

# **THE RIGHTS OF CHILDREN WITH DISABILITIES IN VIET NAM**

Bringing Vietnam's Laws into  
compliance with the UN Convention  
on the Rights of Persons with Disabilities

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## **ABBREVIATIONS**

CEYC	Committee on Culture, Education, Youth, and Children
MOET	Ministry of Education and Training
MOLISA	Ministry of Labour, Invalids and Social Affairs
MOF	Ministry of Finance
MOPI	Ministry of Planning and Investment
MOH	Ministry of Health
MOT	Ministry of Transportation
CT-TTg	Directive from the Prime Minister
ICT	Information and Communication Technology
MDRI	Mental Disability Rights International
NCCD	National Coordinating Council of Disability
VNAH	Viet Nam Assistance for the Handicapped
WHO	World Health Organization

## **PREFATORY NOTE**

UNICEF and the government of Viet Nam commissioned Eric Rosenthal to conduct the assessment and analysis for this report, along with other experts from Mental Disability Rights International. The main aim of this report is to assist the government of Viet Nam in bringing its laws and policies into conformity with the new United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which Viet Nam signed on October 22, 2007. The key objectives of this consultancy were:

- Assessment and analysis of the compliance of Vietnamese legal normative documents related children with disabilities(CWD) with UNCRPD and international treaties, standards and norms related to disability (using the desk review of Vietnamese legal normative documents related to CWD carried out by national legal expert);
- Review the draft Law on PWD and provision of comments and recommendations for its' improvement/finalization;
- Development of recommendations to the government of Viet Nam for legislative and policy changes to bring about implementation of the new legal standards established in the CRPD; these suggestions are based upon our analysis of Vietnamese law and interviews with government officials, service providers, educators, disability activists; our analysis is also informed by site visits to service programs in Viet Nam for children and adults with disabilities.

The legal analysis was drafted by Eric Rosenthal, MDRI Executive Director, with the support of Arlene S. Kanter, Professor of Law, Syracuse University College of Law, and Erin Jehn, MDRI staff attorney. Arlene Kanter visited Viet Nam in spring 2009 on behalf of VNAH and participated in drafting sessions for Viet Nam's new Disability Law. UNICEF brought Eric Rosenthal to Viet Nam in July and September 2009. In September 2009, Mental Disability Rights International (MDRI) brought Elizabeth Bauer, Secretary of MDRI's Board of Directors and an elected member of the State of Michigan Board of Education. In July, Eric Rosenthal participated in a workshop sponsored by MOLISA and VNAH on drafting the new Disability Law. Rosenthal also participated in a training session for disability activists organized by VNAH, and he conducted site visits to a residential rehabilitation center for children with disabilities in Hanoi. Rosenthal and UNICEF staff travelled to Da Nang in July 2009 and visited a community-based rehabilitation center for children and adults with disabilities, a special school, a social protection center/orphanage, and a day care center for victims of agent orange. In September 2009, Rosenthal and Bauer met with government officials in Hanoi, Da Nang, and Do Son and conducted workshops on the development of disability legislation for Ministry officials. They also spoke at a workshop of the National Assembly on the draft Disability Law in September 2009. In September, MDRI and UNICEF staff conducted site visits to a special school, a psychiatric facility, and a model day care center for children with disabilities. Rosenthal and Bauer conducted a workshop for UNICEF and other international development organizations operating in Viet Nam on ways to adapt internationally-funded programs to the requirements of the new UN Convention on the Rights of Persons with Disabilities.

Our analysis of Vietnamese law relies heavily on a very thorough study conducted by Dr. Tong Duy Kiên. The study by the Vietnamese national summarized relevant Vietnamese law and analyzed its strengths and limitations. We did not have English translations of some of the laws included in this study and we have, for the most part, assumed that Dr. Kiên's study was accurate in its description of Vietnamese law.

MDRI met with representatives of the Ministry of Health and the World Health Organization during our September 2009 visit. MDRI learned that the Ministry of Health is drafting a new mental health law, but MDRI has not been able to obtain an English translation of this law. The CRPD regulates the rights and treatment of people with psychiatric or psychosocial disabilities, but the lack of access to the mental health law constitutes a gap in this analysis. It is essential that this new legislation conform to the standards set forth in the CRPD.

This report primarily focuses on legislative changes necessary to bring Viet Nam into conformity with the CRPD. In addition to changing its laws, however, the CRPD requires that the Vietnamese government must also bring about changes in policy and practice to end discrimination against children with disabilities in Vietnamese society, as well as to enforce the rights guaranteed to persons with disabilities. These necessary changes in policy, law, and enforcement are outlined in this report.

## **ACKNOWLEDGMENTS**

We would like to express sincere thanks to the many people who gave time to our discussions in Viet Nam. The Ministry of Labour, Invalids and Social Affairs (MOLISA) drafting team for the Disability Law met with us on a number of occasions and provided us valuable background about the legal situation of children with disabilities. The head of this drafting team, Mr. Lap and his staff, were particularly helpful and arranged site visits throughout Viet Nam. Representatives of the National Assembly were very welcoming and open, as were officials from the Ministry of Education and Ministry of Health. Local DOLISA officials in Da Nang welcomed us into their programs and provided us with essential background about services and educational programs for children with disabilities in their province. We particularly appreciate the help and support of UNICEF staff, especially Naira Avetisyan whose extensive knowledge of the concerns of children with disabilities and excellent working relationships with Vietnamese government officials made this analysis possible.

## Summary of Key Observations

### *LEGISLATION*

The Vietnamese government's stated commitment to bringing the country into conformity with the UN Convention on the Rights of Persons with Disabilities (CRPD) is impressive. As this analysis shows, Viet Nam has already enacted several valuable laws to protect the rights of persons with disabilities. If Viet Nam adopts the Disability Law that is now under consideration in draft form, it will go a long way toward compliance with the CRPD. There are some significant shortcomings in the draft Disability Law, however, but they can be corrected so that this law conforms to the CRPD. To fully comply with the CRPD, the Vietnamese government should make the following changes:

- To protect against discrimination, the proposed Disability Law should include the right to reasonable accommodation, as required by CRPD article 5(3) and defined in CRPD article 2; such a provision should require the modification of public services or programs necessary to permit an individual with a disability to access education, housing, health care, access to services, transportation, and other aspects of public life.
- The right to accessible communication and information technology must be established in the proposed Disability Law, where currently it is unclear as to whether or not this right is guaranteed.
- Laws and regulations providing the right to accessibility must be enforced; this includes the right to an accessible physical environment, transportation, information and communication, and other facilities and services; accessible forms of communication for public services must also be implemented, including sign language, Braille, cassettes, larger font sizes, and other means of assistive technology.
- The right of children with disabilities to live in the community with their own family, or if necessary alternative care families, should be guaranteed.
- Early intervention and health care should be made available and accessible to children with disabilities and their families.
- Placement procedures and periodic reviews for children in institutions should be established, and the law should mandate that new institutional placements of children be brought to an end by a specific date as community-based supports are created.
- A transitional plan should be established to transform special or segregated schools into inclusive educational programs to ensure that all children with disabilities receive education within the mainstream general educational system.
- The draft Disability Law should require that all children with disabilities be registered at birth.
- Legal protections should be established to safeguard the right to evolving capacity of children with disabilities so that they can express their views and exercise choice in matters affecting them.
- Legal protections against improper, coercive care and psychiatric institutionalization should be established, as required by CRPD articles 12 and 14; Viet Nam's new mental health legislation should be drafted in a manner consistent with these provisions.
- A child protection system should be established to report and investigate neglect and abuse.
- An independent system of oversight and monitoring should be established for all community-programs and institutions serving children with disabilities.
- Independent organizations of persons with disabilities and family members should be involved in all matters relating to the monitoring and implementation of the CRPD.

## ***POLICY***

**Vietnamese legislation should reflect the core principles of the CRPD, which include the right of all persons with disabilities to “full and effective participation in society”** – To make this possible, service systems must be reformed so that children with disabilities are able to live and grow up with their families in the community. They must be able to receive an appropriate education in the mainstream school system.

Accessible health care, rehabilitation, and habilitation services must be made available in the community. In the absence of comprehensive community-support programs, many children with disabilities will have little opportunity for independent living as adults. Some children with disabilities are currently relegated to orphanages and other institutions where they are at risk of remaining for the rest of their lives. In direct contradiction to Article 19 of the CRPD, MDRI has learned that Viet Nam is now expanding these segregated residential institutions and programs.

**Viet Nam should reverse current plans to expand residential institutions for children and expand the size of inpatient psychiatric facilities** – Instead of expanding institutions, Viet Nam should adopt plans to end the practice of placing children in institutions. This should be a top priority for reform efforts as segregation from society contributes to increased disabilities and prevents the enjoyment of other rights. The government of Viet Nam and foreign donors should direct efforts to support children in families and provide services in the most integrated settings. Efforts should be made to support and train parents of children with disabilities, especially parents of children with intellectual disabilities, because they are often an overlooked resource for community support that represents a large proportion of children with disabilities.

**As Viet Nam dedicates limited resources to providing community based services and supports to children with disabilities, it should avoid the mistake of establishing new service programs and schools that do not fully integrate children with disabilities into society** – Investing in new residential institutions should be avoided, even if these facilities are smaller or cleaner than existing institutions. Similarly, new investments in segregated education should be avoided.

**Education reform should establish inclusive education for all children with disabilities** – Article 24 of the CRPD provides that governments “shall ensure an inclusive educational system at all levels...” Viet Nam should make sure that mainstream schools admit, teach, and accommodate children with disabilities. In addition to making schools physically accessible and modified for students with different disabilities, new investments in teacher training programs to provide appropriate curricula and support for teaching children with intellectual and other disabilities are essential.

**Governments, persons with disabilities, and family members also should be actively involved in efforts to monitor existing programs and reform efforts** – Effective reform is limited without transparency and data about current conditions. As UNICEF and MOLISA have described in the 2009 report “Creating A Protective Environment for Children in Viet Nam,” there is no comprehensive or integrated system to protect children in special circumstances. The CRPD requires that independent authorities be established to monitor any program serving children with disabilities. Article 4(3) makes clear that people with disabilities and organizations representing them should be involved in such monitoring as well as program planning for implementation of the CRPD.

### ***CITIZEN PARTICIPATION & IMPLEMENTATION***

**The major shortcoming in any legal reform effort in Viet Nam is the lack of a strong, organized, and independent movement of stakeholders – primarily people with disabilities and their family members – committed to pressing for implementation and enforcement of existing law at the local and national level.** Without a strong constituency for enforcement, even an impressive new Disability Law will remain unenforceable. In order to make Viet Nam's enormous effort in legal reform worthwhile, a corresponding effort to empower people with disabilities in public policy-making and advocacy is essential. In most of the world, reform has taken place where independent civil society with leadership by people with disabilities has sought government reform. People with disabilities should be appointed to Peoples' Committees and other leadership positions in local and national government making policies and implementing programs affecting individuals with disabilities. Given the traditional lack of education and opportunities for people with disabilities, this group may lack experience or credentials for these positions. The fastest way to develop that experience is to challenge individuals with disabilities with the real-life experience of developing and implementing programs. Individuals with disabilities must be given the supports and training necessary to allow them to be effective in these positions.

## 1. Factual Context of Children with Disabilities in Viet Nam

Like any child, a child with a disability has the potential to grow within his or her community and to positively affect the lives of people around him or her. The difference is that society may have to adapt in order to realize the child's potential. By signing the Convention on the Rights of Persons with Disabilities (CRPD), Viet Nam has signaled that it is committed to adapting society to the needs of children with disabilities, and it has made significant progress in this respect. In Viet Nam, as in much of the world, children with disabilities face difficulties in accessing their physical environment, as well as access to community-based services and health care, education, and child protective systems. Implementation of the CRPD will require proactive measures to end this discrimination. While some of this discrimination is the result of discriminatory laws, much of this discrimination is the result of policies and practices that have historically segregated children with disabilities from society. The challenges particular to children with disabilities in Viet Nam are outlined below.

### 1.1. Accessibility

The issue of the lack of accessibility for people with disabilities in Viet Nam is particularly serious for children with disabilities, as it creates barriers to health care, education, recreation, culture, sports and other activities essential to a child's development. Specifically, children with disabilities have cited a lack of accessibility to public transportations, schools, hospitals, toilets, cultural buildings, and other buildings.<sup>1</sup> There is also a lack of access to information and communication for people with visual and auditory impairments.<sup>2</sup> Children with visual and auditory impairments are not able to access school curriculum or other information because it is not in Braille, large font, or closed-captions.<sup>3</sup> Sign language interpreters are scarce, and people with disabilities have to rely on the volunteer efforts of teachers who work with people who are deaf.<sup>4</sup> While Viet Nam Television (VTV) offers a nightly closed-captioned news program, closed-captioned programs do not appear to readily available otherwise.<sup>5</sup>

### 1.2. Community-Based Services and Health Care

In terms of community-based services and health care, there is a lack of early identification, early intervention services, community-based rehabilitation, and quality health care services for children with disabilities in their communities in Viet Nam. While official policies of providing community-based rehabilitation for people with disabilities exist, there is a great shortage of such services generally, as well as a complete lack of services targeted for children with disabilities.<sup>6</sup> This lack of services is due to inadequate funding, poor implementation, expansion, and lack of maintenance.<sup>7</sup> Many children with disabilities do not receive health care or rehabilitative services.<sup>8</sup> Of those that do, the number of children using rehabilitative aids is very low with only one-fifth of children with disabilities using prosthetics, orthotics, hearing and vision aids, or wheelchairs.<sup>9</sup> Rehabilitation services are not available

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1 Situational Analysis on Children with Disabilities in Viet Nam, UNICEF and MOLISA 155 (Ha Noi), 2004.

2 Michael Schwartz, Deafness in Viet Nam: Will the United Nations Convention on the Rights of Persons with Disabilities Make a Difference? 34 Syracuse J. Int'l L. & Com 483, 492 (2007).

3 Situational Analysis on Children with Disabilities in Viet Nam, *supra* note 1, at 128.

4 Michael Schwartz, *supra* note 2, at 492.

5 *Id.*

6 Creating a Protective Environment for Children in Viet Nam: an assessment of child protections laws and policies, especially children in special circumstances in Viet Nam, UNICEF and MOLISA 80 (Ha Noi), 2009.

7 International Disability Rights Monitor (IDRM)—Regional Report of Asia: Country Reports, Viet Nam 140 (2005), [http://www.idrmnet.org/pdfs/CIR\\_IDRM\\_Asia\\_05.pdf](http://www.idrmnet.org/pdfs/CIR_IDRM_Asia_05.pdf) (last visited Nov. 23, 2009).

8 Creating a Protective Environment for Children with Disabilities in Viet Nam, *supra* note 6, at 80.

9 *Id.*

in many communities, and often the health care staff does not receive adequate training, or they do not have an incentive to work with the families of children with disabilities.<sup>10</sup> Many families of children with disabilities also do not receive the support that they need to raise a child with a disability. Currently, there is no systematic identification, professional assessment, or provision of support to vulnerable families that will help children with disabilities to remain with their families.<sup>11</sup> Also, the number of support programs at school and in the community for children with disabilities is limited.<sup>12</sup> Families do not benefit from mentoring programs, adolescent counseling services, life skills programs, drop-in centers, or recreational activities.<sup>13</sup> Additionally, there is a lack of trained, professional social workers.<sup>14</sup> Because social work is a new profession, designated and trained social workers have not been appointed.<sup>15</sup>

### 1.3. Education

Viet Nam has long valued the importance of education, and the Vietnamese government invests a high proportion of its national budget towards educational services for children. However, a large percentage of children with disabilities receive no education at all. According to some statistics, only fifty-two percent of children with disabilities have access to education, while thirty-three percent of children with disabilities are illiterate.<sup>16</sup> Other studies have shown a much lower percentage (twenty percent) of children with disabilities who receive an education.<sup>17</sup> Of the children with disabilities who do receive an education, the education system segregates children with disabilities by placing them in separate schools or classrooms.<sup>18</sup> Although some efforts have been made to create an inclusive education system, technical and financial support is lacking.<sup>19</sup> A lack of teacher training and information also contributes to the lack of inclusive education.<sup>20</sup> Finally, many children with disabilities do not receive the reasonable accommodations that would enable them to learn in either special or inclusive schools.<sup>21</sup>

### 1.4. Institutionalization

One of the most serious challenges facing children with disabilities in Viet Nam is their placement in social protection centers, orphanages, residential schools, or other institutions. This issue is of particular concern as Viet Nam appears to be directing new resources to buildings and programs that will increase the population of children and adults in residential facilities. Currently, no reliable statistics exist on the number of children in the institutions run by the government, international NGOs, religious organizations, private organization, or local organizations. However, one study cites the number of children in institutions as 14,574,<sup>22</sup> though this number is believed to be higher. Large discrepancies exist regarding statistics on children with disabilities who do not receive an education, and improved data collection procedures are needed to resolve this problem.

