sign for homosexuals, as the law is very open to them. But in reality, it is also difficult to change the rules regarding LGBT people, because this will greatly affect other relationships, thereby giving rise to many cases that the law may not control.

**Third, the Adoption Law still allows LGBT people to adopt children.** The current Adoption Law states that a child may only be adopted by a single person or by two spouses. Husband and wife here are understood as both partners who satisfy the marriage conditions stipulated by the Law on Family Marriage: age, voluntariness, behavioral capacity, and must be registered at the competent authority. For same-sex people, because their marriage is not recognized by law, they will not be considered legal spouses, and will not be eligible for adoption under the law. However, if you want to adopt a child, one of the partners of the same-sex couple will have to apply for a certificate of singleness and adopt the child as a single person. In cases where transgender people have changed their gender, they have the right to change their moral rights in accordance with their new gender. And in this case, they can marry people of their opposite sex, and become a normal, legal couple under the law, and of course, they will still have the right to adopt.

**Fourth, LGBT people can be detained separately under the Law on the Execution of Criminal Sentences 2019.** Clause 3 of Article 30 of the Law on the Execution of Criminal Judgments provides: "3. *Inmates who are gay, transgender, and gender nonconforming may be held separately.*" Accordingly, people in the LGBT community will be able or not to be detained separately to ensure personal privacy rights.

## **II. Limitations in Vietnamese law in regulations for the LGBT community.**

Thus, the provisions of law related to the LGBT community are not fully stipulated in all legal documents, but the appearance in the provisions of some legal relations such as Civil, Criminal, Marriage and family mentioned above has created more open regulations for people belonging to the LGBT community, help them to be true to themselves and be recognized by everyone. However, in addition to the aforementioned aspects, ensuring the rights of the LGBT community in law making in Vietnam also has some limitations:

**First**, solid legal institutions to realize substantive gender equality have not been completed. Currently, the Law on Gender Equality has been promulgated for more than 17 years, but the concept of "gender equality" is still only encapsulated in two genders: men and women. Since then, it has also made the identification of cases of gender discrimination, gender-based violence and measures to promote gender equality tend to be simplistic and narrow-minded.

In addition, there is no specialized agency in charge of ensuring the rights of the LGBT community in the current law-making process. The LGBT community is still a group that is separated from the rest of the legally disadvantaged groups (such as women, children, the elderly, people with disabilities, etc.) even if their voices to protect legitimate rights and interests have not really been recognized by the agencies. Actors involved in the law-making process have not really paid attention to mechanisms to ensure the rights of the LGBT community.

**Second**, the integration of gender equality in law development still has many limitations, is still formal, and has not guaranteed quality. For example, in 2013, the National Assembly passed 17 laws, of which only 5 integrated gender equality, accounting for a low percentage, only 26.31%. Mainstreaming new gender equality is mainly implemented in draft laws drafted by the Ministry of Labor, War Invalids and Social Affairs, usually laws related to social security, including policies for women or direct gender bills. In addition, in some law projects, the implementation of gender equality mainstreaming with procedures and impact assessment reports on gender equality mainstreaming is also relatively sketchy. For example, the draft Law on Housing has not fully defined gender issues in the stage of research, preparation of dossiers, until verification, even, until the National Assembly discusses, gives opinions and then absorbs, explains, corrects and completes.

Not only that, the implementation of gender equality integration by competent agencies and coordination between agencies has not been really effective. Typically, the Ministry of Labor, War Invalids and Social Affairs is the state agency managing gender equality, but the agency itself only conducts a very narrow scope of assessment. Similarly, the Viet Nam Women's Union advocates gender assessment of all draft laws and requires gender impact assessment to be included in the dossier of all new bills; however, the Association has not fully provided constructive, comprehensive and substantive opinions on the draft and has not made recommendations from them. In addition, the social criticism activities of the Association are mainly carried out in the form of suggestions, lacking necessary critical dialogue with the agency in charge of drafting, appraisal and verification. The association has not held many consultations with experts, scientists ...

**Third**, there are no specific legal documents on the LGBT community. Despite its long history, the LGBT community has not received recognition of its gender identity and sexual orientation. Therefore, there is still no specific legal document that recognizes that this community has become a group vulnerable to rights infringement in the law-making process due to the lack of protection agencies and being "discriminated against", "beaten", "deprived of human rights" in practice. The draft Law on Transgender is in the process of being passed by the National Assembly. This will be considered a great step forward and the most important legal basis to protect this community, especially in the process of developing future bills.

The recognition of LGBT rights is very limited. The 2015 Civil Code recognizes the right to gender reassignment and gender reassignment in Articles 36 and 37. This is considered an important content for the LGBT community, but the regulations are only principled and very limited when only defined in a few cases. In the Law on Marriage and Family 2014, marriage between people of the same sex is not recognized, so when they have a wedding, it will not be legally meaningful, so it will not be protected by law. Thus, it can be seen that the recognition of the LGBT community is very little and very limited in their rights.

