

Research Article

TRANSGENDER RIGHTS
UNDER INTERNATIONAL HUMAN RIGHTS
LAW AND THE INCORPORATION PROCESS
IN VIETNAM:
BARRIERS, CHALLENGES
AND PATHS FORWARD

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ABSTRACT

Background: On 24 November 2015, during its 13th term, the National Assembly adopted the 2015 Civil Code, which introduced fundamental amendments concerning individual personal rights. Among the provisions that drew significant domestic and international attention was Article 37, which legalised gender transition procedures. This development marked a breakthrough in the recognition and protection of personal rights, particularly human rights, and positioned Vietnam as the 62nd country worldwide and the 11th in Asia to permit individuals to change their gender. Nonetheless, as gender transition remains a relatively new legal regulation, placed in the context of Vietnam, the recognition and implementation of this right for individuals still face numerous obstacles and challenges.

Methods: *The article employs a combination of different legal research methods, including analysis, historical inquiry, synthesis, evaluation, and comparative study. In addition, through the analytical-comparative method, the article situates the discussion within the framework of international standards, thereby providing an objective assessment of the compatibility of Vietnam's legislation with international norms. On this basis, the article lays the groundwork for proposals to enhance the domestic legal framework and outline a roadmap towards the full recognition of this right in the near future.*

Results and Conclusions: *The objective of this article is to clarify the legal and practical issues, as well as the perspectives and challenges that Vietnam is currently facing in the process of recognising and implementing individuals' right to gender transition. Based on this analysis, the article proposes several solutions for Vietnam in the near future. To achieve this objective, the article is structured around main parts: (i) the right to gender reassignment under international law and global trends; (ii) views and public opinions on recognizing transgender rights in Vietnam; (iii) Vietnam's efforts in establishing a legal framework to ensure transgender rights; and (iv) the challenges in recognizing transgender rights and implementing relevant laws in Vietnam.*

1 INTRODUCTION

Vietnam—a country located in Southeast Asia – was heavily influenced by the tradition and ideology of Confucianism, which became the 62nd country globally to recognise the legality of transgenderism. The regulation of the rights of transgender people in the Vietnam Civil Code¹ 2015 marked a significant step forward in legislative thinking. It showed an effort to realise fundamental human rights in both legal and practical aspects.

In the Universal Periodic Review (UPR) of the United Nations Human Rights Council (UNHRC) in 2016, Vietnam accepted the recommendation to consider "enacting anti-discrimination laws to ensure equal rights of all citizens, regardless of sexual orientation and gender identity."² To fulfil this commitment, Vietnam has taken crucial legal steps in protecting the rights of the LGBT community over the past five years. The 2014 Law on Marriage and Family removed the provision "prohibiting marriage between people of the same sex".³ The 2015 Criminal Code (amended in 2017) extended its protection to gay, bisexual and transgender women by acknowledging that transgender men and

1 Law of Vietnam No 91/2015/QH13 'Civil Code' (24 November 2015) <<https://vanban.chinhphu.vn/?pageid=27160&doid=183188&classid=1&typegroupid=3>> accessed 4 November 2025. [in Vietnamese]

2 'Universal Periodic Review – Viet Nam' (United Nations Human Rights Council, 2025) <<https://www.ohchr.org/en/hr-bodies/upr/vn-index>> accessed 4 November 2025.

3 Law of Vietnam No 52/2014/QH13 'On Marriage and Family' (19 June 2014) <<https://vanban.chinhphu.vn/default.aspx?pageid=27160&doid=175351>> accessed 4 November 2025. [in Vietnamese]

transgender women can be victims of rape.⁴ More importantly, the 2015 Civil Code, which took effect in January 2017, legally recognised transgender individuals in Article 37 for the first time as follows:

*“Gender reassignment shall be carried out in accordance with the provisions of law. Individuals who have undergone gender reassignment have the right and obligation to register changes to their civil status in accordance with the law on civil status, and are entitled to personal rights consistent with their reassigned gender as provided in this Code and other relevant laws.”*⁵

The gender of each individual is determined from the moment they are born and persists throughout their life. It is a long-standing concept that is deeply ingrained in the minds of most Vietnamese people. Therefore, it is difficult to accept that children born as male or female are of a different gender than their actual gender. Although society is increasingly open and visible, many people still strongly condemn and discriminate against transgender people. This refusal to recognise the rights of transgender individuals has caused many inadequacies in practice. Many people have undergone transgender surgery through illegal surgery in foreign countries, and face many difficulties when returning home without ID cards or with ID cards that do not match their external appearance. This makes them almost “outlaws” and subjects them to many disadvantages in health, employment, daily living, and social security; even in many cases, they are violated but not adequately protected.⁶

In Vietnam, there is currently no official data on the number of transgender people, but according to the statistics of the Institute for Social, Economic and Environmental Research (ISEE), the general estimate is for a rate of 0.5 - 1% (standard rate in the world), Vietnam has about half a million people who self-identify that their gender is not the same as the one they were born with.⁷ However, the country has not yet developed a specific law for transgender individuals, so its implementation has no clear legal basis. From a research perspective, as the right to gender transition has not yet been clearly or comprehensively regulated in Vietnam’s legal system, existing studies remain limited. Most have focused on analysing legal provisions or discussing the evolution of related regulations, rather than examining public attitudes toward this right. Analysing opinions from various social groups regarding its recognition and implementation is essential, as such insights provide

4 Law of Vietnam No 100/2015/QH13 ‘Criminal Code’ (27 November 2015) <<https://vanban.chinhphu.vn/?pageid=27160&docid=183216&classid=1&typegroupid=3>> accessed 4 November 2025. [in Vietnamese]

5 Law of Vietnam No 91/2015/QH13 (n 1) art 37.

6 Thi Hong Nhung Van, ‘On the Right to Gender Reassignment from the Perspective of Individual Personal Rights’ [2021, 20 August] Tạp chí Tòa án nhân dân điện tử <<https://tapchitoaan.vn/ban-ve-quyen-chuyen-doi-gioi-tinh-duoi-goc-do-quyen-nhan-than-cua-ca-nhan>> accessed 4 November 2025. [in Vietnamese]

7 ibid; ‘Gender Statistics in Vietnam 2022’ (National Statistics Office, 2023) <<https://www.nso.gov.vn/en/default/2024/08/gender-statistics-in-vietnam-2022/>> accessed 4 November 2025.

lawmakers with valuable social foundations for improving the legal framework. Furthermore, identifying existing barriers and proposing feasible solutions will help strengthen the effectiveness of this right's implementation.

From a practical perspective, the article focuses on elucidating the international legal framework and practical experiences that provide the foundational basis for examining the right to gender transition. Building on this foundation, it further analyses Vietnam's practical context, prevailing perspectives, and the challenges the country currently faces in recognising and implementing this right. To achieve this objective, the article is designed to clarify the following issues: (i) the right to gender reassignment under international law and global trends; (ii) views and public opinions on recognizing transgender rights in Vietnam; (iii) Vietnam's efforts in establishing a legal framework to ensure transgender rights; and (iv) the challenges in recognising transgender rights and implementing relevant laws in Vietnam.

2 METHODOLOGY

In this article, the authors employ a combination of different legal research methods, including analysis, historical inquiry, synthesis, evaluation, and comparative study. Given the novelty of the subject matter and the challenges Vietnam faces in gradually implementing this right, the authors employ extensive historical and analytical methods to help readers better understand the social context and prevailing perspectives on this issue. In addition, through the analytical-comparative method, the article situates the discussion within the framework of international standard, thereby providing an objective assessment of the compatibility of Vietnam's legislation with international norms, especially with the international legal instruments as the Universal Declaration of Human Rights 1948 (UDHR), the International Covenant on Civil and Political Rights 1966 (ICCPR), the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), the Declaration on Sexual Orientation and Human Rights 2005, etc. Besides, the article analyses and discusses several models of gender transition recognition worldwide, thereby providing a more practical basis and valuable experience for proposing an appropriate recognition model for Vietnam. On this basis, the article lays the groundwork for proposals to enhance the domestic legal framework and establish a roadmap towards the full recognition of this right in the near future.