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10 Situational Analysis on Children with Disabilities in Viet Nam, *supra* note 1, at 129.

11 Creating a Protective Environment for Children with Disabilities in Viet Nam, *supra* note 6, at 24.

12 *Id.*

13 *Id.*

14 *Id.* at 29.

15 *Id.*

16 *Id.* at 81.

17 Situational Analysis of Institutional and Alternative Care Programmes in Viet Nam, UNICEF and MOLISA 34 (Ha Noi), 2005.

18 Creating a Protective Environment for Children with Disabilities in Viet Nam, *supra* note 6, at 81.

19 *Id.* at 82.

20 *Id.*

21 Situational Analysis on Children with Disabilities in Viet Nam, *supra* note 1, at 128.

22 Situational Analysis of Institutional and Alternative Care Programs in Viet Nam, *supra* note 17, at 8.

Admission to an institution is frequently based on the child's general eligibility and not on the basis of presenting needs, and institutions are not always used as the last resort.<sup>23</sup> Generally, children with disabilities are placed in institutions due to their family's limited resources and ability to provide access to food, education and medical care.<sup>24</sup> Once a child is placed in an institution, there is no periodic review or needs assessment as to the placement of the child in the institution.<sup>25</sup> Also, the child is likely to remain in the institution for a long period of time (5 to 12 years on average).<sup>26</sup> Children with disabilities may remain in institutions for a lifetime. Recently, the government has made some efforts to reduce the institutionalization of children.<sup>27</sup> However, there are several factors contributing to the continued institutionalization of children: First, there is not a clear mechanism through which the families of children with disabilities can seek services; second, there are a limited number of identification and assessment programs to identify at-risk families; and third, the system that is in place lacks the staff and training to provide meaningful assistance.<sup>28</sup> Also, no system of monitoring or periodic review exists for children in alternative care.<sup>29</sup> Because the program has not been widely implemented and because some households cannot support a child with a disability, children with disabilities still end up in institutions.<sup>30</sup>

### 1.5. Child Protection System

A comprehensive child protection system does not exist, making the identification and reporting of the abuse of children with disabilities difficult, as well as investigation and assessment process of reporting abuse.<sup>31</sup> The social services that are in place are predominantly based on a charitable effort approach, as opposed a rights-based approach.<sup>32</sup> . In terms of identification and reporting, Viet Nam has no complaint procedures separate from the Law on Complaints and Denunciations or the Penal Procedure Code, neither of which is conducive to children filing by themselves.<sup>33</sup> There is also no investigation and assessment component for responding to reports of child abuse, as only the Law on Handling of Administrative Violations and the Criminal Procedure Code are available for handling complaints.<sup>34</sup>

### 1.6. Citizen Involvement

Currently, legal provisions that stipulate the authority of organizations of persons with disabilities to be involved in law-making and supervision of programs are absent from Vietnamese law. Few organizations function in this area, and their capacities to advocate for their rights and influence national policies are limited.<sup>35</sup> The most prominent organization mainly functions to advocate for persons with disabilities, and it has limited influence on the coordinating laws and policies, supervising the implementation of the proposed Disability Law, or influencing the creation of laws and regulations.<sup>36</sup>

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23 *Id.* at 38.

24 *Id.* at 51.

25 *Id.*

26 *Id.* at 55.

27 Creating a Protective Environment for Children in Viet Nam, *supra* note 6, at 31-32.

28 *Id.* at 24.

29 *Id.* at 34.

30 *Id.* at 32.

31 *Id.* at 29-30.

32 *Id.* at 13.

33 *Id.* at 29.

34 *Id.* at 30.

35 Dr. Tống Duy Kiên, *Comparative Analysis Report on International Laws and Vietnamese Laws Regarding the Rights of Children with Disabilities* 53 (2009) [hereinafter "Comparative Analysis Report"].

36 *Id.*

## 2. Overview of the Convention on the Rights of Persons with Disabilities

### 2.1. Effects of Ratification and Compliance with the CRPD

The 21<sup>st</sup> century's first human rights convention, the Convention on the Rights of Persons with Disabilities (CRPD), was adopted by the United Nations on December 13, 2006 and it entered into force on May 4, 2008. Since then, it has gained rapid recognition around the world. As of December 1, 2009, 143 countries have signed the CRPD and 74 have ratified it.<sup>37</sup> When a country "ratifies" or "accedes" to the convention, it accepts the convention as binding law.<sup>38</sup> Signing a convention is the first step toward ratification, and it entails a political commitment not to act contrary to the "object and purpose" of the convention.<sup>39</sup>

The United Nations High Commissioner on Human Rights has issued guidance to governments who are considering ratifying or who have recently ratified the CRPD.<sup>40</sup> In preparing for ratification, the UN High Commissioner recommends reviewing both laws and policies for compliance with the CRPD.<sup>41</sup> In so doing, the High Commissioner recommends that governments confer with civil society, including organizations representing persons with disabilities.<sup>42</sup> Upon ratifying the CRPD, States Parties not only have an obligation to stop discriminating against persons with disabilities, but also an affirmative obligation to provide the services necessary for persons with disabilities to engage in society on an equal basis as those without disabilities.

The CRPD draws heavily on international experience to encourage the adoption of best practices and to help States Parties focus on the steps they need to take to ensure the protection of human rights and the full participation in society by persons with disabilities. The CRPD also requires governments not just to change laws, policies and practices, but also to fully enforce them.<sup>43</sup> The CRPD recognizes that states have the right to "progressive realization" of rights over time. International human rights law, however, requires that States parties adopt policies immediately that will set a country on the path toward full realization of those rights.

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37 <http://un.org/disabilities/countries/asp?id=166> (last visited October 20, 2009). For an overview of steps taken by countries around the world to conform to the CRPD, see Status of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto: Report of the Secretary-General, 7 July 2009, UNGA 65th Session, Item 70 Promotion and protection of human rights: Convention on the Rights of Persons with Disabilities, UN Doc. No. A/64/128.

38 Under article 43 of the CRPD, a country may signal its intent to be legally bound by first signing and then ratifying it or it may accede to a convention directly without first signing.

39 Vienna Convention on the Law of Treaties (VCLT), art. 18.

40 United Nations High Commissioner for Human Rights, "Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and Secretary-General: Thematic Study by the Office of the United Nations High Commissioner for Human Rights on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities," Human Rights Council, 10th Session, 29 January 2009, UN Doc. No. A/HRC/10/48. [hereinafter "Annual Report of the United Nations High Commission for Human Rights and Reports of the Office of the High Commissioner and Secretary-General"]

41 *Id.* at para. 16.

42 *Id.* at para. 67.

43 "States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability." Article 4(1). This includes action to "take all appropriate measures, to modify, abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities." Article 4(1)(b).

## 2.2. General Contents of the Convention on the Rights of Persons with Disabilities

The CRPD is based on the principles of (a) right to respect for one's inherent dignity, individual autonomy, and independence of persons, (b) non-discrimination, (c) full and effective participation and inclusion in society, (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity, (e) equality of opportunity, (f) accessibility, (g) equality between men and women, and (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.<sup>44</sup> . In doing so, it promotes dignity, equality, and non-discrimination, which are the cornerstones of this international human rights treaty.

Specifically, the CRPD establishes that “discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person.”<sup>45</sup> . In order to prevent such discrimination, governments must not only provide “effective legal protection,” but they must also adapt society through the provision of “reasonable accommodations” to ensure that individuals with disabilities can fully exercise these rights.<sup>46</sup> A core principle of the CRPD is that reasonable accommodations are needed to ensure “[f]ull and effective participation in society” for all people with disabilities.<sup>47</sup> Article 19 of the CRPD establishes the right of persons with disabilities to live in the community with choices equal to others. This right applies to all children with disabilities, including children with the most severe mental or physical disabilities who may require extensive community-based supports. Full participation in society requires physical accessibility<sup>48</sup> and the provision of habilitation and rehabilitation programs, including programs for children with intellectual disabilities.<sup>49</sup> For individuals with sensory impairments, it may mean facilitating the learning of sign language or the use of Braille.<sup>50</sup> The CRPD is a broad-ranging document that describes the health care,<sup>51</sup> education,<sup>52</sup> social services,<sup>53</sup> work and employment,<sup>54</sup> general standard of living,<sup>55</sup> as well as cultural life, leisure and sports<sup>56</sup> that must be afforded to children and adults with disabilities on an equal basis with people without disabilities.

## 3. Overview of Viet Nam's Laws Relating to Persons with Disabilities and Its Proposed Disability Law

### 3.1. Background of Viet Nam's Laws that Relate to Children and Adults Disabilities

The Vietnamese government's stated commitment to the protection of the rights of children with disabilities is impressive. As a country that ratified the United Nations Convention on the Rights

44 *Id.* at art. 3. See Arlene S. Kanter, “The Promise and Challenge of the United Nations Convention on the Rights of Persons with Disabilities,” *Journal of International Law and Commerce*. 34: 287-321. (2007).

45 United Nations Convention on the Rights of Persons with Disabilities (CRPD), Dec. 13, 2006, G.A. Res. 61/106, U.N. Doc. A/RES/106, *entered into force* May 3, 2008. Signed by Viet Nam on Oct. 22, 2007.

46 *Id.* at art. 5(3).

47 *Id.* at art. 3(c). See Arlene S. Kanter, “The Promise and Challenge of the United Nations Convention on the Rights of Persons with Disabilities,” *Journal of International Law and Commerce*. 34: 287-321. (2007).

48 *Id.* at art. 9.

49 *Id.* at art. 26.

50 *Id.* at art. 24(3) and (4).

51 *Id.* at art. 25.

52 *Id.* at art. 24.

53 *Id.* at art. 19.

54 *Id.* at art. 27.

55 *Id.* at art. 28.

56 *Id.* at art. 29.

of the Child (CRC) nearly twenty years ago, Viet Nam has already committed itself to enforcing the basic human rights of all children, not just children with disabilities. Under the CRC, Viet Nam agreed to ensure that every child, including every child with a disability, has “effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child’s achieving the fullest possible social integration and individual development...”<sup>57</sup> UNICEF and the Vietnamese government have a long history of working together to examine ways to implement these rights.

Viet Nam has since adopted a number of laws and policies to protect its children. Beginning with Article 50 of the 1992 Constitution, all Vietnamese citizens are guaranteed political, economic, cultural and social rights. The Vietnamese Constitution further provides that people with disabilities, together with elderly people, and destitute and orphaned children “shall be supported by the State”<sup>58</sup>

Viet Nam has continued to pass laws that provide additional rights to children and adults with disabilities. These laws include the 1989 Law on Protection of People’s Health, the 1999 Penal Law, the 2000 Law on Marriage and Family, the 1991 Law on Universalization of Primary Education, the 2004 Law on Protection, Care and Education of Children, the 2005 Education Law, the 2006 Law on Vocational Training, the 2006 Law on Information Technology, the 2006 Law on Sports and Physical Education, and the 2008 Law on In-land Transportation. In addition to these laws, various ministries of the Vietnamese government have enacted at least 20 different directives, decrees, and decisions relating to disability in such areas as labor and employment, vocational training, accessible transportation, building construction standards for residential and commercial buildings, welfare policies, teacher training, and sports.<sup>59</sup> The Vietnamese government took a significant step in 2006 when the Ministry

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57 United Nations Convention on the Rights of the Child (CRC), G.A. Res. 44/25, U.N. G.A.O.R., 44th Sess., Supp. No. 49. at art. 23(3), U.N. Doc. A/44/25, Ratified by Viet Nam on Feb. 28, 1990.

58 VIET NAM CONST. (1992), art. 67.

59 These include the following: Decree No.67/ND-CP dated 13/4/2007 on assistance policies for social assistance beneficiaries; Government’s Decree No. 43/NĐ/2008/ND-CP dated 8/4/2008 on detailed regulations and guidance for the implementation of Article 62 and Article 72 of the Law on Vocational Training; Government’s Decree No. 55/1999/ND-CP dated 10/7/1999 on the implementation of some articles of the Ordinance on PWDs; Government’s Decree No. 36/2005/ND-CP dated 17/3/2005 on the implementation of some articles of the Law on Protection, Care and Education of Children; Circular No. 13/2000/TT-BLDTBXH dated 12/5/2000 of MOLISA on the guidance of the implementation of some articles of the Government’s Decree No. 55/1999/ND-CP dated 10/7/1999 on the implementation of some articles of the Ordinance on PWDs; Prime Minister’s Decision No.: 23/2001/QĐ-TTg dated 26/02/2001 on the approval of the National Programme of Actions for Vietnamese Children, the period 2001 – 2010; Prime Minister’s Decision No. 201/2001-TTg dated 28/12/2001 on the approval of the “Education Development Strategy for period 2001 - 2010” Prime Minister’s Decision No. 65/2005-TTg dated 25/3/2005 on the approval of “National plan on the community-based care of orphaned and destitute children, abandoned children, children with severe disabilities, children who are victims of toxic chemicals and children living with HIV/AIDS for the period 2005-2010;” Prime Minister’s Decision No.239/2006/QĐ-TTg dated 24/10/2006 on the approval of the Plan for supporting to PWDs for the period 2006-2010; Inter-ministerial Circular No.46/2007/TTLT-BTC-BLDTBXH of MOF and MOLISA on the Guideline for the utilization of funding for the implementation of the Prime Minister’s Decision No. 239/2006/QĐ-TTg dated 24/10/2006 on the approval of the Plan for supporting to PWDs for the period 2006-2010; Prime Minister’s Decision No. 554/QĐ-TTg dated 11/9/1995 on the approval of the establishment of the Sports Association for Vietnamese PWDs; Directive No. 03/2007/CT-UBND of the Sport Committee dated 11/07/2007 on the promotion of the implementation of policies for supporting PWDs in sport activities; Directive No.03/2006/CT-BGT of the Minister of Transportation dated 2/3/2006 on the promotion of the implementation of policies for supporting PWDs in transportation sector; Decision No.23/2006/QĐ-BGDĐT dated 22/ 5/2006 of the Minister of Education and Training on the inclusive education for PWDs; Decision No.49/2007/QĐ-BGDĐT dated 29/ 8/2007 on the training program for teachers and education managers in charge of inclusive education for students with disabilities at the lower secondary schools; Vietnamese construction standards QCXDViet Nam 01:2002 on construction

of Labour, Invalids and Social Affairs (MOLISA) drafted a National Plan to Support People with Disabilities to be implemented between 2006 and 2010.

Currently, the proposed “National Law on Persons with Disabilities” (“proposed Disability Law”) is the most comprehensive disability law yet to be enacted in Viet Nam. For the past several years, the MOLISA has presided over its drafting and editing committees, which consists of representatives from all relevant ministries. These committees have solicited input from representatives from the National Disability Committee, the Vietnamese National Association of the Handicapped (VNAH), and international experts. Modeled after the CRPD, the proposed Disability Law has the potential to be one of the most comprehensive and progressive disability laws in the world. As of October 2009, the proposed Disability Law has been finalized by the Government and the Ministry of Justice, and has been submitted to the National Assembly Committee of Social Affairs for hearing and review.

### 3.2. Drafting of Viet Nam’s Laws Affecting People with Disabilities

By signing the CRPD, the government of Viet Nam stated its intention to bring national law and practice into conformity with the CRPD in preparation for submitting the CRPD to the National Assembly in 2010 for ratification. As such, Viet Nam has begun drafting legislation to bring the country into compliance with the CRPD.