There are many reasons for the limitations in ensuring the rights of the LGBT community. However, the main reason stems from the legal mechanism that does not recognize gender identity in Vietnam. In addition, there are obstacles from objective factors of socio-economic conditions, lack of facilities, lack of professionally trained staff for propaganda work, legal education or inspection of the process of practical application of policies taking place unevenly nationwide, it is also one of the factors leading to rights abuses, discrimination and gender-based violence against the LGBT community. Deeply rooted prejudice against LGBT hinders ensuring the rights of the community in the law-making process in Vietnam. One of the worrisome issues is the

inaccurate perception of people with different gender identities and sexual orientations than the majority. Even this prejudice comes from LGBT people themselves. Moreover, the awareness of subjects involved in law-making is limited. In the process of participating in the development of the law, many competent entities are aware of the importance of ensuring rights for the LGBT community, but they do not fully understand and are not sure about issues related to this community such as gender, gender, sexual orientation, etc gender identity,... This will more or less affect the formulation of policies that ensure the rights of the LGBT community.

### **III. Some recommendations to improve the effectiveness of the law in protecting the LGBT community**

In order to improve the effectiveness of ensuring the rights of the LGBTQ+ community in law making in Vietnam, the author would like to suggest the following solutions:

First, it is necessary to further enhance the role of the Ministry of Labor, War Invalids and Social Affairs on gender issues and gender equality in policies, in particular, to legislate this task. Additional tasks for the Department of Gender Equality in Article 2 of Decision No. 1246/QĐ-LĐTBXH: not only to assist the Ministry in implementing the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) but also to advise the Ministry on anti-discrimination and ensuring the rights of the LGBT community as human rights and basic citizens' rights according to international human rights commitments to which Vietnam has actively participated.

Second, additional gender-specialized staff working in state agencies at all stages of law making. These subjects must be trained and acquire advanced knowledge and experience on gender concepts, sexual orientation and gender identity so that the rights of the LGBT community in the law-making process are not violated first and then guaranteed.

Third, improve the efficiency of consultation and opinion collection activities in the process of law making. For gender-impacted law projects, it is necessary to add regulations on controlling and responding to the opinions of LGBT people and LGBT organizations in Vietnam (iSEE; CCIHP; ICS...) in law-making activities. Sanctions should also include revised research to ensure that the input of the LGBT community and the organizations that represent them becomes meaningful after the consultation. In order to respect and promote the right of LGBT people and their organizations to counsel, a number of measures should be considered, such as: suspending the consultation procedure, delaying the decision until appropriate consultations take place; partial or complete cancellation of the decision due to non-compliance with the principle of consultation...

Fourth, it is necessary to complete and soon pass relevant draft laws and increase State budget expenditure for investment and research in law development in ensuring the rights of the LGBT community. One of the current important drafts related to this content is the draft outline of the Law on Gender Identity and the time to receive the Government's comments on this draft is until February 15, 2023. The draft Law on Gender Identity is a broader recognition of the draft Law on Transsexuality. In addition, it is necessary to amend and supplement Decree No. 88/2008/ND-CP on sex reassignment to add the "intersex" group as a special case to avoid infringement on the freedom of one's body. Gender budgeting is also an important issue, a process aimed at ensuring that all genders benefit equally from the national budget, while ensuring transparency, efficiency and accountability in public spending.

Fifth, learn international experiences on ensuring rights in law-making in Vietnam. Currently, the group of countries recognizing the equal rights of the LGBT community tends to increase, most of them are developed countries, have developed legislatures and have a lot of experience in the process of making laws to ensure the rights of this disadvantaged community. However, it should be noted that the study of international experiences must be consistent with fine customs, customs and socio-economic conditions of Vietnam.

Sixth, strengthen training for officials involved in law-making to ensure the rights of the LGBT community.

Seventh, strengthen cooperation between state agencies and groups/organizations representing the LGBT community in the law-making process.

Eighth, strengthen coordination among relevant agencies with ensuring the rights of the LGBT community in law making. In addition to the need for unified guidance from ministries and sectors, it is necessary to develop a multi-sectoral coordination mechanism in the development and implementation of laws related to promoting gender equality and preventing discrimination against the LGBT community, especially the provisions of relevant laws addressing "hot" issues that seriously violate the rights of the community LGBT. The coordination between concerned agencies and organizations does not stop at competent agencies in law-making activities but also takes into account the relationship with related agencies with their characteristics such as the Ministry of Labor, War Invalids and Social Affairs, Ministry of Health, Ministry of Education and Training,....

**IV. Conclusions**

Clearly, the LGBT community is a large group but still often subjected to the attacks of discrimination, violence and discrimination on the basis of gender common in society. The core reason stems from the limited work of ensuring the rights of the LGBT community in the legal system, especially in the law-making process. Therefore, it is necessary to have in-depth studies to propose recommendations for substantive gender equality, synchronous solutions to improve the quality of each stage in the law-making process in Vietnam and determine that ensuring the rights of the LGBT community is the responsibility of all actors.