3 THE RIGHT TO GENDER REASSIGNMENT UNDER INTERNATIONAL HUMAN RIGHTS LAW AND TRENDS OF COUNTRIES

In international human rights law, the legal basis for this right is laid out in the United Nations Charter (1945),⁸ which affirms the equality in dignity and rights of all individuals, without discrimination. UDHR states in Article 1 that “all human beings are born free and equal in dignity and rights”, while Article 2 stipulates that everyone is entitled to fundamental rights and freedoms “without distinction of any kind...”.⁹ Although the UDHR does not directly mention “sexual orientation” or “gender identity”, the principle of equality and non-discrimination has provided an essential legal basis for the protection of the rights of transgender people. Articles 2 and 26 of ICCPR require member states to ensure equality before the law and to protect all individuals against all forms of discrimination, including on grounds related to “sex”.¹⁰ The modern approach interprets “sex” to cover gender identity, thereby creating an international legal basis for the recognition of the right to gender reassignment. At the same time, ICESCR guarantees all individuals equal access to health, education, employment, and social security without discrimination.¹¹ This provision is significant for transgender people, who often encounter barriers to accessing health services (such as hormonal treatment or gender confirmation surgery) as well as other social rights.

The first joint statement mentioning sexual orientation at the Commission on Human Rights (2005), along with the Joint statements of 2006, 2008, and 2011, have emphasised the need to end violence and discrimination based on sexual orientation and gender identity.¹² Notably, the United Nations Human Rights Council has adopted Resolutions on “Human Rights, Sexual Orientation and Gender Identity” (in 2011 and 2014).¹³ For the first

8 Charter of the United Nations (26 June 1945) art 55(c) <<https://www.un.org/en/about-us/un-charter>> accessed 4 November 2025.

9 UNGA Resolution 217 A(III) ‘Universal Declaration of Human Rights’ (10 December 1948) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 4 November 2025.

10 UNGA Resolution 2200A (XXI) ‘International Covenant on Economic, Social and Cultural Rights (ICESCR)’, ‘International Covenant on Civil and Political Rights (ICCPR)’ (16 December 1966) <[https://undocs.org/en/A/RES/2200\(XXI\)](https://undocs.org/en/A/RES/2200(XXI))> accessed 4 November 2025.

11 *ibid*, ICESCR.

12 UNCHR, ‘Joint Statement on Sexual Orientation and Human Rights’ (March 2005) <<https://arc-international.net/global-advocacy/sogi-statements/2005-joint-statement/>> accessed 4 November 2025; UNHRC, ‘Joint Statement on Sexual Orientation and Gender Identity’ (1 December 2006) <<https://arc-international.net/global-advocacy/sogi-statements/2006-joint-statement/>> accessed 4 November 2025; UNGA, ‘Joint Statement on Sexual Orientation and Gender Identity’ (18 December 2008) <<https://arc-international.net/global-advocacy/sogi-statements/2008-joint-statement/>> accessed 4 November 2025; UNHRC, ‘Joint Statement on the Rights of LGBT Persons’ (22 March 2011) <<https://2009-2017.state.gov/r/pa/prs/ps/2011/03/158847.htm>> accessed 4 November 2025.

13 UNHRC Resolution 17/19 ‘Human Rights, Sexual Orientation and Gender Identity’ (17 June 2011) <<https://docs.un.org/en/A/HRC/RES/17/19>> accessed 4 November 2025; UNHRC Resolution 27/32 ‘Human Rights, Sexual Orientation and Gender Identity’ (26 September 2014) <<https://docs.un.org/en/A/HRC/RES/27/32>> accessed 4 November 2025.

time, the international community publicly affirmed that acts of discrimination against the LGBT community are violations of human rights. The United Nations High Commissioner for Human Rights has recommended that countries should: (i) support legal recognition of the desired gender of transgender people; (ii) provide identity documents consistent with the new gender and name; and (iii) ensure the right to access health care, education, and employment in a non-discriminatory environment.¹⁴

It can be seen that the right to gender transgender is indirectly but clearly recognised in the international framework on human rights. Although there is no specific international treaty on gender reassignment, the broad interpretation of the provisions on equality and non-discrimination in the core international legal instruments of the United Nations has created a global legal framework with orientation and political-moral binding, promoting countries to recognise and protect this right. Thus, international law not only recognises the right to gender reassignment as a legitimate personal need but also considers it an essential element in ensuring human dignity, equality before the law, and access to basic social services. This requires countries to internalise and promulgate rules and specific administrative procedures to recognise the legal gender of transgender people, thereby ensuring that they are treated equally and respected in social life.

Regarding the model of recognition of gender transition in the world, countries often follow one of the following basic models:

First, the self-determination model allows individuals to freely change their legal gender through administrative procedures, without requiring medical certification or surgery. This model is applied in Ireland, Argentina, Norway, and Malta. This model is considered the most progressive because it is consistent with human rights and personal dignity.¹⁵

Second, the medicalised/conditional model requires individuals to satisfy strict conditions such as a diagnosis of gender disorder, surgery, or sterilisation, or court approval. Japan and South Korea are typical examples, and this model is often criticised as violating human rights.

Third, the hybrid model combines self-identification with some additional conditions, often applying simple administrative mechanisms for adults but requiring consultation or medical supervision for minors. Sweden and Germany have recently adopted this model to strike a balance between personal freedom and state control.¹⁶

14 OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (2nd edn, UN 2019). doi:10.18356/9789210023542.

15 European Commission, *Legal Gender Recognition in the EU: The Journeys of Trans People towards Full Equality* (European Union 2020). doi:10.2838/085419; Stefano Osella and Ruth Rubio-Marin, 'Gender Recognition at the Crossroads: Four Models and the Compass of Comparative Law' (2023) 21(2) *International Journal of Constitutional Law* 574. doi:10.1093/icon/moad045.

16 'Sweden Passes Law Lowering Age to Legally Change Gender from 18 to 16' *The Guardian* (London, 17 April 2024) <<https://www.theguardian.com/world/2024/apr/17/sweden-passes-law-lowering-age-to-legally-change-gender-from-18-to-16?utm=>> accessed 4 November 2025.

Fourth, in the Middle East and North Africa, most countries lack a clear framework for recognising changing gender identities. The rare cases often require courts or medical boards with strict surgical conditions, heavily influenced by religious norms.¹⁷ In many African countries, transgender people even face laws that criminalise homosexual relations, and a complete lack of legal recognition mechanisms, leading to the exclusion of transgender people from the system that protects fundamental human rights.¹⁸

Lastly, the restrictive/prohibitionist model is a prominent example in several countries. The most prominent one is Russia. In 2023, Russia issued a law that prohibits gender reassignment surgery and medical treatments, prevents gender change on documents, and prohibits transgender people from adopting children, effectively excluding them from the legal system.¹⁹

Globally, there is a clear division between models that recognise the right to gender reassignment, ranging from progressive self-identification-based systems to medicalized or hybrid models, and even systems of absolute restriction. While the general trend is to expand legal recognition, this progression presents numerous cultural, legal, and social challenges. Vietnam is actively developing and strengthening its legal framework on gender reassignment. Reviewing the country's position is therefore essential to identify opportunities, address challenges, and determine appropriate directions for domestic legal reform.

4 VIEWS AND PUBLIC OPINIONS ON RECOGNISING TRANSGENDER RIGHTS IN VIETNAM

Ensuring transgender rights is the foundation for honouring the right to self-determination, allowing people with gender identities other than their current biological sex to live according to the gender they prefer. However, because transgender identity is a legal and

17 Nora Noralla, '2023 Was a Bad Year for LGBTQ+ Rights in the MENA Region' (*The Tahrir Institute for Middle East Policy*, 4 June 2024) <<https://timep.org/2024/06/04/2023-was-a-bad-year-for-lgbtq-rights-in-the-mena-region-2024-is-set-to-be-even-worse/>> accessed 4 November 2025.

18 Mariel Ferragamo and Kali Robinson, 'Africa's Struggle Toward Inclusive LGBTQ+ Laws' (*Council on Foreign Relations*, 20 September 2023) <<https://www.cfr.org/article/africas-struggle-toward-inclusive-lgbtq-laws?utm=>> accessed 4 November 2025; 'Morocco' (*OutRight International*, 2024) <<https://outrightinternational.org/our-work/southwest-asia-and-north-africa/morocco?utm=>> accessed 4 November 2025.