The proposed Disability Law addresses most aspects of life for people with disabilities in Viet Nam. It ensures the rights of children and adults with disabilities equal access to health care, education, vocational training, employment, residential and government buildings, bus and train transportation, ICT, cultural activities and entertainment. This law, for the first time, prohibits discrimination against people with disabilities in admission to school on the basis of disability.<sup>60</sup> It also sets up a priority for inclusive education,<sup>61</sup> and it requires educational and vocational training schools to provide accommodations to students.<sup>62</sup> It guarantees persons with hearing, speaking, visual and other impairments the opportunity to “attend classes by using sign language, Braille that are standardized at the national level or by using education tools, materials developed for persons with disabilities.”<sup>63</sup>

The proposed Disability Law also ensures access to people with disabilities to cultural, sports, and entertainment venues, and recognizes the availability of community based rehabilitation for people with disabilities.<sup>64</sup> The law provides financial support to families of people with “severe” disabilities though not necessarily other people with disabilities.<sup>65</sup> The proposed law creates a fund to support persons with disabilities,<sup>66</sup> and it mainstreams disability policies into the country’s socio-economic development

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standards for ensuring the accessibility and use of PWDs; Vietnamese construction standards TCXD Viet Nam 264:2002 on house and building- basic principles for construction of building to ensure the accessibility and use of PWDs; Vietnamese construction standards TCXD Viet Nam 265:2002 streets and pavement - basic principles for construction to ensure the accessibility and use of PWDs; Vietnamese construction standards TCXD Viet Nam 266-2002 Housing – construction guidance to ensure the accessibility and use of PWDs; Decision No. 08/2005/QĐ-BGTVT dated 10/01/ 2005 of the Minister of Transportation on the issuance of regulation on terminals of passenger buses.

60 The National Law on Persons with Disabilities 2010/QH12 art. 13(1). (2009) (proposed draft 6, updated on Oct. 5, 2009) [hereinafter “proposed Disability Law”].

61 *Id.* at art. 21.

62 *Id.* at art. 25.

63 *Id.* at art. 20(3).

64 *Id.* at art. 18.

65 *Id.* at art. 34.

66 *Id.* at art. 10.

policies.<sup>67</sup> Perhaps most significantly of all, the law requires the Vietnamese government to secure a sufficient annual budget to implement the proposed Disability Law's policies.<sup>68</sup>

The proposed Disability Law goes a long way toward providing the legal protections required by the CRPD. There are a few critical gaps, however, as well as a few areas where the proposed Disability Law contradicts basic principles established in the CRPD. This report lays out how the proposed Disability Law can be fixed to ensure compliance with the CRPD.

## **4. Right to Protection from Discrimination on the Basis of Disability**

Viet Nam's 1992 Constitution, along with a broad array of laws, prohibits discrimination generally. Yet currently, there is no specialized law in place to protect individuals with disabilities. Viet Nam's proposed Disability Law would be an enormous step forward in prohibiting discrimination on the basis of disability. This law would be greatly strengthened, however, with more specific provisions. First, the proposed Disability Law should include a clear statement specifically prohibiting discrimination on the basis of disability in education, housing, health care, access to services, transportation, and all other aspects of life. Second, it should establish the right to "reasonable accommodation," a critical element to protecting children and adults with disabilities from discrimination.

### **4.1 Definition of Disability**

The CRPD itself contains no definition of disability, *per se*, but it is intended to apply to "those who have long-term physical, mental, intellectual, or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with other."<sup>69</sup> The CRPD specifically rejects the medical model of disability that views a person with a disability as a patient in need of treatment or charity. Instead, the CRPD adopts the "social model" of disability.<sup>70</sup> According to the social model, disability is part of the human experience; disability itself does not diminish the right of children or adults to exert choice about and control over their lives, to live and receive services in an integrated environment, or to fully participate and contribute to their communities through full integration and inclusion in the economic, political, social, cultural, and educational mainstream of society. Further, the social model, as adopted by the CRPD, places the responsibility on society (not the individual with a disability) to remove the physical and attitudinal barriers that "disable" people with various impairments and prevent them from exercising their rights and fully integrating into society.

The proposed Disability Law defines "people with disabilities" as "those who have physical, mental, intellectual and sensory impairment, which are shown in different forms of disability and in interaction with various social barriers, lack of appropriate aid conditions causing difficulties for them in equal participation in the social activities."<sup>71</sup> This definition of disability is a great improvement over the definition in the 1998 Ordinance and the definitions included in previous versions of the proposed law

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67 *Id.* at art. 30.

68 *Id.* at art. 5(1).

69 CRPD, Oct. 22, 2007, art. 1.

70 There is a difference between the terms "disability" and "impairment" in English. The definition of disability, developed by the World Health Organization in 1980 distinguishes between impairment an anatomical loss and disability as a restriction resulting from the impairment. See World Health Organization, *International Classification of Impairments, Disabilities, and Handicaps: A manual of classification relating to the consequences of disease* (Geneva, 1980). Adopted by the United Nations in: *The Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, A/RES/48/96 (20 December 1993).

71 Proposed Disability Law, Oct. 5, 2009, art. 2(1).

that focused solely on the functional limitations of the person with a disability, with no mention of the environmental and social factors that interfere with the ability of people with disabilities to exercise their rights.<sup>72</sup> As written, this definition complies with the CRPD, though other elements of the proposed Disability Law are inconsistent with this definition.

One of these inconsistencies is the definition of persons with “severe disabilities.” These people are defined as those “who have no ability to perform his or her daily personal work, or too functionally retarded to participate in social activities.”<sup>73</sup> While it is true that as a result of their impairments, some people may not be able to support themselves or participate independently in daily and social activities, these people are no less entitled to equal rights under law and to participate in society to the best of their ability than are people with less severe impairments or no impairments at all. Indeed, the CRPD requires that all people (young and old, more impaired as well as more able, etc) have access to the individualized supports and services they need to participate as fully as they can in society. Therefore, in order to fully comply with the CRPD, the second part of the definition of people with disabilities, which defines people with “severe disabilities,” should be deleted from the law. It also should be noted that the term “retarded” contained in the law is derogatory when translated into English. It is not clear whether the terms have the same connotation in Viet Nam, but the term should not be used in English, and instead the appropriate term is “person with a disability.”

The proposed Disability Law applies, in theory, to people with physical, as well as mental, disabilities (this includes intellectual, psychiatric, or psychosocial disabilities). Much of the language of the law, however, seems primarily tailored to the concerns of people with physical disabilities. The law creates a right to rehabilitation and orthopedic services, for example, but not a right to habilitation services that would be required for children with intellectual disabilities. When MDRI asked officials at the Ministry of Health about this, they indicated that the full inclusion of people with mental disabilities would greatly expand the range of benefits and services currently anticipated by the government of Viet Nam. ***It is essential that children and adults with mental disabilities receive full protection under the proposed Disability Law.*** The CRPD recognizes that resources are limited and that full realization of rights may be established over time. If the government must limit benefits due to financial limitations, it must do so equally for all people with disabilities.

## 4.2. Promotion of Dignity, Equality, and Non-Discrimination

The proposed Disability Law includes a definition of discrimination, which states: “Discrimination against persons with disabilities is actions to keep away from, to disrespect, to deny, to exclude, to mistreat, to use bad languages for, holding prejudice against, or to limit the due rights of persons with disabilities for reasons of his or her disability.”<sup>74</sup> This definition of discrimination conforms to the CRPD definition and is properly prohibited under the proposed Disability Law.<sup>75</sup> The problem, however, is that the definition in the proposed Disability Law is not specific enough. In addition to generally prohibiting

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72 For example, the 1998 Ordinance defines a people with disabilities as those “who are defective of one or many parts of the body or functions which are shown in different forms of disability, and which reduce the capability of activity and causes many difficulties to work, life and studies. In addition, one of the earlier drafts of the law, from February 2009, defined persons with disabilities as “Vietnamese citizens defective of one or many parts of the body or functions which are shown in different forms of disability, and which reduce the capability to perform daily living activities.” These definitions embrace the “medical model” of disability; whereas the UN CRPD utilizes and endorses the alternative, “social model” of disability.

73 Proposed Disability Law, Oct. 5, 2009, art. 2(2).

74 *Id.* at art. 2(8).

75 *Id.* at art. 13(1).

discrimination, it should specifically prohibit discrimination on the basis of disability in the context of education, housing, health care, access to services, transportation, and all other aspects of life.

In addition to the proposed Disability Law, Viet Nam's 1992 Constitution reaffirms the principles of dignity, equality, and non-discrimination in article 52, which states "all citizens are equal under the law."<sup>76</sup> Article 5 of the Civil Code, article 8 of the Civil Procedure Code, article 3 of the Penal Code, article 5 of the Penal Procedure Code, article 5 of the Labour Code, and article 2 of the Law on Marriage and Family contain similar statements.<sup>77</sup> However, to further clarify and protect the rights of persons with disabilities, additional language should be added that affirmatively applies these rights to persons with disabilities and prohibits discrimination on the basis of disability.

Article 15 of the CRPD also requires protections against inhumane treatment or torture, which constitutes a form of discrimination against persons with disabilities. Protections against abuses in institutions – including such practices as the use of physical restraints or seclusion – must be established under Viet Nam's laws as an anti-discriminatory matter. During MDRI's visits to institutions, MDRI observed the unregulated use of physical restraints on children with disabilities.

### 4.3. Reasonable Accommodation

The CRPD defines "reasonable accommodation" as the "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise of an equal basis with others of all human rights and fundamental freedoms."<sup>78</sup> Denying persons with disabilities reasonable accommodations constitutes discrimination on the basis of disability.<sup>79</sup>

The concept of reasonable accommodation is extremely important under the CRPD. Without reasonable accommodation, individuals with disabilities will not be able to realize their right to dignity, equality, and non-discrimination because they will not be able to fully participate in society. As such, the CRPD states that "in order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided."<sup>80</sup> The necessity of reasonable accommodation for children is further emphasized in article 7, which states children in particular must be "provided with disability and age-appropriate assistance."<sup>81</sup>

Although article 2 of the proposed Disability Law provides a general definition of discrimination, it does not state that the failure to provide reasonable accommodation to persons with disabilities constitutes discrimination.<sup>82</sup> Without reasonable accommodations, persons with disabilities will not be able to participate fully in society and are therefore subject to discrimination. Subsequently, this language should be added to the definition of disability in the proposed Disability Law in article 2 and prohibited under article 13. Incidentally, this is one reason why the development of independent civil society and the empowerment of persons with disabilities to engage in advocacy is so essential. Unless individuals denied access have the opportunity to work with others to identify and bring about improvements, the current pattern of non-enforcement is likely to continue.

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76 VIET NAM CONST. (1992), art. 52.

77 Dr. Tống Duy Kiên, *supra* note 35, at 11.

78 CRPD, Oct. 22, 2007, art. 2.

79 *Id.*

80 *Id.* at art. 5.

81 *Id.* at art. 7(3).

82 Proposed Disability Law, Oct. 5, 2009, art. 2.

## 5. Right to Accessibility

One of the most pervasive problems that all people with disabilities face is the lack of accessibility to public spaces and public services. Persons with physical disabilities are unable to access schools, health care centers, and public places because the buildings and the transportation do not accommodate persons with disabilities. Similarly, persons with visual or auditory disabilities are often denied access to curriculum, media outlets, and other information. Viet Nam has laws and regulations that promise to make the physical environment and transportation available, but it only encourages the development of information and communication. Viet Nam's proposed Disability Law does not make clear who is responsible for making information and communication accessible, at what time the information and communication must be available by, or what it will entail. The proposed Disability Law would be much improved if it specifically guaranteed persons with disabilities the right to information technology and communication and laid out a plan to ensure this right.

### 5.1. Right to Accessibility of the Physical Environment and Transportation

For people with certain disabilities, their right to equality means very little if they are unable to access their environment. The right to accessibility helps people with disabilities to live independently and participate fully in their surroundings. Accessibility is not just an issue for people with physical disabilities who have trouble entering or using buildings, houses, roads, and transportation. Accessibility is also an issue for people with visual and auditory impairments. For these people to access society, it is necessary that sign language, Braille letters, cassettes, larger font sizes, and other means of assistive technology be available.<sup>83</sup>

As such, article 9 of the CRPD requires States Parties to take appropriate measures to ensure “access to people with disabilities, on an equal ground with others, to (1) the physical environment, (2) to transportation, (3) to information and communications, including information and communications technologies and systems, and (4) to other facilities and services open or provided to the public, both in urban and in rural areas”

In terms of access to the physical environment and transportation, the Ministry of Construction and the Ministry of Transportation have issued a series of regulations requiring buildings and transportation to be accessible to persons with disabilities.<sup>84</sup> In terms of access to information and communication, the 2006 Law on Information Technology has a separate provision regarding people with disabilities. Although the regulation encourages the development of information technology, there is no specific provision on the use of sign language, Braille, increased font size and other alternative communication, such as characters or language assisting devices for different disability forms.<sup>85</sup>

As for the proposed Disability Law, it requires all new housing and public buildings to be upgraded and retrofitted to ensure access to people with disabilities.<sup>86</sup> . It also requires that all future designs comply

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83 CRPD, Oct. 22, 2007, art. 9(1).

84 These regulations include: Vietnamese Construction Standards QCXD Viet Nam 01:2002 on building codes; Vietnamese Construction Standards TCXD Viet Nam 264:2002 on basic disability design and construction; Vietnamese Construction Standards TCXD Viet Nam 265:2002 on route and sidewalk rules; Vietnamese Construction Standards TCXD Viet Nam 266:2002 on housing construction; and Minister of Transportation's Decision No. 08/2005/QĐ-BGTVT dated 10/01/2005 on regulation of passenger bus terminals.

85 Dr. Tống Duy Kiên, *supra* note 35, at 12-13.

86 Proposed Disability Law, Oct. 5, 2009, art. 30(1).

with national construction code standards.<sup>87</sup> Public transportation also must be made accessible to persons with disabilities.<sup>88</sup> As for information and communication technology, the proposed Disability Law places an obligation on “institutions, organizations, enterprises and individuals” to establish programs to develop a roadmap for the use of sign language, Braille, and technical devices for persons with disabilities.<sup>89</sup> From this language, however, it is not clear who is responsible for implementing or enforcing these laws. A timetable and completion date is also lacking. All of this should be clarified in the law to ensure the right to accessibility.

Although Viet Nam has made progress in passing regulations that adapt the physical environment and transportation to people with disabilities, there are still improvements to be made as noted above. In terms of access to the physical environment and transportation, it is not immediately clear whether the current laws are specific enough to improve access to persons with disabilities. In many cases, buses, railroads, housing, public buildings, and roads are not accessible to people with disabilities. In part, however, this lack of access is attributable to the lack of enforcement of current laws. Despite the regulations in place, persons with disabilities continue to lack access to public transportation, schools, hospitals, toilets, stores, and buildings of all types.<sup>90</sup>

## 5.2. Right to Accessibility of Information Technology and Communication

In terms of access to information technology and communication, Viet Nam’s current laws do not require that information technology be made available to persons with disabilities. Rather, Viet Nam’s laws encourage the dissemination of information technology.<sup>91</sup> As such, people with visual or auditory impairments are not guaranteed the availability of Braille letters, cassettes, increased font size, and other types of technology.<sup>92</sup> Although the latest draft of the proposed Disability Law requires media organizations to begin planning for access to information and technology,<sup>93</sup> it is not clear from the law who will be in charge of implementing these changes, what the standards will be, or how they will be enforced.

As such, Viet Nam’s laws would be better if they specifically guaranteed persons with disabilities the right to Braille letters, cassettes, increased font size, and other types of technology and provided a clear plan for implementation. Other accommodations should also be taken into consideration, including captioning on videos, computer programs that are audible for people who have vision impairments, traffic lights that not only change color but also announce when it is safe for pedestrians, fire alarms in all buildings that have blinking lights for people with hearing impairments, and elevators with Braille signage and audio announcements, to name a few examples.

## 6. Right to Live in the Community

For more than 60,000 children with disabilities in Viet Nam, the right to live with their families in the community is denied on the basis of their disability, as the right to live in the community does not exist under Vietnamese law. A number of legislative changes need to occur in order to bring Vietnamese law into conformity with article 19 of the CRPD, which establishes the “equal right of all persons with

87 *Id.* at art. 30(2).

88 *Id.* at art. 32(1).

89 *Id.* at art. 33.

90 Situational Analysis of Children with Disabilities in Viet Nam, *supra* note 1, at 155.

91 Dr. Tống Duy Kiên, *supra* note 35, at 12.

92 *Id.* at art. 13.

93 Proposed Disability Law, Oct. 5, 2009, art. 33.

disabilities to live in the community, with choices equal to others...” The proposed Disability Law should be amended to: (1) include a specific provision guaranteeing the right of children to live with their families and (2) guarantee the right of children to live with an alternative family if their own family cannot take care of them. New legislation should also be adopted to establish a supported-foster care system for all children with disabilities regardless of the severity of their disability. To ensure that children with disabilities can live safely in the community, as required by CRPD article 16, Viet Nam should establish a child protection system to prevent abuse in families, institutions, and any program serving children with disabilities. The Vietnamese government should also create standards of care and placement procedures for children with disabilities in institutions.

### **6.1. Right to Protection of the Family**

Under international human rights law, every child with a disability has the right not to be separated from his or her family on the basis of disability. The CRPD requires States Parties to “ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of disability of either the child or one or both of the parents.”<sup>94</sup>

The Law on Marriage and Family contains a host of obligations that family members have to one another. However, none of these obligations specifically address the right of children with disabilities to live with their family and to not be separated from their family on the basis of disability. The Vietnamese Law on Protection, Care and Education of Children is more specific, but not specific enough. It states that children (generally, not just children with disabilities) have the right to live with their parents and that no one has the right to take children away from their parents, unless it is in the child’s interest.<sup>95</sup> It also states that the care of disadvantaged children is to be carried out mainly by their families or alternative families and that the care of disadvantaged children in child-support establishments shall only apply to those children who are disadvantaged or not raised in their own family.<sup>96</sup> None of the above provisions, however, apply explicitly to the right of children with disabilities to family. Similarly, the proposed Disability Law does not include a provision establishing the right of children to live with their families and to not be removed from their family on the basis of their disability.

To comply with the CRPD, Viet Nam should amend its various laws to explicitly state that children with disabilities have the right to live with their own families. This statement should also be added to the proposed Disability Law. When children are taken away from their families, they face many hardships. As such, this oversight should be corrected, and special efforts should be made to preserve the opportunity for a child with a disability to live with his or her family. The steps necessary to identify the families of children with disabilities and services available to these families in their home also should be set forth in the proposed Disability Law.

To enforce the right to protection of the family, Viet Nam will need to provide support both to the child with a disability and to the child’s family. Support includes a full array of educational, social and health care services that are available to children with disabilities where they live in the community, such as social welfare benefits (financial assistance); income generation support; home visiting and support programs; family support centers; drug and alcohol addiction treatment; counseling; respite care; peer

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94 CRPD, Oct. 22, 2007, art. 23(4).

95 Law on the Protection, Care, and Education of Children, No.25/2004/QH 11 June, 2004, art. 13.

96 *Id.*

support groups; and parenting education classes.<sup>97</sup> Families of children with disabilities should also be provided with counseling so that they will learn not to be ashamed of their children with disabilities and instead to see their potential.<sup>98</sup> These families will also need income supports and respite care.

## 6.2. Right to Live in the Community

The right to community integration is a core principle of international law that predates the CRPD.<sup>99</sup> In the past 30 years, it has been affirmed and reaffirmed in the UN Principles for the Protection of Persons with Mental Illness, the Standard Rules on Equalization of Opportunities for Persons with Disabilities, and the Resolution on the Social Services for Physically or Mentally Handicapped Persons.<sup>100</sup> The CRC was the first binding treaty, however, to recognize that children with disabilities have the right to “active participation in the community.”<sup>101</sup> States Parties are obligated to provide social services to guarantee this right.<sup>102</sup> Article 23(3) of the CRC specifies that governments must ensure that “the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child’s achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.”

The Committee on the Rights of the Child has expressed concern at the placement of children with disabilities in institutions.<sup>103</sup> Although it does not unequivocally state that all children with disabilities have the right to live in the community, it “urges States Parties to use the placement in institution only as a measure of last resort, when it is absolutely necessary and in the best interests of the child.”<sup>104</sup> It calls upon states “to set up programmes for de-institutionalization of children with disabilities, re-placing them with their families, extended families or foster care system.”<sup>105</sup>

Article 19 of the CRPD, meanwhile, makes clear that *all* children with disabilities have the right to live in the community with choices equal to others. Taken together, the CRC and CRPD establish that governments must plan for the full integration into society of children now segregated from society. This would entail a plan for providing community-based services to end the reliance on orphanages, residential schools, psychiatric institutions, and social protection facilities for raising children.

### 6.2.1. Right to Live in a Family Setting

Article 19 of the CRPD, specifically requires governments to recognize the right of “all persons with disabilities to live in the community, with choices equal to others...”<sup>106</sup> This article applies equally to children and adults with disabilities, regardless of the severity of the impairment. If a child’s own biological or extended family cannot or will not raise the child, then “substitute” or “foster” families are the next best option. The CRPD holds that “where the immediate family is unable to care for a child

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97 Creating a Protective Environment for Children in Viet Nam, *supra* note 6, at 23.

98 *Id.*

99 Eric Rosenthal, Elizabeth Bauer, Mary F. Hayden, and Andrea Holley, *Implementing the Right to Community Integration for Children with Disabilities in Russia: A Human Rights Framework for International Action*, 4 Health and Hum. Rts. 83, 85 (1999).

100 *Id.* at art. 85-86.

101 CRC, Feb. 28, 1990, at art. 23(1).

102 *Id.*

103 General Comment 9, U.N. CRC, 43rd Sess., at para. 47 U.N. Doc. CRC/C/GC/9 (2006).

104 *Id.*

105 *Id.*

106 CRPD, Oct. 22, 2007, at art. 19.

with disabilities, [States Parties shall] undertake every effort to provide alternative care within the wider family, and dialing that, within the community in a family setting.”<sup>107</sup> To the extent that foster families are reluctant to take in children with disabilities who may require special care due to their physical, sensory, psychological, or mental status, the Committee on the Rights of the Child recommends that “organizations that are responsible for foster placement of children must, therefore, conduct the necessary training and encouragement of suitable families and provide the support that will allow the foster family to appropriately take care of the child with the disability.”<sup>108</sup>

Nothing in Viet Nam’s proposed Disability Law, however, establishes the right of children with disabilities to live in a family setting in the community. The proposed Disability Law needs to be amended to state unequivocally that children with disabilities do in fact have this right. While the Vietnamese Law on Protection, Care and Education of Children states that all children have the right to live with their parents and that no one has the right to take children away from their parents, unless it is in the child’s interest,<sup>109</sup> it does not apply specifically to children with disabilities.

Currently, the practice of separating children with disabilities from their parents, in part, continues as the current community-based services are inadequate to allow implementation of this right.<sup>110</sup> Viet Nam has limited mechanisms to provide financial and other forms of support to families of children with disabilities.<sup>111</sup> Vietnamese law makes some provisions for community-based care via (1) kinship care, (2) guardianship, (3) adoption, (4) informal fostering, and (5) institutionalization.<sup>112</sup> However, it lacks a publicly-regulated foster care system for instances in which families cannot take care of their children with disabilities.<sup>113</sup> These shortcomings should be corrected to guarantee children with disabilities the right to live in a family setting.

### **6.2.2. Right to Deinstitutionalization**

Over the last 50 years, researchers have documented the damaging consequences of placing children in institutions.<sup>114</sup> While dangers are particularly great during infancy, children placed an older age are also vulnerable.<sup>115</sup> These dangers include cognitive problems, severe emotional and behavioral disorders, a syndrome that mimics autism, sensory integration issues, speech and language delays, serious medical

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107 *Id.* at art. 23(5).

108 General Comment 9, U.N. CRC, 43rd Sess., at 790, U.N. Doc. CRC/C/GC/9 (2006).

109 Law on the Protection, Care, and Education of Children, No.25/2004/QH 11 June, 2004, art. 13.

110 Situational Analysis of Institutions and Alternative Care Programmes in Viet Nam, *supra* note 17, at 38-39.

111 Creating a Protective Environment for Children in Viet Nam, *supra* note 6, at 24.

112 *Id.* at art. 31.

113 *Id.*

114 Charles H. Zeanah et al., *Designing Research to study the effects of institutionalization on brain and behavioral development: The Bucharest Early Intervention Project*, 15 DEVELOPMENT AND PSYCHOPATHOLOGY 885, 886 (2003) (reviewing five decades of research literature on the damaging effects of institutionalization); D.A. Frank et al., *Infants and Young Children in Orphanages: One View from Pediatrics and Child Psychiatry*, 95 PEDIATRICS (1996); JAMES CONROY AND VALERY BRADLEY, THE PENNHURST LONGITUDINAL STUDY: A REPORT OF FIVE YEARS OF RESEARCH AND ANALYSIS (1985).

115 Dana Johnson, *Medical and Developmental Sequelae of Early Childhood Institutionalization in Eastern European Adoptees*, in THE EFFECTS OF EARLY ADVERSITY ON NEUROBIOLOGICAL DEVELOPMENT 147 (C. Nelson, ed., 2000).

problems, and deficiencies in growth.<sup>116</sup> While children may recover from many of the developmental delays caused by institutionalization, the psychological damage caused by institutionalization is likely to last a lifetime.<sup>117</sup>

The UN High Commissioner for Human Rights has unequivocally stated that “Legislation authorizing the institutionalization of persons with disabilities on the grounds of their disability without their free and informed consent must be abolished.”<sup>118</sup> In addition to simply abolishing institutionalization of persons without their consent, however, Article 19 of the CRPD creates a positive obligation on governments to plan for deinstitutionalization and to create the services necessary for meaningful community-based alternatives to institutions. As the UN High Commissioner for Human Rights has made clear, a stated policy of deinstitutionalization is not enough:

“The provisions of article 19 of the Convention carry far-reaching implications for all forms of institutionalized care of persons with disabilities. The recognition of the right of persons with disabilities to independent living and community inclusion requires the shift of government policies away from institutions towards in-home, residential and other community support services. The key element of any intervention aimed at giving effect to the right to independent living and community inclusion is the explicit legal recognition of the right of persons with disabilities to determine where and with whom to live. This recognition should also openly reflect the unlawfulness of arrangements for residential care made against the wishes of a person with disabilities.”<sup>119</sup>

“De-institutionalization is necessary but not sufficient to achieve the goal of independent living. In most cases, a national strategy that integrates interventions in the area of social services, health, housing and employment, at a very minimum, will be required. For the effective implementation of such strategies it is necessary that the independent living principle be rooted in a legislative framework which clearly establishes it as a legal right and in turn places duties on authorities and service providers, while also allowing for recourse in case of violation. Such legislative frameworks shall include the recognition of the right to access the support services required to enable independent living and inclusion in community life, and the guarantee that independent living support should be provided and arranged on the basis of the individual’s own choices and aspirations, in line with the principles of the Convention.”<sup>120</sup>

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116 Zeanah et al., *supra* note 114, at 15. See also Kim Chisholm, *A Three-Year Follow-up of attachment and indiscriminate friendliness in children adopted from Romanian orphanages*, 69 CHILD DEVELOPMENT 1092 (1998); Megan Gunner, Jacqueline Bruse, and Harold Grotevant, *International adoption of institutionally reared children: research and policy*, 12 DEVELOPMENT AND PSYCHOPATHOLOGY 677 (2000); Dana Johnson, *Medical issues in international adoption: Factors that affect your child’s pre-adoption health*, 30 ADOPTIVE FAMILIES 18 (1997); T.C. Benoit, et al., *Romanian adoption: The Manitoba experience*, 150 ARCHIVES OF PEDIATRIC AND ADOLESCENT MEDICINE 1278 (1996); Michael Rutter, et al., *Quasi-Autistic patterns following severely early global deprivation*, 40 JOURNAL OF CHILD PSYCHOLOGY AND PSYCHIATRY AND ALLIED DISCIPLINES 547 (1999).

117 Johnson, *supra* note 115, at 147.

118 Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the Higher Commissioner and Secretary-General, *supra* note 40 at para. 49.

119 *Id.* at art. 50.

120 *Id.* at art. 51.

Yet despite this language, the current policies in Viet Nam do not address the situation of children that are currently residing in institutions, and there is no national strategy for de-institutionalization. According to UNICEF and the MOLISA, children with disabilities in Viet Nam are frequently put in institutions as a matter of standard procedure.<sup>121</sup> Moreover, they stay for long periods of time, often until they reach age 18 and beyond.<sup>122</sup> Their placement is rarely reviewed, and when it is, the focus is placed on the material conditions of the child.<sup>123</sup> ***As such, the Vietnamese government should stop all future institutionalization of children with disabilities. In the meantime, it should also set forth a timeline for phasing out the current use of institutions and placing institutionalized children in families within the community.***

Even though the proposed Disability Law provides that institutions will promote community and family living for children and adults with disabilities,<sup>124</sup> it is unlikely it will have that effect in practice for several reasons. First, institutions may have a vested interest in keeping people there in order to retain the staff and budget of the institution. Second, once individuals live in an institution for a long period of time, they are said to become “institutionalized,” or used to living in an institution, and are then often afraid of being released into a world they do not know. Further, the proposed Disability Law includes no standards regarding who determines which patients are “qualified” and “willing” to leave the institutions. Without such standards, the decision to release is left to the treating staff’s professional judgment, which may differ from that of the family or the resident, him or herself. In such cases, the staff’s judgment will likely prevail. ***As such, the Vietnamese government should focus on creating a strategy to provide real community-based alternatives to institutional care, instead of continuing the practice of institutional care.***

As for creating a strategy to provide community-based alternative care, no publicly-regulated foster care system exists currently in Viet Nam. However, Viet Nam has begun to transition away from institutions to family-based care.<sup>125</sup> On March 25, 2005, the Prime Minister issued Decision No. 65/2005/QĐ-TTg, which presents a plan for “Community-based care for destitute and orphaned children, abandoned children, children with severe disabilities, children who are victims of toxic chemicals, children living with HIV/AIDs for the period of 2005-2010”<sup>126</sup> The decision contains plans for the following: experiment to transfer children under special circumstances who are currently looked after in state-run social protection centers to the community in the form of foster families, foster parents or care at the Social House; to develop the pilot Social House model to take care of children under special circumstances at commune level; Pilot the shift from institutionalized care for children under special circumstances in state-run social protection centers to the centralized care in the form of “small scale families” in the state-run social protection centers.”<sup>127</sup>

The general policy direction set by Decision No. 65/2005/QĐ-TTg is a positive step in transitioning to a publicly regulated foster care system. As a means of ensuring the right to live with a family, the effort to provide community-based alternatives established in the pilot program developed pursuant to Decision

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121 Creating a Protective Environment for Children in Viet Nam, *supra* note 6, at 33.

122 *Id.*

123 *Id.*

124 Proposed Disability Law, Oct. 5, 2009, art. 37(5). The law states that facilities that are responsible for nurturing people with disabilities will “collaborate with the people’s committee at commune level where persons with disabilities have residence to return to their families or communities and/or those who are qualified or willing to leave the social protection centers for home and community.”

125 Creating a Protective Environment for Children in Viet Nam, *supra* note 6, at 31.

126 Decision No.65/2006/QĐ-TTg, March 25, 2005.

127 *Id.*

No. 65/2005/QĐ-TTg dated should be applied to all children with disabilities and fully implemented. Children who now live in institutions should be integrated back into society without any further delay.

Decision No. 65/2005/QĐ-TTg provides for the placement of Vietnamese children “in state-run social protection centers [and] “small scale families” in the state-run social protection centers.”<sup>128</sup> This model seems to merely substitute a large for a small institution. International experience has shown the dangers to children inherent in such congregate settings, even if they are smaller and cleaner facilities.<sup>129</sup> “Family-like” environments within the walls of institutions cannot substitute for true families.<sup>130</sup> Even when extensive resources are invested into greater staffing or cleaner institutions, children experience psychological damage and/or developmental delays from growing up in congregate settings.<sup>131</sup> As UNICEF found in its 2004 “Situational Analysis of Institutional and Alternative Care Programmes,” foreign donors in Viet Nam have shown a preference toward investing in fixing up institutions rather than supporting community-based alternatives.<sup>132</sup> The government of Viet Nam and foreign donors should avoid these mistakes by directing efforts to supporting children in families and providing services in the most integrated settings within local communities.