19 'Vladimir Putin Signs Law Banning Gender Changes in Russia' *The Guardian* (London, 24 July 2023) <<https://www.theguardian.com/world/2023/jul/24/vladimir-putin-signs-law-banning-gender-changes-in-russia?utm=>> accessed 4 November 2025; 'Country Policy and Information Note: Russia – Sexual Orientation and Gender Identity and Expression, June 2025' (*Government UK*, 23 July 2025) <<https://www.gov.uk/government/publications/russia-country-policy-and-information-notes/country-policy-and-information-note-sexual-orientation-and-gender-identity-and-expression-june-2025-accessible?utm=>> accessed 4 November 2025.

social issue that is inextricably linked to human rights, the recognition of this right has long sparked heated controversy in countries such as Vietnam.²⁰

In Vietnam, research on transgender people is just beginning and starting cautiously, with many bottlenecks, which significantly limit the social life of transgender people. One of the fundamental reasons for these limitations is that the State does not have enough legal framework for the rights of transgender people. National Assembly (NA) delegate Nguyễn Anh Trí, head of the drafting committee and former director of the Central Haematology and Blood Transfusion Institute, has sought public opinion on the drafted Gender Transition Law. In his opinion, the completion of the law on gender reassignment is consistent with the Party's policies and guidelines, as well as the new situation. He also stated that the law's implementation aims to raise community and societal awareness that gender reassignment is not a disease or mental disorder, but rather a deviation in behaviour, perception, and lifestyle. That it must be respected by law as a category of human rights in a civilised society, and that transgender people should have positive attitudes and behaviours to integrate into society. At the same time, it reflects the magnificent humanitarian principles of the Socialist Republic of Vietnam, including the protection of vulnerable populations and the commitment to leaving no one behind.²¹

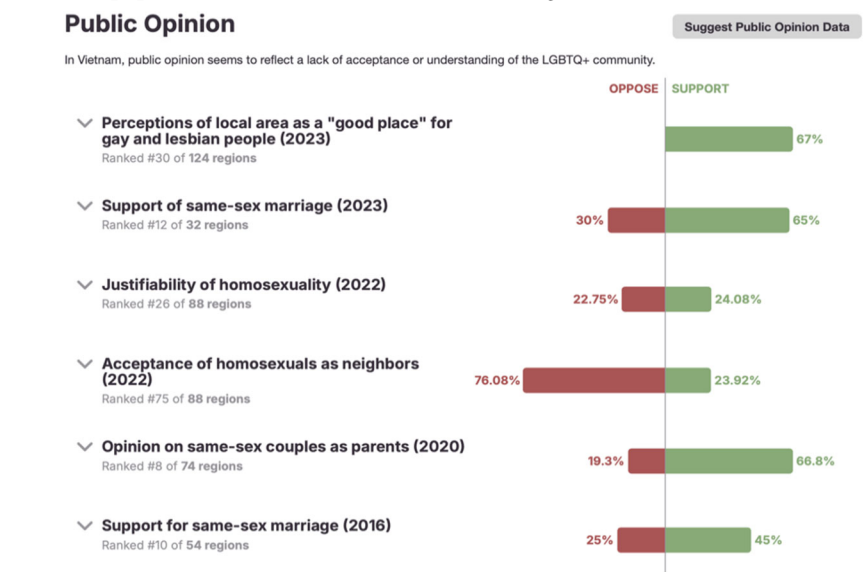


Figure 1. Public Opinion in Vietnam²²

20 Thi Hoai Thuong Mac, 'Recognizing the Issue of Gender Reassignment in International Human Rights Instruments' (2022) 5 Tạp chí nhân quyền Việt Nam 29. [in Vietnamese]

21 Hung Minh, 'Changing Public Awareness, Ensuring Citizens' Right to Gender Reassignment' (*National Assembly of Vietnam: Electronic Information Portal*, 12 May 2023) <<https://quochoi.vn/tintuc/Pages/tin-hoat-dong-cua-quoc-hoi.aspx?ItemID=75738>> accessed 4 November 2025. [in Vietnamese]

22 'LGBT Rights in Vietnam' (*Equaldex*, 2025) <<https://www.equaldex.com/region/vietnam>> accessed 4 November 2025.

The submission of proposals by National Assembly deputies for the development of laws is an exercise of the right to the legislative initiative as prescribed by the Constitution (Article 84), the Law on the Organisation of the National Assembly (Article 29), and the Law on the Promulgation of Legal Documents (Article 33).²³ However, up to now, there are still many conflicting views on transgender people in general and on recognising and ensuring the rights of transgender people in particular in Vietnam.

4.1. Is Transgenderism a Personal Right?

When the Ministry of Health was drafting the Draft Law on Gender Transition, there were many differing views on whether it should be referred to as a "right" or an "event", "transgender" or "gender change".²⁴

The first line of opinion said that transgender is not a need and is not everyone's right, but only for those who satisfy certain conditions as prescribed by law.²⁵ Therefore, using the word "right" to attach to the phrase "transgender" is inappropriate. The title of Article 37 was "right of transgender", meaning everyone could own it, and anyone could perform a gender change.

The second line of opinion asserts that gender change is a fundamental right of an individual under the provisions of the 2015 Civil Code.²⁶ Many Vietnamese researchers agree with this view and gave their agreement based on the following reasons:²⁷

(i) *Gender change is an objective need of transgender people.* It is from these objective needs that fundamental human rights are formed. From a human rights, individuals have the right to life. The right to transgender is a new citizen's right recognised by the 2015 Civil

23 Constitution of the Socialist Republic of Vietnam (28 November 2013) <<https://vanban.chinhphu.vn/?pageid=27160&docid=171264&classid=1&typegroupid=1>> accessed 4 November 2025. [in Vietnamese]; Law of Vietnam No 57/2014/QH13 'On the Organisation of the National Assembly' (20 November 2014) <<https://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=178126>> accessed 4 November 2025. [in Vietnamese]; Law of Vietnam No 64/2025/QH15 'On Promulgation of Legal Documents' (19 February 2025) <<https://vanban.chinhphu.vn/?pageid=27160&docid=213327&classid=1&typegroupid=3>> accessed 4 November 2025. [in Vietnamese]; Minh (n 21).

24 Thi Anh Thu Nguyen, 'Discussing the Right to Gender Reassignment and Some Suggestions for the Draft Law on Gender Reassignment' [2021, 5 January] Tạp chí điện tử Luật sư Việt Nam <<https://lsvn.vn/ban-ve-quyen-chuyen-doi-gioi-tinh-va-mot-so-gop-y-cho-du-thao-luat-chuyen-doi-gioi-tinh-a6673.html>> accessed 4 November 2025. [in Vietnamese]

25 This is the opinion we received through a number of seminars and conferences, including the academic talk "Discussing new contents of the 2015 Civil Code with members of the editorial team" of the Faculty of Civil Law -Hanoi Law University, held on January 4, 5, 2017. These opinions were expressed in direct discussion, so we can only describe this opinion without citing the source.

26 Thi Giang Le, 'The Right to Transgender: Personal Rights in the Civil Code 2015' (2016) 14 Kiểm sát 38. [in Vietnamese]

27 Van (n 6).

Code. This is a human right originating from certain foundations: *First*, individuals have the right to live with their true gender; *second*, an individual's gender is not only determined in civil status documents but also must ensure the biological characteristics of gender (characteristics, positions, roles of men and women in all social relationships); *third*, it is the legal basis for individuals to exercise their statutory rights in accordance with their true gender.²⁸

(ii) *According to the first interpretation*, it is contended that “since being transgender is not a universal need and not everyone has the right to change gender, the term ‘right’ should not be used.” This argument misconstrues the nature of personal rights under the Civil Code. The universality of a right does not depend on its exercise by all individuals but on its legal recognition and protection. For example, Article 36 of the 2015 Civil Code recognises the right to re-determine gender identity for persons born with congenital defects or indeterminate gender. Although not exercisable by everyone, this remains a legally protected personal right.²⁹

(iii) *The failure to attach the word “right” to gender change in Article 37 creates inconsistent terms*. Both the title of Section 2 and the titles of the remaining 14 Articles have the word “right”, so the removal of the word “right” in Article 37 makes it inappropriate to place this article in Section 2.³⁰

Based on the above analysis, the authors believe that it is necessary to attach the word “right” to Article 37, so that the name of this provision should be “right of transgender individuals”. At the same time, through these analyses, it can be seen that, in essence, transgender is one of the objective needs of people. If viewed from a natural perspective, it is one of the fundamental human rights; however, changing one’s gender is a personal right from a legal perspective.

4.2. What are the Conditions for Being Recognised as a Transgender Person?

According to Article 2(2) of the draft of Law on Gender Reassignment (the Draft of 15 January 2018), a transgender person is a person who has received a medical intervention to change his/her sex from male to female or from female to male. At the same time, Chapter II of the Draft specifically notes the conditions for individuals requesting sex change, including (i) having a biologically complete sex drive; (ii) having a psychological examination according to the standard table and being certified by a psychologist and

28 Van Tien Nguyen, ‘The Right to Transgender is Human Right’ *Báo điện tử Pháp Luật thành phố Hồ Chí Minh* (Ho Chi Minh, 4 February 2017) <<https://plo.vn/quyen-chuyen-doi-gioi-tinh-la-quyen-con-nguoi-post423287.html>> accessed 4 November 2025. [in Vietnamese]

29 Van Hoi Nguyen (ed), *Improving the Law on Gender Reassignment in Vietnam* (Công an nhân dân 2020). [in Vietnamese]

30 Le (n 26).

psychiatrist about the desire to have sex other than the completed biological sex and have total active legal capacity; (iii) being 18 years or older; (iv) being single.

Regarding the age of transgender individuals, the Draft recognises that individuals from 16 to under 18 years old, if confirmed by a medical examination and treatment facility, have excessive gender dysphoria, can undergo medical intervention by using sex hormones. This treatment requires the consent of the father, mother or guardian. Those who are eighteen years of age or older may select from the following medical intervention techniques to change their gender: (i) using sex hormones; (ii) undergoing breast and genital surgery; (iii) undergoing complete surgery to remove organs with reproductive functions associated with the old sex; (iiii) combining surgery and sex hormone use; or (iv) other methods that are acceptable for Vietnam and recognised by other countries.

In addition, the Draft also recognises other conditions, such as:

- (i) having received legal advice according to the provisions of this Law;
- (ii) being capable of performing civil acts, as only individuals with civil behavioural capacity have the full awareness to express their voluntary will in requesting medical intervention for gender change;
- (iii) considering the individuals' marital status through two options: Option 1 applies to single persons; Option 2 allows individuals to request medical assistance to change gender without disclosing the requester's marital status. Option 1 is more likely to be approved as allowing a married person to change their gender could result in two people of the same sex having a legally recognised marriage. This goes against the present regulations of the Vietnamese Law on Marriage and Family, which states in Clause 2, Article 8 that "the State does not recognise marriage between people of the same sex"; and
- (iv) not subject to a suspended sentence, non-custodial reform, or additional criminal penalties such as a ban on leaving the place of residence, and having had their criminal record erased.

With the revisions made to the Draft on 5 December 2023, it is now clear that most of the new regulations have a legal or practical basis. Even so, there remain disagreements over the suitability of the Draft from, particularly the provision that surgery on the breasts, genitalia, and other reproductive organs associated with the former sex is not required for those seeking medical intervention to change their gender.

The first view point argues that "*transgender is a surgery to change the external and internal genitalia and treat sex hormone replacement.*"³¹ Thus, transgender is only recognised for those who perform surgery to change the internal and external genitalia. That is, medical intervention to change sex must be carried out holistically. For example, Le Dieu Linh states

31 Minh Tuan Nguyen, *Transgender for People Suffering from Gender Identity* (Vietnam Lawyers' Association, Department of Legal Affairs of the Ministry of Health 2017). [in Vietnamese]

that, “gender change (also known as transgender surgery) is a concept used to refer to medical procedures to change a person's gender, which includes procedures such as surgical genitalia, hormone injections, orthopaedic surgery...”³² Although the author does not explicitly indicate whether genital surgery is comprehensive (both internal and external), the use of the term “reassignment surgery” suggests that no form of medical intervention is excluded from the process of gender transition.

The second view point holds that “*transgender refers to medical procedures used to change a person's gender, which may or may not include transgender surgery.*” According to some Vietnamese researchers, a “transgender person is someone who wishes or has undergone surgery to achieve a match between their genitalia or the actual gender identity in their brain.”³³ Therefore, when a person desires to live by their true gender, they are considered transgender.

Although the Draft dated 5 December 2023 does not mandate breast surgery, genital surgery, or surgery on parts with reproductive functions associated with the sex assigned at birth, public consultation is still ongoing, and it remains unclear whether these requirements will become mandatory. According to the authors, to be recognised as a transgender person, whether an individual has to undergo surgery on the internal and external genitals or not, must be considered from several angles. *First*, the term “gender” refers to the biological characteristics characterising a person (such as chromosomes, gonads, and internal and external genitalia) as male or female.³⁴ These biological characteristics of men and women, which are innate, natural and changeable according to physical laws, are attached to the individual from birth to death.³⁵ Thus, to determine a person's gender, one may have to rely on multiple characteristics, such as chromosomes or genitals. *Second*, the issue must be viewed from the perspective of respecting an individual's right to gender self-determination and their right to bodily integrity. Breast or genital surgery may pose significant health and safety issues for individuals seeking to change their gender. Therefore, forcing those who desire to alter their gender to undergo breast or genital surgery will violate the requirements on the inviolability of life, body, and the right to legal protection of health as outlined in Article 33 of the 2015 Civil Code.³⁶

32 ‘Gender Reassignment Surgery and Important Considerations’ (*Bệnh viện Trường Đại học Y Dược Huế*, 19 May 2023) <https://bvdydhue.vn/modules.php?name=Donvi&file=blog&op=blog_single&id=26> accessed 4 November 2025. [in Vietnamese]

33 Thanh Tu Mai, ‘Transgender People’s Aspiration to be Themselves in Vietnam – Practical and Legal Issues’ (*Thư viện Quốc hội - Văn Phòng Quốc hội*, 2012) <<http://thuvienso.quochoi.vn/handle/11742/54923>> accessed 4 November 2025. [in Vietnamese]

34 Nguyen MT (n 31).

35 Thị Hường Ngô (ed), *Lecture Series on Gender Equality Law* (H Hồng Đức 2013) [in Vietnamese].

36 Thuy Duong Nguyen, ‘Must Have Surgery to be Recognised as Transgender?’ (*Nhquang & Associates*, 4 August 2016) <<https://nhquang.com/vi/phai-qua-phau-thuat-moi-duoc-cong-nhan-la-nguoi-chuyen-gioi/>> accessed 4 November 2025. [in Vietnamese]

4.3. How Many Times Can an Individual Change his/her Gender?

The Draft of 15 January 2018 does not mention the amount of time an individual can change their gender. However, the Draft of 5 December 2023 contained specific provisions on this issue, stating that “citizens perform sex transformation twice in life” is one of the illegal acts. Concurrently, this Draft lists the rule that “citizens only transform gender once in life” as one of its fundamental tenets.³⁷ However, after the Draft was issued for public opinion, differing perspectives emerged on the number of times an individual could change their gender. Specifically, delegate Nguyen Quang Huan (National Assembly delegation of Binh Duong province) stated, “It is the people's right to alter gender. If the law allows someone to change their gender for the first time, there should be no limit on how many times they can do it in the future (...).”³⁸ Contrary to the preceding stance, the majority of viewpoints expressed believe that the Draft's provision prohibiting gender reassignment more than twice in a lifetime is appropriate. Dr Nguyen Huy Quang (former Head of the Legal Department, Ministry of Health) noted: “After completing gender reassignment, the person must change their civil status”. Furthermore, this gender reassignment has a high mortality rate, and people who have had surgery once may have a higher life expectancy than other persons their age. Thus, permitting a second time will have a substantial impact on human health. From there, it will damage the workforce, and if the transgender person's health deteriorates, death will affect the family and society.”³⁹

Although there are differing views on related issues, most members of the Law Committee agreed with National Assembly deputies' proposal to include the Law Project in the 2024 Program. This illustrates a shift in lawmakers' views and thinking regarding introducing the law on gender transition—a change that is both necessary and consistent with the policies and guidelines of the Party and the State of Vietnam aimed at ensuring human rights. It also demonstrates a broader development in social awareness of this issue.