One of the mistakes that other countries have made as they go through reform has been to begin by serving children with the least impairments, leaving children with more severe impairments to live in institutions or to remain segregated from society in their homes. Unfortunately, reform usually takes longer than expected and children with more severe disabilities remain neglected and living in the worst of circumstances. Institutionalization contributes to even more severe disabilities. If Viet Nam starts the reform process by meeting the needs of children with the most severe disabilities first, it will demonstrate that all children with disabilities can be integrated into the community. The solutions for children now residing in institutions are fundamentally the same as for all children with disabilities in Vietnamese society.

### **6.3. Right to Services and Adequate Standard of Living**

Services and an adequate standard of living are necessary for children and adults with disabilities to live in a family or community setting outside of an institution. Without services and an adequate standard of living, the rights of children and adults with disabilities will not be realized. As such, the CRPD states that States parties must ensure that “[p]ersons with disabilities have access to a range of in-home, residential and other community support living and inclusion in the community, and to prevent isolation or segregation from the community.”<sup>133</sup> States Parties must also “also undertake to so provide early comprehensive information, services, and support to children with disabilities and their families.”<sup>134</sup>

The proposed Disability Law lays out the community-based social support for persons with disabilities and lists the beneficiaries of a monthly stipend, which includes persons with “severe disabilities.”<sup>135</sup> It states that “persons with severe disabilities who have no support or have no possibility to live with their family or in the community shall be financially supported by the State in terms of nursing and taking

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128 Decision No.65/2006/QĐ-TTg, March 25, 2005.

129 See, e.g. Hidden Suffering: Romania’s Segregation and Abuse of Infants, MDRI 20 (Washington DC), 2006.

130 *Id.*

131 *Id.*

132 Situational Analysis of Institutional and Alternative Care Programs in Viet Nam, *supra* note 17, at 14.

133 CRPD, Oct. 22, 2007, art. 19(b).

134 *Id.* at art. 23(3).

135 Proposed Disability Law, Oct. 5, 2009, art. 34.

care services in Social Protection Institutions.”<sup>136</sup> Decision No. 20/2007/QĐ-TTg seeks to reduce poverty in poor communities and households with adults and children with disabilities. Decree No. 67/ND-CP dated April 13, 2007 sets out the policies for supporting social protection for people with “severe” disabilities, outlines the monthly subsidies, and provides health insurance cards. However, there are older versions of the decree that do not include children under 15 as beneficiaries, and some provinces continue to use them.<sup>137</sup> As such, all provinces need to implement the most recent decree.

The proposed Disability Law and the above directives seek to provide an adequate standard of living, but they should be changed so that the right to services and adequate standards of living do not rest on the “severity” of the disability. To the extent that Article 34 and 35 of the proposed Disability Law set up separate systems of services, supports, schools, residential programs, and institutions for people with “severe” disabilities, it is inconsistent with the CRPD. If, on the other hand, the law is modified to establish that financial support shall be provided to all people with disabilities for community support, then this provision would comply with the CRPD since the CRPD favors community living over institutions and residential programs.

The chapter of proposed Disability Law on social security protections also should state in no uncertain terms that persons with disabilities have the right to live in the community and that social security for protection will help to enable them to live in the community, and the right to community living is not dependent on the severity of the disability. In the event that persons with disabilities are placed in social protection institutions, standards must be established to ensure that they have an adequate services and standard of living.

#### **6.4. Right to Freedom from Abuse and Exploitation and Right to Freedom from Torture, Cruel, Inhuman or Degrading Treatment or Punishment**

The CRPD states unequivocally that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>138</sup> It also mandates that States Parties must take all measures to “prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.”<sup>139</sup> The UN Special Rapporteur on Torture has held that certain medical practices may constitute torture, such as (i) medical or scientific experimentation and (ii) medical interventions, such as abortions and sterilizations, electroconvulsive shock therapy, forced psychiatric interventions, involuntary commitments to psychiatric institutions.<sup>140</sup> He also noted that the practice of using long term physical restraints for children in orphanages constitutes a form of “ill-treatment or torture.”<sup>141</sup> The United Nations Principles for the Protection of Persons with Mental Illness provides detailed guidance about the procedural protections necessary to ensure that restraints are not abused.<sup>142</sup>

The CRPD requires States Parties to take all appropriate measures to “protect persons with disabilities [...] from all forms of exploitation, violence and abuse, including their gender-based roles.”<sup>143</sup>

136 *Id.* at art. 35(1).

137 Dr. Tống Duy Kiên, *supra* note 35, at 47.

138 CRPD, Oct. 22, 2007, art. 15(1).

139 *Id.* at art. 15(2).

140 Promotion and protection of human rights: implementation of human rights instruments. Torture and other cruel, inhuman or degrading treatment or punishment: Note by the Secretary General, U.N. G.A.O.R. 63 Sess., Item 67(a), at para. 58-65, U.N. Doc. A/63/175 (2008).

141 *Id.* at art. 55.

142 G.A. Res. 46/119, U.N. GAOR, Principles for the Protection of Persons with Mental Illness, 75th meeting, at prin. 11(11), U.N. Doc. A/RES/46/119 (1991).

143 CRPD, Oct. 22, 2007, art. 16(a).

Furthermore, States Parties shall take all appropriate measures to prevent all forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers. The UN Special Rapporteur on Torture<sup>144</sup> and the UN Special Rapporteur on the Right to Health<sup>145</sup> have both pointed out that individuals with disabilities are particularly at risk of abuse when they are in positions of powerlessness typically found when they are detained in residential institutions. Since children and adults with disabilities in institutions are more vulnerable, their right to be protected from abuse and exploitation must be adequately protected.

Preventing the abuse and mistreatment of children and adults with disabilities should be a priority in light of the fact that children and adults with disabilities in institutions are particularly vulnerable. As such, the Vietnamese Constitution states: “the citizen shall enjoy inviolability of the person and the protection of the law with regard to his life, health, honor and dignity. It is strictly forbidden to use all forms of harassment and coercion, torture, violation of his honour and dignity, against a citizen.”<sup>146</sup> Viet Nam has other domestic laws to protect children from abuse and exploitation as well,<sup>147</sup> and the proposed Disability Law contains provisions protecting people with disabilities from abuse based on discrimination.<sup>148</sup> Viet Nam also has ratified several international conventions that protect the rights of children against abuse, violence, and exploitation.<sup>149</sup>

Yet despite the numerous laws prohibiting abuse, none of Viet Nam’s laws specifically protect children with disabilities from abuse, mistreatment, violence, and exploitation, particularly in residential and institutional settings. Article 13 of the proposed Disability Law should include a new provision specifically prohibiting such treatment, and all other relevant laws mentioned above should also be amended to apply to specifically to children with disabilities. Also, measures must be taken to enforce the right to be free from abuse and exploitation by setting up child protection services. This means that a child protection service should be established that enables people to report instances of abuse, for the instances of abuse to be investigated, and for prompt action to be taken to stop the abuse. Social workers must be trained to respond to the reports and to report such abuses themselves. For more information on child protection, see section 12.7.1. of this report entitled, Establishment of a Child Protection System.

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144 Torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/63/175 (2008), *supra* note 140, at para. 50.

145 Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, U.N. Economic and Social Council 61 Sess., Item 10, at para. 8, U.N. Doc. E/CN.4/2005/51 (2005).

146 VIET NAM CONST. (1992), art. 71.

147 The Law on Protection, Care and Education of Children protects children from a variety of types of abuse, neglect and exploitation. In addition, Government Decree No. 114//2006/ND-CP includes sanctions for violence and abuse against children and imposes monetary fines and criminal prosecution for offenders. In 1999, the government also issued the Penal Code, which prohibits a number of crimes against children. More recently, the National Programme of Actions for Vietnamese children for the period 2001 – 2010, approved by the Prime Minister in relation to the Decision No.23/2001/QĐ-TTg dated 26/02/2001, sets out “specific objectives of protecting children from social evils, preventing violence against children, fighting discrimination against children; preventing childhood injury, and promoting the care for children with disabilities.”

148 Proposed Disability Law, 2009, art. 13.

149 These conventions include the Convention on the Rights of the Child and Optional Protocols, the International Labour Organization Convention No. 138 (1973) concerning Minimum Age for Admission to Employment, and ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

## 7. Right to Health Care

While Vietnamese law recognizes the right to health care and provides for community-based rehabilitation services, many children with disabilities in Viet Nam still lack access to health care. The number of children who receive community-based rehabilitation is very low, as approximately one-third of families who have children with disabilities have never sought treatment for their child.<sup>150</sup> Of those households who have sought out treatment for their child, fifty percent have benefitted from Viet Nam's health care support policies, while thirty-eight percent have access free health checkups and treatment.<sup>151</sup> Forty-five percent have received health insurance cards.<sup>152</sup> As such, the right to health care needs to be implemented in a meaningful way that provides persons with disabilities with the care they require.

The proposed Disability Law provides a valuable array of health care and rehabilitation services to people with disabilities. It never mentions a right to habilitation, however, which is essential for people with intellectual disabilities or other severe disabilities to build or maintain self-care and community living skills. Specific references also should be made to the right to community-based psychosocial rehabilitation services, which are essential for children with mental health issues to live in the community. Finally, the proposed Disability Law does not protect the right to individual autonomy, self-determination, and choices in medical care and social services required by the CRPD. The Vietnamese government should also add a section to the proposed Disability Law to protect the right of persons with disabilities to give informed consent, autonomy, and choice. Specific protections against coerced treatment, particularly in the context of mental health care and institutionalization, should be established.

### 7.1. Right to Special and Free Health Care

The CRPD requires States Parties to “provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons.”<sup>153</sup> States Parties must also “provide those health services needed by persons with disabilities specifically because of their disabilities.”<sup>154</sup> The CRC also sets forth the rights of children with disabilities to health care: “States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or other for the child.”<sup>155</sup>

The right to special and free health care in Viet Nam is included in many different laws.<sup>156</sup> Article 10 of the 1998 Ordinance on Persons with Disabilities deals directly with people with disabilities. It states: (1) people with disabilities are entitled to disease prevention, health care and functional rehabilitation and (2) seriously disabled persons without income and support and poor disabled persons are assured medical examination and treatment free of charge.<sup>157</sup> In regard to health care for children, article 15 of the Law on Protection, Care and Education of Children states that children have the right to health care and protection and that children six and under are entitled to free health care.<sup>158</sup> Viet Nam's proposed

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150 Creating a Protective Environment for Children in Viet Nam, *supra* note 6, at 80

151 *Id.*

152 *Id.*

153 CRPD, Oct. 22, 2007, art. 25(a).

154 *Id.* at art. 25(b).

155 CRC, Feb. 28, 1990, art. 23(2).

156 At the most basic level, article 61 of the 1992 Constitution states that “the citizen is entitled to a regime of health care.” More specifically, Chapter VII of the 1989 Law on the Protection of the People's health protects the health of the “elderly, invalids, persons with disabilities, and ethnic minorities.”

157 Dr. Tống Duy Kiên, *supra* note 35, at 43.

158 Law on Protection, Care and Education of Children, No. 25/2004/QH 11 June, 2004, at art. 15.

Disability Law guarantees persons with disabilities the right to “access health check up, treatment and appropriate medical services.”<sup>159</sup> It also requires the government to “improve and upgrade the health care service facilities so as to allow the access of persons with disabilities.”<sup>160</sup> Significantly, it also requires persons with disabilities to be supported and provided with the opportunity to community-based rehabilitation programs.<sup>161</sup>

Currently, the number of children who have received special health care is quite small (only thirty-percent of children with disabilities have received orthopedics and functional rehabilitation<sup>162</sup>). The number of children using rehabilitative aids remains very low with only one-fifth of children with disabilities using prosthetics, orthotics, hearing and vision aids, and wheelchairs.<sup>163</sup> More specifically, fewer than ten percent of children with physical disabilities and two-percent of children with hearing disabilities received any kind of rehabilitative aid or device.<sup>164</sup> A report by the National Assembly’s Committee on Culture, Education, Youth and Children (CEYC) found the following: “we have not ensured the environment and conditions for children with disabilities under special circumstances to realize their basic rights prescribed by the law.”<sup>165</sup> One of the reasons for this gap is that since the regulations were issued, the MOH has only issued an official requesting coordination at a local level. The letter lacked specific plans, and it was issued years after Directive No. 55/1999/CT-TTg.<sup>166</sup>

As such, more specific regulations on the responsibilities of the relevant ministries and state agencies should be established. Detailed guidelines on the form, content, objectives, tasks, solutions, responsibilities, as well as the authority and mechanism for supervision and coordination required for effective inter-ministerial coordination and implementation of the regulations should be created.<sup>167</sup> Also, the proposed Disability Law lacks any mention of habilitation services for children. It should be corrected so that it specifically reference the right to habilitation in order that children with intellectual or other disabilities can gain self-care and community-living skills.

## 7.2. Right to Prevention and Early Intervention

Under the CRPD, early intervention is mandated, and governments must guarantee “early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons.”<sup>168</sup> Very often though, disabilities are not detected until quite late in a child’s life.<sup>169</sup> Therefore, early identification requires heightened awareness among health professionals, parents, teachers as well as other professionals working with children. The Committee on the Rights of the Child also recommends that States Parties establish systems of early identification and early intervention as part of their health services.<sup>170</sup>

Under the Law on the Protection, Care, and Education of Children, parents and guardians are responsible for implementing the regulations on health checks, treatment of children, while the MOH

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159 Proposed Disability Law, Oct. 5, 2009, art. 15(1).

160 *Id.* at art. 16(1).

161 *Id.* at art. 16(1).

162 CEYC’s Report on the Results of Monitoring the Policies and Legislation for Children under Special Circumstances and Childhood Injury Prevention. October 17, 2008, as cited in Dr. Tống Duy Kiên, *supra* note 35 at 45.

163 Creating a Protective Environment for Children in Viet Nam, *supra* note 6, at 80-81.

164 *Id.*

165 Dr. Tống Duy Kiên, *supra* note 35, at 45.

166 *Id.* at 45.

167 *Id.* at 44.

168 CRPD, Oct. 22, 2007, art. 25(b).

169 Dr. Tống Duy Kiên, *supra* note 35, at 43.

170 *Id.*

is responsible for organizing the implementation of primary care, prevention, and treatment.<sup>171</sup> The MOET is responsible for organizing health care through public school for purposes of prevention and early intervention.<sup>172</sup> Recently, on September 1, 2006, the Prime Minister issued Directive No. 55/1999/CT-TTg on the promotion of policies supporting people with disabilities, which gives the MOH the responsibility to develop and implement strategies to provide health care to persons with disabilities, where attention is paid to community-based programmes for early identification and functional rehabilitation.<sup>173</sup> The proposed Disability Law, meanwhile, states that health care facilities have an affirmative duty to “identify innate disabilities in newly born babies, so as to take habilitation in time.”<sup>174</sup> Health care facilities also must ensure appropriate conditions for health check-up and treatment.<sup>175</sup>

On its face, Viet Nam’s laws on early intervention seem to establish a clear mandate. However, like the right to special and free health care, the right to early identification and prevention has not been implemented. Statistics suggest that that one-third of families who have children with disabilities have never sought treatment for their child.<sup>176</sup> Of those households who have sought out treatment for their child, fifty percent have benefitted from Viet Nam’s health care support policies, while thirty-eight percent have access free health checkups and treatment.<sup>177</sup> Forty-five percent have received health insurance cards.<sup>178</sup> Many children are not diagnosed early on and do not receive the services they need. As such, the Vietnamese government must take measures to ensure that these rights are implemented and enforced.

### 7.3. Right to Informed Consent, Autonomy, and Choice

The CRPD is very clear in establishing the right to informed consent, autonomy, and choice, stating that persons with disabilities have the same right to liberty and security of person that everyone else has and that persons with disabilities shall “not be deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the exist of a disability shall in no case justify a deprivation of liberty.”<sup>179</sup> In the event that persons with disabilities are “deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.”<sup>180</sup> The CRPD finally states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>181</sup> In particular, the Special Rapporteur on Torture has noted that the use of restraints and seclusion may constitute torture, as well as other medical procedures performed without an individual’s consent.<sup>182</sup> These sections apply to all persons with both mental or physical disabilities.