5 VIETNAM'S EFFORTS IN BUILDING A LEGAL BASIS TO ENSURE TRANSGENDER RIGHTS

5.1. Changes in Perception and Ideas Toward Codifying Transgender Rights

Examining the changes in regulations and Drafts related to gender reassignment in Vietnam over different periods shows that Vietnam's efforts to recognise and ensure individuals' the implementation of individuals' right to gender reassignment are as follows.

37 Chung Thanh and others, ‘Should it be Illegal to Change Gender More than Once?’ (*Tuoi Tre Online*, 10 December 2023) <<https://tuoitre.vn/co-nen-cam-chuyen-doi-gioi-tinh-hai-lan-tro-len-20231210083841148.htm>> accessed 4 November 2025. [in Vietnamese]

38 *ibid.*

39 *ibid.*

First, gender reassignment was initially prohibited before being legalised through the enactment of an important law known as the Civil Code. Previously, Vietnamese law prohibited people who had completed their gender from performing gender reassignment surgery as prescribed in Clause 1, Article 4 of Decree No. 88/2008/ND-CP dated 5 August 2008, of the Government on gender reassignment. However, with the efforts of the State and society in propaganda and education, people gradually developed a more objective view and reduced discrimination against transgender individuals. Notably, with Article 37 of the 2015 Civil Code, Vietnam has become the 11th country in Asia to legalise gender reassignment surgery.⁴⁰ *Second*, immediately after legalising gender reassignment, Vietnam took steps to implement the Gender Reassignment Law as quickly as possible. *Third*, the Draft Law on Gender Reassignment aims to concretise Article 37 of the 2015 Civil Code and remove the hurdles that individuals face when seeking to alter their gender. *Fourth*, the Draft Law on Gender Reassignment was developed to clearly demonstrate Vietnam's stance on recognising cases of gender reassignment surgery before this right is legalised.

In addition to efforts to recognise and ensure individuals' right to gender transition, Vietnam is also highly rated in terms of indicators related to recognition and safety for the LGBT+ community. With the promulgation of Article 37 of the 2015 Civil Code, the Government of Vietnam has committed to developing a legal framework that regulates the process of changing one's legal gender marker.⁴¹

5.2. Vietnam's Efforts in Recognising Transgender Rights and Implementing International Commitments

Since becoming a member of many international treaties on human rights, Vietnam has made significant efforts to recognise and protect human rights in general, including the rights of transgender people. The international community has acknowledged Vietnam's notable achievements in this area. Although there are no specific regulations to concretise and guide the implementation of Article 37 of the 2015 Civil Code, the provisions in the Constitution, and other legal documents related to protecting human rights and citizens' rights still provide a legal basis that guarantees the rights of transgender individuals. Specifically, Clause 1, Article 14 of Vietnam's 2013 Constitution notes that "*in the Socialist Republic of Vietnam, human rights and citizens' rights in the political, civic, economic,*

40 Van Kha, 'Gender Reassignment: Is Vietnamese Law Allowed?' *Báo điện tử Dân Trí* (Ho Chi Minh, 23 April 2021) <<https://dantri.com.vn/ban-doc/chuyen-doi-gioi-tinh-phap-luat-viet-nam-co-cho-phap-20210421105057378.htm>> accessed 4 November 2025. [in Vietnamese]

41 Rana Flowers and Ann Măwe, 'It is Time for Vietnam to Walk the Talk on Trans Rights' *Hanoi Times* (Hanoi, 15 March 2021) <<https://hanoitimes.vn/it-is-time-for-vietnam-to-walk-the-talk-on-trans-rights-319508.html>> accessed 4 November 2025.

cultural and social fields are recognised, respected, protected and guaranteed in concordance with the Constitution and the law.”

Although a separate regulation has not yet been promulgated, Vietnam has been striving to clarify its commitment to ensuring the rights of transgender people. Accordingly, Article 3 of the Draft of Law on Gender Reassignment (released on 15 January 2018) sets out several regulations directly guaranteeing the rights of transgender individuals, such as ensuring transgender individuals can live according to their affirmed gender and allowing medical interventions based on the voluntary request of individuals seeking gender change. These contents could become legal principles under transgender law if it is passed.

On 5 February 2016, the Prime Minister issued Decision No. 243/QĐ-TTg on Promulgating the Implementation Plan for the Civil Code, which tasked the Ministry of Health with studying and proposing the development of legal documents related to gender change.⁴² On 12 December 2016, the Ministry of Health of Vietnam convened the first conference to discuss the outline framework and significant issues identified in the draft law. Following this, the Ministry of Health developed a draft law on Gender Reassignment and consulted with relevant agencies, departments, and the public. The draft (released on 15 January 2018) received comments from various agencies, organisations, mass organisations, and individuals in the country, as well as recommendations from the United Nations.⁴³ After the 2018 Draft was not approved, Vietnam continued its effort and released a Draft containing the sex conversion law on 5 December 2023. This version included seven chapters and outlined key topics such as state policies on gender transformation, gender-related rights, and conditions for medical interventions.

The Civil Code 2015 can be said to have significantly enhanced each individual rights, including issues of personal status equality in marriage and employment, while maintaining prudence, conformity with international practice, and respect for national traditions and customs, thereby creating a new step forward in the law-making process and addressing the needs of a segment of citizens in society. Gender reassignment, however, is linked to a range of personal rights issues (gender re-identification, the right to marry, name changes, and a variety of related documents and procedures). Therefore, to effectively implement the right to gender reassignment and avoid difficulties or barriers during the implementation process, a new law must be developed and promulgated, accompanied by detailed regulations outlining the procedures, methods, and circumstances for gender reassignment. Simultaneously, relevant legal procedures must be updated to reflect the new law. As a result,

42 Decision of the Prime Minister of Vietnam No 243/QĐ-TTg ‘On Promulgating the Implementation Plan for Implementing the Civil Code’ (5 February 2016) <<http://vanban.chinhphu.vn/default.aspx?pageid=27160&docid=183419>> accessed 4 November 2025. [in Vietnamese]

43 United Nations Vietnam, ‘UN Recommendations on Viet Nam’s Draft Gender Affirmation Law: Draft Law version from January 2018’ (United Nations Vietnam, 26 November 2019) <<https://vietnam.un.org/en/26018-uns-recommendations-viet-nams-draft-gender-affirmation-law>> accessed 4 November 2025.

the legislation on gender reassignment will inevitably encounter difficulties in its practical implementation, as many administrative procedures will need to be modified.⁴⁴

6 DISCUSSION ON THE CHALLENGES TO THE RECOGNITION OF TRANSGENDER RIGHTS AND THE IMPLEMENTATION OF THE LAWS ON TRANSGENDER IN VIETNAM

6.1. The Impact of Confucian Ideology on Transgender Rights

Originating in ancient China during the Spring and Autumn period and the Warring States (551 BC - 3 BC) of the Zhou dynasty, Confucianism is one of the foremost philosophical schools, founded by Confucius.⁴⁵ Amidst societal upheavals, Confucius delved into socio-political matters, offering insights and solutions to restore societal stability. His teachings later served as governance principles throughout China's feudal era.⁴⁶ According to Confucianism, the "Three Fundamental Bonds" and "the Five Constant Virtues" formed the moral foundation for social and family behaviours, such as the way of governing to "rule the family" and "rule the state." This led to the concept of male chauvinism, where decision-making power was often held by fathers and husbands, giving rise to the saying, "One boy means one, ten girls means none."⁴⁷

Vietnamese history has undergone significant transformations influenced by the infusion of Western liberal ideas and the socialist ideologies of Marx, Engels, and Lenin. As Vietnamese society continues to evolve in an era of globalisation and integration, feminism, liberal concepts, and international human rights standards have been strongly influenced the country's developmental trajectory. These influences have also engendered conflicts within Vietnamese society. Despite ongoing social change, Confucian ideology remains prevalent, impacting notions of gender and gender

44 Thi Ngoc Hai Doan, 'The Right to Change Gender According to the Provisions of Vietnamese Civil Law' (*Bộ Tư pháp*, 12 June 2018) <<http://moj.gov.vn/qt/tintuc/Pages/nghien-cuu-trao-doi.aspx?ItemID=2325>> accessed 4 November 2025. [in Vietnamese]

45 Katarzyna Anna Nawrot, 'Does Confucianism Promote Cooperation and Integration in East Asia?' (2020) 7 International Communication of Chinese Culture 1. doi:10.1007/s40636-020-00173-2

46 Lauren J Littlejohn, 'Confucianism: How Analects Promoted Patriarchy and Influenced the Subordination of Women in East Asia' (Young Historians Conference 2017) <<http://archives.pdx.edu/ds/psu/19798>> accessed 4 November 2025.

47 Hiroko Sekiguchi, 'The Patriarchal Family Paradigm in Eighth-Century Japan' in Dorothy Ko, JaHyun Kim Haboush and Joan R Piggott (eds), *Women and Confucian Cultures in Premodern China, Korea, and Japan* (University of California Press 2003) 27. doi:10.1525/j.ctt1pp3b9.9; Sirin Sung, 'Women Reconciling Paid and Unpaid Work in a Confucian Welfare State: The Case of South Korea' Queen's University Belfast (2003) 37(4) Social Policy and Administration 342. doi:10.1111/1467-9515.00344.

equality by emphasising the distinction between men and women and reinforcing traditional gender roles. As a result, men are often afforded greater prominence, diminishing the role of women within families and society.⁴⁸

In many parts of Vietnamese society—particularly in rural areas—there is a strong emphasis on traditional gender roles. Men are often viewed as the primary providers for their families, and marriage is seen as a means to have children and carry on the family lineage. As a result, there is a pervasive belief that homosexuality and transgender identity are not only against traditional societal norms but also unnatural.⁴⁹ Sexual relations are generally considered appropriate only when they occur within a loving relationship between a man and a woman. Due to the ancient concept that the result of love is marriage, one of the factors that maintains family happiness is sexual relations and childbearing.⁵⁰

Furthermore, some people still believe that being transgender is a disease and can be transmitted, leading them to stay as far away from transgender people as possible. For many, it is not acceptable for a person to be born with perfect sex as male or female but have the desire to change to get the opposite sex; it is even considered "sick". For the most part, for each individual, gender is a constant, attached factor throughout their life. Therefore, the fact that a person changes their gender contradicts the laws of nature and common morality, making it challenging to receive acceptance and sympathy from society. This concept has influenced and caused significant obstacles to the psychology of society in general and those who desire to change gender in particular, making those who want to change gender not brave enough to carry out their innate transgender identity.⁵¹

Deeply ingrained traditional beliefs have narrowed the perspectives of many individuals—including government officials, policymakers, and lawmakers—within the confines of what is commonly referred to as a "heterosexual society." This framework perpetuates the notion that heterosexuality is the default orientation for everyone and that it holds a position of superiority over all other sexual orientations. Consequently, this prevailing mindset has resulted in discrimination and inequality against individuals who identify with different sexual orientations or gender identities. Societal favouritism towards heterosexual views has

48 Nguyen Toan Thang, Nguyen Thi Hong Yen and La Minh Trang, 'Impacts of Sinosphere on Ensuring Equal Rights of Ethnic Minority Women in Southeast Asian Countries: Barriers, Challenges and Recent Developments' in Thamil Venathan Ananthavinayagan and Amritha Viswanath Shenoy (eds), *The Wretched of the Global South: Critical Approaches to International Human Rights Law* (Springer 2024) 147. doi:10.1007/978-981-99-9275-1_8.

49 Ingrid Grosse, 'Gender Values in Vietnam: Between Confucianism, Communism, and Modernization' (2015) 3(2) *Asian Journal of Peacebuilding* 253.

50 Tien Manh Vu and Hiroyuki Yamada, 'The Impacts of Confucianism on Gender Inequality in Vietnam' (2024) 22(1) *The Journal of Economic Inequality* 165. doi:10.1007/s10888-023-09584-8.

51 Hong Quang Truong, *Rights of Lesbian, Gay, Bisexual, Transgender and Intersex People in Vietnam: From Awareness to Practice* (Nxb Tu Phap 2022). [in Vietnamese]

translated into natural barriers and challenges when it comes to the development and enforcement of laws that protect and uphold the rights of transgender individuals.⁵²

6.2. Social Barriers and Challenges:

Stigma and Discrimination Against Transgender People

Even though society is becoming increasingly open and aware of transgender individuals, many people still strongly condemn and discriminate against them. These individuals oppose recognising the rights of those who wish to change their gender. As a result, societal discrimination against transgender people negatively impacts the practical implementation of laws that protect their rights, as many individuals who wish to change their gender do so covertly, fearing the stigma from their families and society.

In Vietnam, the pressures of close social relationships lead transgender individuals to fear judgment from their neighbours and acquaintances. Consequently, many parents pressure their children not to dress or behave differently to maintain the family's reputation. Furthermore, due to an insufficient understanding of gender, some parents believe that their children are simply following their friends' behaviours or fear that if their child is identified as transgender, they will not have a prosperous future. Consequently, they may resort to harsh methods to "correct" or coerce their children back to their "real" gender, using verbal abuse or even physical force, leading to various forms of violence.⁵³

The stigma and prejudice against transgender individuals have severe consequences, depriving them of the fundamental human right to live their lives safely and freely. This stigma manifests in various forms, including negative attitudes, hostility, prejudice, irrational fear, mistrust, disrespect towards preferred gender identity and pronouns, use of derogatory language and names, as well as instances of bullying, harassment, and even physical violence.⁵⁴ Transgender individuals also encounter discrimination when taking part in social activities.⁵⁵ Discrimination can take many forms, with direct and indirect discrimination being the most prevalent.⁵⁶

52 Nguyen VH (n 29).

53 Anh Tri Nguyen, 'Report No 29/BC-DBQH on the Current Legal and Social Situation Proposed to Develop a Law on Gender Reassignment' (24 April 2023). [in Vietnamese]

54 Hoa Thu Pham and Thi Yen Dong, 'Prejudice, Stigma and Discrimination against Homosexual and Transgender People in Vietnam' (2015) 31(5) VNU Journal of Science: Social Sciences and Humanities <<https://js.vnu.edu.vn/SSH/article/view/262>> accessed 4 November 2025. [in Vietnamese]

55 iSEE, 'iSEE's Perspective on Incidents of Violence, Discrimination and Prejudice Against LGBT People' (iSEE, 26 May 2020) <<https://www.isee.org.vn/goc-nhin/quan-diem-isee-ve-cac-vu-viec-bao-luc-voi-nguoi-lgbt>> accessed 4 November 2025. [in Vietnamese]

56 Oran Doyle, 'Direct Discrimination, Indirect Discrimination and Autonomy' (2007) 27(3) Oxford Journal of Legal Studies 537.

The impact of stigma and discrimination on transgender individuals is particularly severe in areas such as labour, employment,⁵⁷ and healthcare.⁵⁸ In October 2022, the Ministry of Labour, Invalids, and Social Affairs (now the Ministry of Home Affairs (MOHA)) conducted an online survey with 1,337 respondents to report on Equal Experience and Discrimination against Homosexual, Bisexual, and Transgender People in Vietnam. The survey's summary showed that transgender people frequently encounter more severe circumstances than other communities, like bisexuality and homosexuality, when deciding to come out to their families.⁵⁹ Some of the reported challenges included being banned from external relationships, mistreatment by family members, being forced to get married, facing financial control, pressure from family and lovers, being subjected to medical treatments, physical assault, being encouraged or forced to relocate, confinement at home, and pressure from religious figures. The two most commonly reported experience were "forced to change their appearance and gestures" at 71.8% and "scolded, used words to pressure" at 60.6%.⁶⁰

6.3. Barriers and Challenges in Performing and Enforcing Laws Related to Transgender People

The upcoming deliberation and endorsement of the Law on Gender Reassignment by the National Assembly symbolise a pivotal advancement in acknowledging, guaranteeing, and advancing the rights of transgender individuals as fundamental human rights. However, enacting this law is not a straightforward task. It necessitates the meticulous refinement of related legislation, a process of great importance. Resolving legal dilemmas arising from the exercise of transgender rights presents tangible challenges that demand careful attention.