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171 Law on the Protection, Care, and Education of Children, No. 25/2004/QH, June 11, 2004, art. 27.

172 *Id.*

173 Directive No. 55/1999/CT-TTg, 2005, at art. 2(5).

174 Proposed Disability Law, Oct. 5, 2009, art. 16(3).

175 *Id.*

176 Creating a Protective Environment for Children in Viet Nam, *supra* note 6, at 80

177 *Id.*

178 *Id.*

179 CRPD, Oct. 22, 2007, art. 14(1).

180 *Id.* at art. 14(2).

181 *Id.* at art. 15(1).

182 Torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/63/175 (2008), *supra* note 139, at para. 55, 58-65.

Article 10 of the 1998 Ordinance on Persons with Disabilities states that “persons with serious forms of mental illness who pose a threat to society must be put under obligatory treatment at mental establishments.”<sup>183</sup> Similarly, the proposed Disability Law states “Mentally retarded persons in bipolar disorder who show behaviors of committing suicide or jeopardizing other people’s life are provided with allowances travel costs and treatment expenses during the compulsory treatment in health services facilities.”<sup>184</sup> On its face, this article is in direct violation of articles 14 and 15 of the CRPD because the CRPD strictly prohibits unlawful deprivation of liberty and guarantees a person’s right refuse to consent to medical treatment. Moreover, this paragraph discriminates on the basis of disability by differentiating between people with mental and physical disabilities and violating the right of people with mental disabilities. As such, this paragraph should be removed to comply with the CRPD.

## 8. Right to Education

Children with disabilities in Viet Nam frequently receive sub-standard and segregated education, while many receive no education at all. Although some efforts have been made to create an inclusive education system, technical and financial supports are lacking, as are the number of trained and qualified teachers.<sup>185</sup> CRPD article 24(1) establishes a right to education and requires states to “ensure an inclusive education at all levels.” Currently, Decision No. 23/2006/QĐ-BGDĐT, states that people with disabilities should (1) “enjoy the right to education on an equal basis with everyone else” and (2) learn general education, engage in vocational training, receive functional rehabilitation, and develop their potential for better integration into the community.<sup>186</sup> Decision No. 9/2007/QĐ-BGDĐT, dated August 29, 2007, mandates training for teachers and education manager to become acquire the skills necessary to provide inclusive education. Although the exact statistics vary, between fifty-two percent and twenty-four percent of children with disabilities attend school.<sup>187</sup>

Like its predecessors, the proposed Disability Law provides a right to education, but it does not recognize the right to an “inclusive” education in a mainstream class room for all children with disabilities; rather, most children with disabilities still receive their education in a separate classroom or a separate school. While special schools now provide essential services to a small number of children with disabilities, the new legislation should recognize that these are transitional programs that will eventually be transformed into resource centers to support children with disabilities in mainstream schools. The proposed Disability Law should provide reasonable accommodations to all children with disabilities. The law should also mandate that all teachers receive specialized training to serve children with disabilities and provide inclusive education methodologies.

### 8.1. Inclusive Education

Before the Convention on the Rights of People with Disabilities was adopted by the United Nations in 2006, international law recognized the right to education as a universal human right.<sup>188</sup> The right to education is enshrined in Article 26(1) of the Universal Declaration of Human Rights (UDHR) which states that “Everyone has the right to education. Education shall be free, at least in the elementary and

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183 Dr. Tống Duy Kiên, *supra* note 35, at 44.

184 Proposed Disability Law, Oct. 5, 2009, art. 15(5).

185 Creating a Protective Environment for Children with Disabilities in Viet Nam, *supra* note 6, at 82

186 Dr. Tống Duy Kiên, *supra* note 35, at 38.

187 See CEYC’s Report on the results of monitoring the policies and legislations for children under special circumstances and childhood injury prevention, dated 17/10/2008, cited in Dr. Tống Duy Kiên, *supra* note 35, at 81.

188 United Nations, G.A. Res. 217A(III), U.N. GAOR, 3rd Sess., U.N. Doc. 217A(III) (1948).

fundamental stages. Elementary education shall be compulsory.”<sup>189</sup> This universal right to education is equally affirmed and made binding on State Parties by Article 13(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Viet Nam signed and ratified in 1982.<sup>190</sup> With the adoption of the CRC in 1989, the universal right to education was specifically applied to children with disabilities for the first time.<sup>191</sup>

With the adoption of the CRPD in 2006, the universal right to inclusive and appropriate education for children and adults with disabilities is finally enshrined in international law. Article 24 of the CRPD requires States to “ensure an inclusive education system at all levels” and acknowledges the importance of the right to education to the development of the person and his or her sense of dignity and self worth as well as the importance of the right to education in strengthening respect for “human rights, fundamental freedoms and human diversity.”<sup>192</sup> Section 2 of Article 24 of the CRPD states that State Parties shall ensure that people with disabilities are not excluded from the general education system on

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189 Universal Declaration of Human Rights, United Nations, G.A. res. 217A (III), U.N. GAOR , 3rd Sess., U.N. Doc A/810 (1948). Article 26 provides, in full: (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. (3) Parents have a prior right to choose the kind of education that shall be given to their children.

190 Viet Nam has issued a declaration with its ratification which states: Declaration: That the provisions of article 48, paragraph 1, of the International Covenant on Civil and Political Rights, and article 26, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, under which a number of States are deprived of the opportunity to become parties to the Covenants, are of a discriminatory nature. The Government of the Socialist Republic of Viet Nam considers that the Covenants, in accordance with the principle of sovereign equality of States, should be open for participation by all States without any discrimination or limitation.

191 There are a number of other important international law instruments specifying the rights of people with disabilities to education including the UNESCO Convention against Discrimination in Education; the Sundberg Declaration adopted by the World Conference on Actions and Strategies for Education, Prevention and Integration on the 7th November 1981; the World Declaration on Education for All – Meeting Basic Learning Needs, adopted by the World Conference on Education for All on the 9th March 1990; ILO Convention 159 concerning Vocational Rehabilitation and Employment (Disabled Persons) adopted on 1st June 1983; Tallinn Guidelines for Action on Human Resources Development in the Field of Disability adopted by the General Assembly Resolution 44/70 15th March 1990; the World Program of Action Concerning Disabled Persons UN General Assembly Resolution 37/52 3rd December 1982; Vienna Declaration and Program of Action adopted at the World Conference on Human Rights 25th June 1993; Standard Rules on Equalization of Opportunity for Persons with Disabilities General Assembly Resolution 48/96 20th December 1993; the Salamanca Statement on Principles, Policy and Practice in Special Needs Education and the Salamanca Framework for Action on Special Needs Education adopted by the World Conference on Special Needs Education: Access and Quality 7-10 June 1994.

192 Articles 24(1) and (2) provide in full: States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to: a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity; b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential; c) Enabling persons with disabilities to participate effectively in a free society. (2) In realizing this right, States Parties shall ensure that: a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability; b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live; c) Reasonable accommodation of the individual’s requirements is provided; d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education; e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

the basis of disability, and that children with disabilities shall have access to an inclusive, quality, and free primary education and secondary education on an equal basis with others in the communities in which they live. Each of these sections, as well as the entire CRPD, applies to people with all disabilities, including those with severe disabilities.

### **8.1.1. Inclusive Education under Vietnamese Law Generally**

It is estimated that out of a total of approximately one million Vietnamese children with disabilities, only 269,000 or 24.22% of the total number of children with disabilities attend some school.<sup>193</sup> While that number has risen, the general education level of children with disabilities aged 6-17 who attend school is very low and almost half of these children are illiterate. Together with the MOLISA, UNICEF reported that 34% of people with disabilities in Viet Nam are illiterate in contrast to the overall literacy rate in Viet Nam which is 91.1% of the total population.<sup>194</sup>

Even so, Viet Nam has long been a proponent of education, acknowledging that education provides an opportunity for children to learn about the society in which they live, and for many people, it is a way out of poverty. The Constitution itself states that “the State and society shall create the necessary conditions for handicapped children to acquire general knowledge and appropriate job training.”<sup>195</sup> Elaborating on the right to education for children with disabilities, the government of Viet Nam passed the 2004 Law on Protection, Care and Education of Children, the 2005 Law on Education, and the Ordinance on Persons with Disabilities. In order to promote inclusive education, the MOET issued Decision No. 23/2006/QĐ-BGDĐT dated May 22, 2006 so that people with disabilities can (1) “enjoy the right to education on an equal basis with everyone else” and (2) learn general education, engage in vocational training, receive functional rehabilitation, and develop their potential for better integration into the community.<sup>196</sup> Decision No. 9/2007/QĐ-BGDĐT dated August 29, 2007, mandates training for teachers and education managers to become acquire the skills necessary to provide inclusive education.

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193 CEYC’s Report on the results of monitoring the policies and legislations for children under special circumstances and childhood injury prevention, dated 17/10/2008, cited in Dr. Tống Duy Kiên, *supra* note 35, at 29.

194 International Disability Rights Monitor 2005 Regional Report on Asia at 133, available at [http://www.idrmnet.org/pdfs/CIR\\_IDRM\\_Asia\\_05.pdf](http://www.idrmnet.org/pdfs/CIR_IDRM_Asia_05.pdf), last visited October 20, 2009. For more information about Inclusive Education in Viet Nam, see also <http://www.eenet.org.uk/newsletters/news8/page23.shtml>. USAID has observed that although some schools for children with disabilities in Viet Nam have been established in cooperation with international NGOs, resulting in the enrollment of approximately 21,000 children countrywide, the rate of enrollment of children with disabilities in special schools is only around 2% of the total number of children who could benefit from educational opportunities. Id. Moreover, a UNESCO report has noted that important efforts are underway in this story of one young man, named Kien:

Kien ...is one of over 26,000 children with impairments who have been integrated into mainstream schools since 1991. He was provided with a wheelchair through the support of UNICEF and Radda Barnen in time for him to start school in 1996/97. Now his classmates help him by pushing him to school. Thirsty for knowledge, he has made excellent academic progress, in spite of severe motor difficulties which prevent him from holding a pen or pencil. Prior to his arrival the class teacher had received training in methods to facilitate integration. After just two months in school, he knew all of the letter sounds and names, and by the end of the year he was reading well. He also acquired a reputation for the formidable speed of his mental math. He moved onto the second grade with ease and continues to make very good progress. See Radda Barnen/Catholic Relief Services/Save the Children UK, *Inclusive Education in Viet Nam 1991-8*. Stockholm, 1998, available at <http://unesdoc.unesco.org/images/0012/001234/123486e.pdf>.

195 VIET NAM CONST. (1992), art. 59.

196 Dr. Tống Duy Kiên, *supra* note 35, at 38.

Yet Viet Nam continues to recognize and utilize separate and segregated educational systems that are inconsistent with the CRPD. Article 63 of the 2005 Education Law authorizes the establishment of a two-tiered educational system in which “disabled and handicapped people” are to be educated in separate schools and classes. It is estimated that today there are over 107 special schools that serve over 7,000 children with disabilities in Viet Nam.<sup>197</sup> Although the purpose of these separate schools and classes is “to restore [the] functions [of people with disabilities], to receive education and vocational training and to integrate them into communities,” an educational system that relies on separate schools violates the spirit and language of the CRPD. Moreover, according to the current 2005 Education Law, only students with severe disabilities or those living in poor households are entitled to free education; all other children must pay a fee and are entitled only to a “reduction in school fees.”

Viet Nam’s laws on education are a starting point in providing children with disabilities with an inclusive education, but they should be modified to make clear that segregated education will exist only as a transition to full inclusion. The reasons for the failure to educate students with disabilities in Viet Nam are many, including a system that provides little or no training to teachers about disabilities, prejudice against people with disabilities by society, teachers, and parents, resulting in low expectations about the potential of children with disabilities, as well as inaccessible buildings, lack of adapted curricula, assistive devices, and educational materials, and lack of funds.<sup>198</sup> Each of these problems are remediable, provided an enforceable mandate, in compliance with international law, is included Viet Nam’s new Disability Law and its 2005 Education Law.

First, in order for Viet Nam to comply fully with Article 24 of the CRPD, which requires governments to “ensure an inclusive education system at all levels,” the 2005 Education Law as well as the new proposed Disability Law should be amended to create a timeline and a plan to phase out the system of separate schools for children with disabilities. These laws should include a statement that the goal of Viet Nam’s educational reform is the mainstreaming of all children with disabilities into inclusive school. To further that goal, Article 4 of the proposed Disability Law, which sets forth the general rights of people with disabilities, should include a specific right to education for all children, including all children with disabilities. This right is not included among the rights recognized in the list in Article 4 of the latest version of the Disability Law.

Second, to improve the implementation of the inclusive education, teachers must be trained so that they have the knowledge and skill to do so. Today in Viet Nam, only about 1,500 teachers have been trained in formal full-time or in-service tertiary education specialized in education for students with disabilities. Moreover, the teacher colleges’ capacity to train teachers specialized in teaching for students with disabilities is still very limited – there are only 7 educational establishments nationwide having faculties for special education.<sup>199</sup> Not only increased teacher training but other supports are necessary to effectuate the goals of inclusion. Such supports may include a parent aid or other paraprofessional to sit with a student or to wheel him or her into different rooms or the restroom as needed, or training programs for teachers on how to develop flexible curricula, and how to work with students with different abilities, as well establishing a welcoming school culture (from top to bottom) that not only tolerates students with disabilities but welcomes them and strives for them to develop a sense of belonging within the school community.<sup>200</sup>

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197 CEYC’s Report on the results of monitoring the policies and legislations for children under special circumstances and childhood injury prevention, dated 17/10/2008, cited in Dr. Tống Duy Kiên, *supra* note 35.

198 USAID VIET NAM DISABILITY SITUATION ASSESSMENT AND PROGRAM REVIEW (2005), available at [http://pdf.usaid.gov/pdf\\_docs/Pdacf476.pdf](http://pdf.usaid.gov/pdf_docs/Pdacf476.pdf), last visited August 28, 2009.

199 Dr. Tống Duy Kiên, *supra* note 35, at 139.

200 See e.g. Tony Booth Professor of Inclusive Education Canterbury Christ Church University College, England, Inclusion in Education: Participation of Disabled Learners, World Education Forum 2000 available at [http://www.unesco.org/education/wef/en-leadup/findings\\_inclusion.shtm](http://www.unesco.org/education/wef/en-leadup/findings_inclusion.shtm), last visited on August 28, 2009.

### **8.1.2. Inclusive Education under Viet Nam's Proposed Disability Law**

Article 21 of the proposed Disability Law describes three types of educational approaches: (1) inclusive, (2) integrated (semi-inclusive) and (3) special education. According the law, inclusive education shall be the main approach applied for education of persons with disabilities, and the integrated and special education approaches are applied only to students who are “not able to learn/study in the inclusive education environment.”<sup>201</sup> The approach that will be utilized will depend on choice of the child with disabilities, their families or their legal guardians as they deem appropriate for person with disability's individual development.<sup>202</sup>

While the Vietnamese government has made progress in addressing the right of children with disabilities to an inclusive education, article 21 of the proposed Disability Law requires continued work. Specifically, article 21 refers to children who are considered “not able to learn/study in an inclusive setting.” This statement is inconsistent with the language and intent of the CRPD, and it should be deleted. Until children are provided an opportunity to attend inclusive schools and classrooms, the law should presume that all children have the potential to benefit by inclusion. Indeed, if the environment were truly inclusive, all students with disabilities could be mainstreamed.

By referring to some children as “not able to learn,” the sentence perpetuates stereotypes and discrimination against this group of children.<sup>203</sup> The CRPD recognizes that all children and adults with disabilities have potential, including the potential to learn. It is the responsibility of society to remove the obstacles that prevent them from realizing their potential.<sup>204</sup> Successful educational programs should focus not on what is “wrong with students” and what they can not do or how they are “unable to learn;” rather, they should focus on what the schools can do differently to include all children, to help all children realize their full potential, and to provide all children with the skills they need to participate fully in all aspects of the community and public life.