In marriage and family dynamics, a situation arises when one spouse undergoes a gender transition, prompting consideration of whether the other spouse should also undergo a gender transition. At present, there is no specific legislation addressing this issue. However, the decision to allow or disallow individuals with spouses to undergo gender transitions carries complex implications. If a married individual is permitted to undergo a gender transition, it could result in legally recognised marriages between individuals of the same sex. This conflicts with Clause 2, Article 8 of the 2014 Law on Marriage and Family, which explicitly states that "the state does not recognise marriage between individuals of the same sex". Consequently, existing marriage and family laws do not acknowledge same-sex marriages.

57 Pauline Oosterhoff and Tu-Anh Hoang, "Transgender Employment and Entrepreneurialism in Vietnam" (2018) 26(1) Gender & Development 33. doi:10.1080/13552074.2018.1429102.

58 iSEE, *Research Report on Stigma and Discrimination by Health Workers in Providing Health Services to Men who Have Sex with Men* (iSEE 2011) <<http://csaga.org.vn/song-trong-mot-xa-hoi-di-tinh-cau-chuyen-tu-40-nguoi-nu-yeu-nu-quan-he-voi-cha-me--cht992.html>> accessed 4 November 2025. [in Vietnamese]

59 Nguyen AT (n 53).

60 *ibid.*

Additionally, if gender confirmation surgery is not a requirement for transgender individuals, it may have profound effects on traditional family structures. That could lead to legal marriages transforming into same-sex unions, thus impacting the fundamental function of reproduction within the family unit. As a result, many express concerns that permitting individuals to undergo gender transitions and marry individuals of the same gender could significantly impact the reproductive function of the family, potentially having adverse effects on society's existence and development.⁶¹

On the other hand, denying a married person the right to transition may force the individual to dissolve their marriage. If both spouses agree to the divorce, it can be handled amicably. However, if one party refuses, the individual seeking gender transition must request a divorce according to Article 56 of the Law on Marriage and Family 2014. However, the situation becomes complex when the court must determine the grounds for divorce in cases where the spouse seeking transition has not committed any of the acts specified in Clause 1, Article 56, but simply wishes to be transgender. That may lead to a situation where the transgender person intentionally creates grounds for divorce, which could have unintended consequences.⁶² The consideration of the Draft Law on Gender Reassignment prompts the need to weigh the impact of married couples seeking divorce carefully. The draft's requirement that transgender individuals be single raises potential conflicts and may affect the legitimate rights and interests of many individuals. Legislators must ensure that legal documents harmonise with the rights of those seeking gender reassignment with those of other relevant parties. Additionally, the resolution of this issue may vary across countries depending on their legal recognition of same-sex marriage.⁶³

In the field of labour, it is essential to differentiate between male-to-female transgender individuals. For a male transgender person transitioning to a female, they are entitled to policies applicable to female employees under labour law, as well as any policies for transgender employees. According to the Policy Impact Assessment Report on the Law on Gender Reassignment, dated 12 October 2017, by the Ministry of Health, the Labour Code must include additional provisions for women's employment once this law is enacted. Employers of transgender individuals, as outlined in Chapter XI of the Labour Code, are

61 Vu and Yamada (n 50).

62 UNDP Viet Nam, *International Experiences on Personal and Property Rights of Transgender Persons: Report* (UNDP 2023) <<https://www.undp.org/vietnam/publications/international-experiences-personal-and-property-rights-transgender-persons>> accessed 4 November 2025; Quynh Phuong Pham, *Lesbian, Gay, Bisexual and Transgender People in Vietnam* (Khoa Học Xã Hội 2014). [in Vietnamese]

63 Evan Gerstmann, *Same-Sex Marriage and the Constitution* (CUP 2017); Ministry of Health, 'Report on the Current Situation of Transgender People in Vietnam and Related Legal Systems' (2022) <<https://moh.gov.vn/documents/20182/212437/880B%25C3%25A1o%2520c%25C3%25A1o%2520th%2520c%2520trang%2520ng%2520i%2520chuy%2520n%2520gi%2520i.doc/253afe2c-0b06-46f6-b8ec-81010c742a29>> accessed 4 November 2025. [in Vietnamese]

also required to ensure that male-to-female employees enjoy the same fundamental rights as female employees, as specified in Chapter X of the Labour Code.

Currently, the conditions for recognizing transgender individuals have not been explicitly defined, making it unclear whether genital surgery is required. If genital surgery is not mandatory, a transgender person transitioning from male to female may still give birth. In this case, they are legally considered women raising a child, despite not having been pregnant or giving birth. At this time, the selection and application of policies for female workers must be explicitly considered. For female-to-male individuals, employees will no longer be eligible for the policies applicable to female employees who are unable to complete the registration for a change of civil status. However, due to the influence of female hormones, female-to-male transgender individuals may not have the same physical strength as cisgender men, which can make performing heavy manual labour more difficult. Female-to-male transgender people may experience pressure in terms of employment as societal expectations often place men in roles involving heavy work, economic responsibility, and family leadership. Therefore, to safeguard the rights of transgender people following medical interventions, the Labour Code should include specific regulations on the employment of transgender people and the employer's responsibilities toward transgender workers.

In the context of transgender rights, it is crucial to consider the implications of not mandating internal or external sterilisation for transgender individuals transitioning from female to male. Without such requirements, a transgender man may retain the ability to conceive and carry a child. This raises important questions about how existing policies on female workers would apply to a transgender man who is pregnant or raising a child. Comprehensive regulations are needed to ensure coherence between legal provisions and the lived experiences of transgender individuals. Some experts argue that mandatory sterilisation is necessary to harmonise the legal physical recognition of gender identity across different branches of law.

Gender transgender can also impact criminal liability and prison policies. For example, a female-to-male transgender individual who retains their reproductive organs may become pregnant while serving a sentence. This creates complications in applying policies to pregnant prisoners or in determining responsibility for raising children if the incarcerated individual is identified as male but becomes pregnant. Applying existing policies designed for female prisoners may be inappropriate. Some suggest that laws regulating transgender individuals should mandate genital surgery and sterilization to address such legal complications.

Ensuring the legal recognition and protection of transgender rights requires comprehensive reforms across various facets of the law. However, in practice, lawmakers often lack a thorough understanding of these issues and may fail to adopt a human-rights-based approach. Legal drafting concerning the rights of LGBTI individuals frequently overlooks

the diversity of sexualities and gender identities within society. This knowledge gap is evident in provisions relating to gender equality, highlighting the need for a more inclusive and well-informed approach.

The regulations mentioned above illustrate the goals of gender equality initiatives, which aim to achieve parity between men and women and enable women to develop their skills. However, this approach does not reflect the evolving nature of gender development. While the concept of gender is broad, it is currently limited to the realm of biological sex/gender, failing to encompass the equality of various sexual orientations and gender identities.⁶⁴ The idea of gender equality is centred on achieving equality between men and women and has gained significant momentum in contemporary society. Nevertheless, inherent inequalities persist within political and legal circles in Vietnam, and the prevailing narrow interpretation of gender equality has resulted in ongoing stigmatisation and discrimination against the LGBTI community. The concept of gender equality should therefore be expended to encompass equality not only between genders but also within gender identities and sexual orientations.⁶⁵

6.4. Barriers and Challenges Related to Beliefs and Religions

In many religious traditions, there is a limited recognition of diverse gender identities and sexual orientations, as these belief systems uphold the notion that only men and women were created and granted special privileges by a divine entity. Within this context, fertility beliefs significantly shape attitudes towards gender transition, emphasising the importance of a harmonious union between men and women to sustain and advance the human race.⁶⁶

Vietnam is a diverse, multi-religious country, with major religions including Buddhism, Catholicism, Protestantism, Islam, Cao Dai, and Hoa Hao.⁶⁷ Religious systems play an essential role in shaping perceptions of family dynamics, gender roles, and sexual orientation. For example, Confucianism principles have deeply ingrained the notion of the husband as the primary authority in family decision-making. As a result, wives are expected to adhere to traditional gender expectations, including obedience to their husbands and the responsibility of bearing children to carry on the family lineage. Consequently, non-traditional families and couples who are unable to conceive children may face societal rejection within this cultural context.