Article 21 of the proposed Disability Law should be rewritten to acknowledge that, although an entirely inclusive educational system is not currently in place in Viet Nam, it is the goal. Developing and implementing a fully inclusive educational system is necessary and will take a process of reform – perhaps over years – to bring about full inclusion of children with disabilities in the mainstream educational system.

### **8.2. Reasonable Accommodation in Educational Programs**

Under the CRPD, a reasonable accommodation is defined as “necessary and appropriate medication and adjustment not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise of an equal basis with others of all human rights and fundamental freedoms.”<sup>205</sup> State Parties are required to provide “reasonable accommodation of the individual's requirements.”<sup>206</sup> Similarly, States Parties must provide the support they need so

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201 Proposed Disability Law, 2009, art. 21(2).

202 *Id.* at art. 21(3).

203 *Id.*, at Article 2, para 2: Definitions of Terms: ...2. Persons with severe disabilities are those do not have capacity to conduct daily living activities or capacity reduced which makes or will make them unable to learn, study, work, produce, do business by themselves.

204 Arlene S. Kanter, “The Promise and Challenge of the United Nations Convention on the Rights of Persons with Disabilities,” *Journal of International Law and Commerce*. 34: 287- 321. (2007).

205 CRPD, Oct. 22, 2007, art. 25(a).

206 *Id.* at art. 24(2)(c).

that they can thrive in the general education system.<sup>207</sup> Children who are blind, deaf or deaf-blind are entitled to education in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize the student's academic and social development.<sup>208</sup>

In an earlier draft of the proposed Disability Law, the right to reasonable accommodations was the first right guaranteed to children with disabilities in Article 20 (“the State ensure the rights of persons with disabilities to education with reasonable accommodation”). It appears that paragraph 1 of Article 20 has since been changed. It now states that “the State creates and ensures the rights to education for persons with disabilities in accordance with their needs.”<sup>209</sup> The following article attempts to accommodate children with disabilities via the permitting the following: start school later, be exempted from subjects or activities for which they are not physically capable; be entitled to reduced school fees; and apply for stipends and support.<sup>210</sup> For children with hearing or speaking impairments, the use of sign language, standardized Braille, or other educational tools appears to be available.<sup>211</sup>

To bring the proposed Disability Law into compliance with the CRPD, several significant changes must be made. First, the language of the most recent draft should be replaced with the language in the older draft that specifically guarantees children the right to reasonable accommodation. Without reasonable accommodation, it will be difficult for children with disabilities to be fully integrated.

The second paragraph of the first Article 20 should also be changed. It begins by stating that “Persons with disabilities can s[t]art schooling at a later age than that regulated”<sup>212</sup> This sentence seeks to provide flexibility to children with disabilities by exempting them from the mandatory age requirement for students to begin school. However, by exempting children with disabilities, as a group, this provision perpetuates the stereotype that children with disabilities are slow learners or unable to learn.

The third paragraph of the first article 20 should the paragraph should affirmatively state that people attending classes have the right to sign language interpreters, Braille and other “educational tools. ...” The current language is an improvement over an earlier version of the law, which merely stated that children “can attend” class. However, it is still not entirely clear from the language used that children have the right to language interpreters, Braille and other educational tools, and such language is required to comply with the CRPD.

Next, paragraph 1 of article 21 fails to include a sentence clarifying that even special education programs may include aspects of inclusion. With reasonable accommodation, any child with a disability can benefit from inclusion in some way. Children who attend special education classes must still be given the opportunity to be included in mainstream classes during certain class periods of the school day, to interact with their peers, and be a part of mainstream society.

Finally, transportation to and from school should be recognized as a right to reasonable accommodation. One of the reasons many children with disabilities do not attend school is that even if the school building is accessible (which it often is not), no accessible transportation is available to bring students to and from school.<sup>213</sup> As such, it would be advantageous if the Directive No.03/2006/CT-BGTVT of the

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207 *Id.* at art. 24(2)(d).

208 *Id.* at art. 24(3).

209 Proposed Disability Law, Oct. 5, 2009, art. 20(1).

210 *Id.* at art. 20(2).

211 *Id.* at art. 20(3).

212 *Id.* at art. 20.

213 Creating a Protective Environment for Children in Viet Nam, *supra* note 6, at 85.

Minister of Transportation, dated 2/3/2006 on the promotion of the implementation of policies for supporting PWDs in transportation sector, be amended to provide the right to accessible transportation for all children with disabilities to and from school. Chapter III of the new Disability Law should also include the right of all children, youth, and adults to accessible transportation to and from educational and vocational schools. Clarifying the legal right of children with disabilities to attend school, on an equal basis with children without disabilities, and to receive necessary accommodations to enable them to learn and become as independent as possible, is an important and necessary step for Viet Nam.

## **9. Right to Legal Identity, Registration at Birth, and Legal Capacity**

Article 18(2) of the CRPD requires children with disabilities to be immediately registered after birth. At present, there is no law in Viet Nam that requires children with disabilities to be registered at birth. Registration of births is particularly important in a country like Viet Nam with a large population of children who are placed in institutions. Children who are not registered at birth often fall through the cracks of social service programs, consigning them to a life of institutionalization or abandonment.

Article 12 of the CRPD provides a right to a legal identify, and it requires the establishment of protections to ensure that the right of individuals to maintain control over their lives is not improperly taken away. This includes a right to “supported decision-making.” These rights are not currently protected under Vietnamese law, and the draft Disability Law as drafted would not remedy these problems. Indeed, there are provisions of the draft Disability Law that are not consistent with the protections established in the CRPD. This includes the right to recognition of the evolving capacity of children with disabilities to make choices about their lives.

### **9.1. Legal Identity and Registration at Birth**

To be treated equally before the law, one must be recognized before the law first. To prevent children with disabilities from being excluded, the CRPD requires that children with disabilities be registered immediately after birth and given a name, nationality, and the right to know and be cared for by their parents.<sup>214</sup>

In Viet Nam, a child must have a birth certificate to be legally recognized, start school, register for exams, etc, as well as to be protected against child labor and trafficking abuses.<sup>215</sup> However, many children with disabilities are not registered at birth.<sup>216</sup> This is, in part, due to avoid paying the registration fee, avoid paying late fines, or avoid embarrassment.<sup>217</sup> However, Viet Nam does not have a specific provision on the registration at birth of children with disabilities; rather, the responsibility to register the birth of a child is applied equally to all children, though existing regulation exempt the birth registration fee for children living in poor households only. To improve the registration of children with disabilities at birth, the policy of exempting the birth registration fee should be expanded to include the families of children with disabilities and specify that children with disabilities must be registered at birth like other children without disabilities.<sup>218</sup> The proposed Disability Law should also be amended to require that children with disabilities be registered at birth to comply with the CRPD.

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214 CRPD, Oct. 22, 2007, art. 18(2).

215 Situational Analysis of Institutional and Alternative Care Programs in Viet Nam, *supra* note 17, at 35.

216 *Id.*

217 *Id.*

218 Dr. Tống Duy Kiên, *supra* note 35, at 30.

## 9.2. Legal Capacity

The CRPD provides people with disabilities equal recognition before the law: (1) “States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law” and (2) “States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.”<sup>219</sup> As for children, the CRPD sets forth the principle of “respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.”<sup>220</sup> Also, “children with disabilities have the right to express their views freely on all matters affecting them.”<sup>221</sup>

The right to equal recognition before the law is set out in many Vietnamese legal documents.<sup>222</sup> According to Article 5 of the Civil Code, it is prohibited to discriminate against an individual by ethnicity, social status, gender, economic condition, religiosity, education level and occupation of an individual. Article 5 of the Civil Code, however, does not list disability as a prohibited reason for discrimination. It should be amended to add disability to the list.<sup>223</sup> In regard to legal capacity, a person is said to lack legal capacity if that person has lost decision-making capacity due to mental illness or are otherwise incapable of understanding his or her own acts. In such cases, a court may, upon the request of a person with related rights or interests, issue a decision to declare such a person based on the conclusion of the competent examination organization.<sup>224</sup>

Viet Nam’s current laws, however, do not recognize the legal capacity of persons with disabilities nor do they include any provision that provides respect for the evolving legal capacities of children with disabilities as set forth in Article 3 of the CRPD. As such, this principle should be added to the proposed Disability Law. Children are less vulnerable and more resourceful when they grow up in an environment that respects their rights and opinions.<sup>225</sup> In addition to recognizing the right of respect for children’s evolving legal capacities, families, schools, and communities should create an environment where children can express themselves, learn problem-solving skills, and have their opinions respected.<sup>226</sup> Youth organizations, cultural activities, community centers, and recreational activities all help in this respect.<sup>227</sup>

## 10. Oversight & Enforcement

While Viet Nam has laws and regulations to protect the rights of persons with disabilities, oversight and enforcement of these laws and regulations, which are critical to guaranteeing the rights of persons with disabilities, are lacking. This lack of oversight and enforcement of existing laws on the rights of persons with disabilities is reported to be a pervasive problem in Viet Nam, and it is one of the most important gaps in Vietnamese law. Children with disabilities are vulnerable to neglect and abuse in the community,

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219 CRPD, Oct. 22, 2007, at art. 12. Note: this is an extremely innovative provision of article 12. For further elucidation of its meaning, see the article written by Michael Bach (not yet published, but available from MDRI upon request).

220 *Id.* at art. 3(h).

221 *Id.* art. 7(3).

222 These documents include the Constitution, Civil Code, Civil Procedure Code, Penal Code, Penal Procedure Code, the Law on Marriage and Family, as well as the Ordinance on Persons with Disabilities. See Comparative Analysis Report, 2009, at 44.

223 Dr. Tống Duy Kiên, *supra* note 37, at 44.

224 *Id.*

225 Creating a Protective Environment for Children in Viet Nam, *supra* note 6, at 17.

226 *Id.*

227 *Id.*

and especially in institutions. For these reasons, article 16 the CRPD requires the creation of child protection systems that will identify cases of abuse that may take place within families, community-based programs, or in institutions.

UNICEF and MOLISA have identified the lack of a child protection system in Viet Nam as a serious problem for all children. Currently, cases of abuse are supposed to be reported through the Law on Complaints and Denunciations or the Penal Procedure Code. These systems are not tailored to the sensitive nature of child abuse or the concerns of children with disabilities. As described by UNICEF and MOLISA, a new system of child protection must be established that includes systems for identification of neglect and abuse, reporting, investigation, assessment, recovery, and reintegration measures.

Protection for children with disabilities should be incorporated into the mainstream system of child protection for all children. This should include the creation of specialized systems and training for staff should be established to ensure that this system is adapted to ensure that children with disabilities are protected. The mainstream system of child protection should be supplemented by the establishment of a system of oversight mechanisms. This system should ensure that all programs serving children with disabilities are regularly inspected. The oversight mechanism should not only supplement the system for reporting abuses but should be designed to identify conditions that may lead to neglect and abuse. Regular reports should be made public and available to local, regional, and national authorities so that reforms may be adopted to respond to underlying problems identified.

The CRPD also requires a national focal point for the oversight for the implementation of the entire CRPD. Viet Nam should delegate an office within a government ministry to be responsible for CRPD oversight and implementation. This office should develop and take responsibility for routine data collection procedures in compliance with article 31 of the CRPD.

### 10.1. Child Protection System

The CRPD requires a child protection plan to be in place to protect children with disabilities against abuse and exploitation. States parties have an affirmative duty to prevent abuse and exploitation of children with disabilities.<sup>228</sup> To prevent abuse, States Parties must take all appropriate measures to protect children, including “through the provision of protection services.”<sup>229</sup> These protection services must “ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated, and, where appropriate, investigated.”<sup>230</sup>

While Viet Nam has many laws relating to the protection of children generally (see Chapter 5. Right to Live in the Community), Viet Nam lacks a comprehensive child protection system. Under the Law on the Protection, Care and Education of Children and Decree No. 36/2005/ND-CP on the implementation of that law, the MOLISA is primarily responsible for developing and implementing a child protection scheme.<sup>231</sup> However, currently there is not a comprehensive, integrated system designed to prevent and respond to reports of child abuse, nor are there designated social workers to respond to child protection cases.<sup>232</sup> The social services that are in place are predominantly based on charitable efforts, as opposed a rights-based approach.<sup>233</sup> In order promulgate a comprehensive child protection system, the following

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228 CRPD, Oct. 22, 2007, art. 16(2).

229 *Id.* at art. 16(4).

230 *Id.* at art. 16(5).

231 Creating a Protective Environment for Children in Viet Nam, *supra* note 6, at 13.

232 *Id.*

233 *Id.*

systems must be established and implemented: (1) identification and reporting, (2) investigation and assessment, (3) recovery and reintegration, and (4) alternative care.<sup>234</sup>

In terms of identification and reporting, Viet Nam has no complaint procedures separate from the Law on Complaints and Denunciations or the Penal Procedure Code, neither of which is conducive to children filing by themselves just as there is no investigation and assessment component for responding to reports of child abuse.<sup>235</sup> Only the Law on Handling of Administrative Violations and the Criminal Procedure Code are generally responsible for handling complaints.<sup>236</sup> These systems, however, are not tailored to handle child abuse cases, which are delicate and sensitive in nature. To put an effective child protection system in place, the child protection system itself must include provisions regarding the procedures for taking a child with disabilities away from his parents, foster care procedures. (see section 5 of this report, Right to Living in the Community). Moreover, specific regulations must be enacted to ensure implementation of these procedures.

Finally, there are not enough qualified social workers to prevent and respond to reports of abuse.<sup>237</sup> This is, in part, because social work has not been recognized as a legal profession.<sup>238</sup> Also, social work is often perceived as charitable, as opposed to rights-based work.<sup>239</sup> As such, a new profession of social work should be supported, including training and recognizing social workers as professionals.

## 10.2. CRPD Implementation Oversight

The CRPD requires States Parties to designate one or more focal departments within government to be responsible for the implementation of the CRPD. States Parties must also establish independent protection and monitoring mechanisms to see that the laws and regulations that conform with the CRPD are enforced and monitored.<sup>240</sup>

Chapter VIII of the proposed Disability Law lays out the Responsibilities of Governance Agencies on Disability Work. Article 31 names the MOLISA as “responsive to the Government for executing the function of the governance of disability work.” Article 40 states the duties of the following ministries to uphold and enforce the CRPD.<sup>241</sup> While it appears that the MOLISA is responsible “executing the function of the governance on disability work,” it is not altogether clear which agency is responsible for monitoring and overseeing the promulgation of the CRPD.<sup>242</sup> As such, the current coordination mechanism for monitoring and oversight appears to be ineffective.<sup>243</sup>

This gap between the establishment of laws and the implementation and monitoring of laws was noted in a report by CEYC, which stated, “many issues directly related to the responsibilities of different ministries

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234 *Id.*

235 *Id.* at 29.

236 *Id.* at 30.

237 *Id.* at 13.

238 *Id.*

239 *Id.*

240 CRPD, Oct. 22, 2007, art. 33(1).

241 These ministries includes the Ministry of Labor, Invalids and Social Affairs; Ministry of Health; Ministry of Education and Training; Ministry of Culture, Sports and Tourism; Ministry of Construction; Ministry of Transport; Ministry of Information and Communication; Ministry of Science and Technology; Ministry of Finance; Ministry of Planning and Investment; and the People’s Committee.

242 Dr. Tống Duy Kiên, *supra* note 35, at 53.

243 *Id.*

and the coordination among different agencies [...] have not been elaborated in legal documents.”<sup>244</sup> Although the MOLISA established the National Coordinating Committee on Disability (NCCD), the coordination work of the NCCD is limited to a ministerial level, lacking the authority to coordinate on a national and regional level. Moreover, the NCCD does not meet the internationally recommended standards to be an independent coordination committee or independent human rights agency.<sup>245</sup>

As such, the proposed Disability Law should be changed to clearly designate a government ministry to be responsible for monitoring the implementation of the proposed Disability Law. Whether MOLISA is designated with the authority or a National Coordination Committee is established, the proposed Disability Law must be monitored and implemented, otherwise it will be useless.