64 Hong Quang Truong, 'Law on the Rights of Lesbian, Gay, Bisexual, Transgender and Intersex People in Vietnam: Current Situation and Prospects' (2019) 3 *Đặc san Thông tin Khoa học pháp lý*. [in Vietnamese]

65 Truong (n 51).

66 Huong Dieu, 'A Perspective on Transgender in Belief and Religion' *Báo Pháp luật Việt Nam* (Hanoi, 19 May 2019) <<https://baophapluat.vn/post-307240.html>> accessed 4 November 2025. [in Vietnamese]

67 Thu Hoang and Nhan Ha, 'Ensuring Freedom of Belief and Religion in Vietnam' *Nhan Dan* (Hanoi, 14 March 2023) <<https://nhandan.vn/bao-dam-quyen-tu-do-tin-nguoi-ton-giao-o-viet-nam-post742798.html>> accessed 4 November 2025. [in Vietnamese]

Furthermore, a 2013 study highlighted the substantial impact of ethnic and religious factors on individuals' attitudes toward same-sex marriage. The research revealed that religious doctrine often acts as a formidable barrier to the acceptance of same-sex unions. It also found notable disparities in support for same-sex marriage, with individuals adhering to religious beliefs (except Buddhists) displaying markedly lower levels of acceptance compared to those without religious affiliations.⁶⁸

In summary, although the law in Vietnam includes provisions for transgender individuals and has made significant progress in recognising and protecting their rights as human rights, transgender people in Vietnam still face discrimination from society, family, and friends. They are sometimes subjected to misinformation, unequal treatment, and poverty. Stereotypical and unrealistic messages in the press and some media channels have created and reinforced misconceptions and social stigma.⁶⁹ Therefore, recognising and protecting their rights is an urgent issue that needs to be carefully considered, both in Vietnam and elsewhere, to ensure that transgender people are treated equally and can live authentically as their true selves.

7 CONCLUSION

The movement to legalise transgender rights is a growing global phenomenon. However, this endeavour brings with it a set of complex legal challenges. It is essential to not only to recognise the rights of transgender individuals but also to address the practical issues surrounding the enforcement of transgender legislation and its broader societal impact.

Vietnam has made a significant stride by recognising sex conversion in Article 37 of the Civil Code in 2015, becoming the 62nd country in the world to do so. This decision represents a departure from traditional ideas in the country that have historically posed challenges to the rights of transgender individuals. The lawmaking process in Vietnam requires the government to assess the impacts of proposed policies. In assessing the policy impact of the gender transition law project, Vietnam identified barriers to future law development and enforcement, primarily rooted in traditional cultural factors. As legal regulations emerge, they gradually shape and regulate changes in conventional cultural practices. Article 5 of the 2015 Civil Code stipulates that customs are to be followed only in the absence of legal regulations and cannot contradict Article 3 of the Civil Code, which outlines the fundamental principles of civil law. To advance the rights of transgender individuals in Vietnam, in addition to addressing social, cultural, and religious dimensions, the authors argue that completing and developing the related legal system is the most

68 HSPI, IOS, and iSEE, *Results of the Referendum on Same-Sex Marriage: Research Report* (Nhà xuất bản Thế giới 2013) <<https://thuvien.lgbt/en/documents/ket-qua-trung-cau-y-kien-nguoi-dan-ve-hon-nhan-cung-gioi-2013>> accessed 4 November 2025. [in Vietnamese]

69 Ministry of Health (n 63).

effective legal tool for protecting their rights in practice. Key amendments for legal amendments should focus on the following matters:

First, priority should be given to improving laws on gender reassignment, with careful consideration of key issues, including the requirement for genital or chest surgery for legal recognition, the minimum age for medical intervention, and the permissible number of gender changes. A human rights-based approach should guide these reforms to ensure broader gender equality. The law will serve as a foundation for future amendments and the progressive refinement of the legal framework governing transgender individuals' rights. Furthermore, legislators should also ensure consistency between the provisions of the Law on Gender Reassignment and Vietnam's international commitments.

Second, regarding the Civil Law Code 2015, it is essential to amend the title of Article 37 by adding the word "right" before the phrase "gender reassignment" to ensure consistency in the structure and spirit of Section 2, which is titled "Personal Rights". Currently, the provision only reads "Gender Reassignment", whereas other provisions in the same section explicitly recognize rights, such as "right to change one's name," "right to re-determine one's gender," and "right to one's image". The absence of the word "right" diminishes the legal affirmation of this provision and creates the impression that it is a technical or medical procedure rather than a personal right recognised and guaranteed by the State. Finally, it is proposed to intensify public awareness and legal education campaigns to promote human rights more broadly and, specifically, the rights of transgender individuals. This initiative aims to foster understanding and respect for transgender rights, thereby reducing infringements.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ПРАВА ТРАНСГЕНДЕРНИХ ОСІБ ЗГІДНО З МІЖНАРОДНИМ ЗАКОНОДАВСТВОМ У СФЕРІ ПРАВ ЛЮДИНИ ТА ПРОЦЕС ЇХ ВПРОВАДЖЕННЯ У В'ЄТНАМІ: ПЕРЕШКОДИ, ВИКЛИКИ ТА ШЛЯХИ РОЗВИТКУ

Ван Хой Нгуєн*, Тоан Тханг Нгуєн, Тхі Хоай Тхуонг Мак та Тхі Хонг Єн Нгуєн

АНОТАЦІЯ

Вступ. 24 листопада 2015 року, під час своєї 13-ої сесії, Національна асамблея ухвалила Цивільний кодекс 2015 року, який вніс фундаментальні зміни щодо особистих прав людини. Серед положень, що привернули значну увагу на внутрішньому та міжнародному рівні, була стаття 37, яка легалізувала процедури зміни статі. Цей крок став рушійним у визнанні та захисті прав людини, зокрема особистих прав, завдяки чому В'єтнам посів 62-ге місце у світі та 11-те в Азії серед країн, у яких дозволено особам змінювати свою стать. Тим не менш, оскільки зміна статі залишається відносно новим правовим регулюванням, у контексті В'єтнаму визнання та реалізація цього права для осіб все ще стикається з численними перешкодами та викликами.

Методи. У статті використовується поєднання різних методів юридичної науки, зокрема аналіз, історичне дослідження, синтез, експертна оцінка та порівняльне дослідження. Крім того, за допомогою аналітико-порівняльного методу у роботі розглядається дискусія в межах міжнародних стандартів, що сприяє об'єктивній оцінці сумісності законодавства В'єтнаму з міжнародними нормами. З огляду на це, у статті було закладено основу для пропозицій щодо вдосконалення внутрішньої правової бази та окреслено шлях до повного визнання цього права найближчим часом.

Результати та висновки. Метою цієї статті є уточнення правових та практичних питань, а також перспектив та викликів, з якими В'єтнам наразі стикається в процесі визнання та реалізації права осіб на зміну статі. На основі цього аналізу у дослідженні було запропоновано кілька рішень для В'єтнаму на найближчий час. Для досягнення цієї мети роботу було структуровано за такими основними частинами: (i) право на зміну статі згідно з міжнародним правом та світовими тенденціями; (ii) погляди та громадська думка щодо визнання прав трансгендерних осіб у В'єтнамі; (iii) зусилля В'єтнаму щодо створення правової бази для забезпечення прав трансгендерів; та (iv) проблеми у визнанні прав трансгендерних осіб та впровадженні відповідних законів у В'єтнамі.

Ключові слова: права трансгендерних осіб, законодавство про права людини, ЛГБТ, індивідуальні права, цивільне право В'єтнаму.