### 10.3. Data Collection

States Parties are required to collect statistical and research data that will help them formulate and implement the policies required under the CRPD.<sup>246</sup> The data must be collected in such a way that ensures privacy and confidentiality, while complying with internationally accepted norms to protect human rights and fundamental freedoms.<sup>247</sup> Additionally, the data must be disseminated and used to help assess States Parties success in implementing the CRPD.<sup>248</sup>

From the proposed Disability Law, it is not immediately clear which government ministry is responsible for collecting data. However, it is clear that a system should be put in place to collect data in such a way that will conform with international standards. A ministry should be appointed to collect data, and that appointment should be recognized in the new Disability Law.

## 11. Citizen Involvement

In order to make Viet Nam’s enormous effort in legal reform worthwhile, a corresponding effort to empower people with disabilities is essential in all walks of life. In most of the world, reform has taken place where independent civil society with leadership by people with disabilities has sought government reform. People with disabilities should be appointed to Peoples’ Committees and other leadership positions in local and national government making policies and implementing programs affecting individuals with disabilities.

Article 4(3) of the CRPD establishes that people with disabilities through representative organizations should be involved in program planning and implementation at all levels of society and government. Article 31 requires States Parties to involve civil society in the implementation of the CRPD and allow them to participate fully in the monitoring process. It is particularly important that persons with disabilities and their representative organizations are included.<sup>249</sup>

Citizen involvement and advocacy by people with disabilities and their families is crucial to legal reform and program implementation.<sup>250</sup> People with disabilities and their families are the most familiar with their needs and which reforms necessary to recognize and promote their rights and needs. Generally speaking,

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244 *Id.*

245 *Id.*

246 CRPD, Oct. 22, 2007, art. 31.

247 *Id.* at art. 31(1)(a)(b).

248 *Id.* at art. 31(2).

249 *Id.* at art. 33(3).

250 Eric Rosenthal et al, *supra* note 99, at 102-103.

however, disability rights have not received the recognition that other human rights organizations.<sup>251</sup> Advocacy training for disability groups is an effective way of helping disability group to participate in policymaking and the implementation of new programs if disability groups are inexperienced in such matters.<sup>252</sup>

Currently, legal provisions that stipulate the authority of organizations of persons with disabilities to be involved in law-making and supervision are absent from Vietnamese law. The majority of organizations do either social or charity work and have limited advocacy capacities to influence decision, policies at local and at national level. As Dr. Tống Duy Kiên states in his comparative report, “the activities of the Association are mainly supportive and charitable, which have little influence on the coordination work as well as the participation in the supervision and social inquiry on policies, legislations and the implementation of policies and legislations related to [persons with disabilities].”<sup>253</sup> The role of organizations should be enhanced to include the right to recommend and influence policy. They should be given the ability to independently inquire into and supervise Viet Nam’s laws on persons with disabilities.<sup>254</sup> Advocacy trainings should be encouraged as well.

## **12. Recommendations to the Vietnamese Government**

### **12.1. Right to Protection from Discrimination on the Basis of Disability**

**12.1.1. Statement on Discrimination** – Viet Nam’s proposed Disability Law should include a clear statement that specifically prohibits discrimination on the basis of disability in the context of education, housing, health care, access to services, transportation, and all other aspects of life.

**12.1.2. Statement on Reasonable Accommodation** – The definition of discrimination in Viet Nam’s proposed Disability Law should include the failure to provide reasonable accommodations.

### **12.2. Right to Accessibility**

**12.2.1. Clarification of Accessibility** – The use of sign language, Braille letters, cassettes, larger font sizes, and other means of assistive technology should be recognized as part of the right to accessibility for persons with disabilities.

**12.2.2. Enforcement of Existing Regulations** – Viet Nam’s existing regulations that make the physical environment, transportation, information and communication, and other facilities and services accessible to persons with disabilities must be implemented and enforced, especially the use of sign language, Braille letters, cassettes, larger font sizes, and other means of assistive technology.

### **12.3. Right to Live in the Community**

**12.3.1. Statement on the Right of Children with Disabilities to Live with Their Own Family** – A specific provision should be added to the proposed Disability Law guaranteeing the right of all children with disabilities to live with their own or alternative families.

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251 *Id.*

252 *Id.*

253 Dr. Tống Duy Kiên, *supra* note 35, at 54.

254 *Id.*

**12.3.2. Statement on the Right of Children with Disabilities to Live with an Alternative Family** – A specific provision in the proposed Disability Law should be added to guarantee the right of children to live with an alternative family if their own family cannot take care of them.

**12.3.3. Establishment of a Publicly Regulated Foster Care System** – A comprehensive, publicly regulated foster care system must be established for all children with disabilities regardless of the severity of their disability.

**12.3.4. Creation Standards for Care for Institutions** – In the event that children with disabilities are placed in an institutions, standards should must be created that regulate the conditions of such institutions, the duration of confinement permissible for children up to the age of 18, as well as the requirement of periodic reviews to determine whether or not continued placement away from a family is absolutely necessary for an individual child and whether any alternatives in the community are available.

**12.3.5. Prohibition on New Placements in Institutions** – International experience shows that the easiest and most effective way to start on this path is to stop any new placements of children in institutions. To make this possible, a full array of community based services and support systems must be established for the small number of children with disabilities in need to new placement. The law should establish a specific mandate to prioritize the creation of services necessary to end any new placements in institutions. A target date for ending any new placements – perhaps 2011 – should be established.

**12.3.6. Establishment of a Child Protection System to Prevent Abuse in Families and Institutions** – Currently there is not a comprehensive, integrated system to implement that will prevent and respond to reports of child abuse in a child's home or in an institution. Nor are there designated social workers to respond to child protection cases. The social services that are in place are predominantly based on charitable efforts, as opposed a rights-based approach. As such, a comprehensive child protection system must be put in place that will include the following systems: (1) identification and reporting, (2) investigation and assessment, (3) recovery and reintegration, and (4) alternative care.

## **12.4. Right to Health Care**

**12.4.1. Improvement of Access to Early Intervention Health Care** – Since many children with disabilities do not access health care, Viet Nam needs to improve the accessibility of health care to children with disabilities and their families.

**12.4.2. Improvement of Facilities and Rehabilitative Equipment** – A general lack of facilities for children with disabilities and rehabilitative equipment results in very few children receiving the specialized health care that they need. Viet Nam, therefore, needs to improve its facilities and rehabilitative equipment.

**12.4.3. Statement on the Right to Consent** – A section must be added to the proposed Disability Law that protects the right of persons with disabilities to give informed consent, autonomy, and choice, and not be subject to coerced treatment.

## **12.5. Right to Education**

**12.5.1. The Legal Requirement** – The first step to guaranteeing the right to education for all children with disabilities in Viet Nam is to include within the new Disability Law the requirement of an inclusive educational system (in place of the two tiered system of mainstream and special schools) as well as a requirement for vocational training for children and youth with disabilities. To achieve this goal, the

following language should be inserted in Article 21: *Inclusive education shall be the main approach for education of purposes with disabilities, and the goal of educational reform to make mainstream education available to all children with disabilities. During the reform process, special education will be transformed, as resources become available, into resource centers to support mainstream schools and their increased inclusion of children with disabilities.* The 2005 Education Law and the Vocational Education Act will also need to be changed to comport with the revised Disability Law. To be effective, the mandate of inclusion will require rigid enforcement, including a prohibition on the building or opening of any new special or separate programs, schools, or institutions for children with disabilities as well as eventually closing down or using for other purposes all existing special schools, programs, and institutions, and transferring the funds for separate schools and programs to support the development of inclusive schools, necessary accommodations, and training of teachers, and the development of vocational and career education programs for youth and adults with disabilities. The MOET's Decision No. 23/2006/QĐ-BGDĐT dated 22/5/2006 on the Inclusive Education should be fully implemented.

**12.5.2. Accessibility Surveys** – In addition to prohibiting the creation of new segregated schools and programs, accessibility surveys should be conducted on current educational and vocational training buildings, and plans and a budget should be developed to retrofit such buildings and to provide necessary accommodations and modifications in them for use as inclusive schools. To avoid stereotypes in improve accessibility, Article 20 of the proposed disability law should be changed to read: *Educational systems shall be flexible for all children with regard to age of enrollment. Children with disabilities should be accorded the same flexibility as other students. Reasonable accommodations shall be available for children with disabilities with regard to age of enrollment, fees, conditions of schools, and modes of communication.*

**12.5.3. Teacher Training** – The next step in transforming the current educational system to an inclusive educational system is the development of new teacher training (and retraining) programs. Since teachers are the primary factor in predicting student success, teachers must learn how to teach all students, with and without disabilities, and to receive sufficient support to help them as they learn new skills. Such programs may be supported by the government as well as with consultants funded by international donors.

**12.5.4. Changing Attitudes** – A related co-requisite to the creation of an inclusive education system is systematically challenging the attitudinal barriers created by teachers, parents and society, generally. This is no easy task and will involve collaboration among ministries, NGOs, international donors, and UNICEF. Teachers, who have been raised and educated themselves in a society that has stigmatized, marginalized, and isolated children with disabilities need to learn or re-learn not only how to teach students with various disabilities, but also how to address their own stereotypes about the children with disabilities they are teaching. Teachers and all school personnel as well as parents and administrators will need to learn how to respect differences, including the different ways children with disabilities may learn and express themselves in their classrooms. To the extent that the attitudinal barriers within the school system parallel the general attitude that Vietnamese society has towards children and adults with disabilities, it will take continuing contact and close relationships with children with all different types of impairments to remove these barriers among teachers, parents, and others within the Vietnamese educational system.

**12.5.5. Data Collection** – another important step in transforming the current system to an inclusive educational system involves data collection. The government of Viet Nam should appoint an office in each ministry to collect data regarding people with disabilities generally, and regarding education issues in particular. Such data should include the number and location within the country of children with disabilities (disaggregated by age, sex, type of disability) who are not attending school at all, the number

who are attending mainstream schools, and the number who are attending special schools, or receiving schooling within institutions. Data also should be collected regarding the number of students who complete primary and/or secondary schooling; the types of institutions and educational programs that exist and their sources of funding; the teacher to child ratio for educational programs, including those within institutions and orphanages. Collecting such data will help Viet Nam keep track of the number of children with disabilities who have a right to attend school as well as the number of students who are not attending school and where they live. Once the Government knows how many children need to be placed in mainstream schools, and where they are, MOET can then develop a process to allocate the necessary resources and an appropriate timeline for moving all children into mainstream schools. Additional data, including graduation rates and employment rates of graduates, is also important for the monitoring and enforcement of the new inclusive education law, not to mention required as part of the monitoring and enforcement responsibilities Viet Nam will assume once it ratifies the CRPD.

**12.5.6. Enforce Prime Minister's Directive No. 01/2006/CT-TTg** – Viet Nam should enforce Prime Minister's Directive No. 01/2006/CT-TTg, dated 09/01/2006, on the promotion of policies for supporting persons with disabilities in the current socio-economic situation assigns the MOET to: "Develop and submit to the Prime Minister the strategy and plan of actions for education for children with disabilities for the period 2006 - 2010 and the subsequent years towards community based and inclusive basis." After 3 years, due to various reasons, such strategy has not been promulgated.

**12.5.7. Policies on International Donors** – Information should be collected regarding the sources of funding for the special schools and programs as well as for the inclusive schools and programs. To the extent that international donors support funding for separate schools and programs, they should be encouraged or required instead to fund inclusive programs which are based on the view that all persons with disabilities have a right to education. Such education should facilitate children with disabilities to realize their full potential and shall provide the skills necessary to participate fully in all aspects of the community and public life. With a view toward realizing this right without discrimination and on the basis of equal opportunity, the educational system will be reformed with efforts to bring about the full inclusion of all children with disabilities in the mainstream educational system. The State will provide the budget necessary to transform its educational system through this reform process to make the mainstream educational system fully accessible and appropriate for all persons with disabilities.

## **12.6. Right to Legal Identity**

**12.6.1. Registration at Birth** – Viet Nam currently lacks adequate protections to ensure all children with disabilities are registered at birth. As such, a section must be added to the proposed Disability Law to ensure that children with disabilities are registered at birth and that their evolving legal capacities are recognized.

**12.6.2. Respect for the Evolving Capacities of Children with Disabilities** – Children have the right to express their views freely on all matters affecting them" and have such views be "given due weight in accordance with their age and maturity, on an equal basis with other children." This right to respect for the evolving capacities of children with disabilities should be explicitly recognized in Viet Nam's law so that children with disabilities can be given the support they need to make choices and be prepared to exercise these rights as they become adults.

## **12.7. Enforcement and Monitoring Mechanisms**

**12.7.1. Establishment of a Child Protection System** – a comprehensive child protection system must be established that includes identification, reporting, investigation, assessment, recovery, and reintegration measures.

**12.7.2. Training for Professional Social Workers** – One of the problems related to enforcement and monitoring is the lack of trained professional social workers to carry out the responsibilities of the child protection system.

**12.7.3. Oversight and Implementation** – A government ministry or a new department must take responsibility for the oversight and implementation of the CRPD.

**12.7.4. Citizen Involvement** – Citizen organizations must be created that are involved in program implementation and planning. These organizations must also be given the ability to independently inquire into and supervise Viet Nam's laws on persons with disabilities.

## **13. Recommendations to International Donors**

The CRPD has major implications for the work of UNICEF and all international donors operating in Viet Nam. Article 32 of the CRPD commits international donors to support “national efforts for the realization of the purpose and objectives of the present Convention.” It not only calls on international donors to establish specialized programs to facilitate the implementation of the Convention, but article 31(1)(a) commits donors to ensure that all programs serving the population at large are “inclusive and accessible to persons with disabilities.”

This means, for example, that all buildings funded by international donors should be physically accessible to people with disabilities. Information provided to the public should be provided in accessible formats. Health care and public service projects should be provided in a manner that is accessible to children with disabilities and their families. Educational programs should be adapted so that they are appropriate and inclusive of children with physical, sensory, and cognitive disabilities. Programs that segregate children with disabilities from society violate the core principles of the CRPD. Accordingly, international funding and support should not be provided to create new separate or special schools or new residential institutions or programs that do not serve children in their families or communities. Consistent with article 19 of the CRPD, international support should promote the full community integration of children with disabilities.

International support can be critical to helping Viet Nam bring about implementation of the CRPD and adopting the policy reforms identified in this report. Article 32(b) calls for “capacity-building, including through the exchange and sharing of information, experiences, training programs, and best practices.” Also, international support can be particularly important in assisting Viet Nam in making the transition from segregated to integrated education and community-based services. While mainstreaming children into the community may ultimately lower the costs to society of providing services, the transition period can be costly. Once segregated institutions are closed, funds used on these programs can be transferred to support community-based services. But social care facilities, for example, cannot be closed down until support programs are established that will help families keep children with disabilities at home. International funding can be particularly important to help Viet Nam through this expensive transitional period.

To this end, new investments should be made in programs that serve children in the most integrated settings possible. Limited resources should be used to promote best practices, rather than programs and services that will have to be replaced in the years to come. One of the mistakes often made by international donors is to invest in programs that do not fully integrate children with disabilities into the community.<sup>255</sup> Moving children from large to small institutions, for example, may seem like an improvement, yet international research has shown that children with disabilities do not thrive when they are raised in congregate care settings. While new buildings appear cleaner and better than the institutions they replace, these segregated facilities will eventually become a costly burden on the social service system that may improperly use limited resources that should be available for further reform.

In order to affect positive reform and understand the issues, international donors can provide key technical advice on the implementation of best practices. Other countries have gone through similar transitions, so it may be particularly valuable to learn from international experience during the planning phases of legislative changes and new policy development.<sup>256</sup> International donors should be in close contact with government provinces, districts, and communes.<sup>257</sup>

As international donors promote the implementation of best practices, it is also valuable to draw on the expertise of the international disability community. Involving people with disabilities in leadership positions can help breakdown stereotypes of people with disabilities and provide models of leadership for people with disabilities in Viet Nam. This may be particularly important for people with intellectual or psychiatric disabilities for whom there are no positive leadership models in Viet Nam. As required by article 4(3), governments should “closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.”

One of the main impediments to the implementation of the CRPD is the lack of a strong and independent movement of people with disabilities. International donors can play a critical role in building the capacity of Vietnamese disability groups. International donors should work with citizen organizations and DPOs to assess the development of the drafting and implementation of legislation, so that it accurately reflects the needs of persons with disabilities.<sup>258</sup> International donors should also work to support citizen organizations and DPOs as a whole so that the citizen organizations and DPOs can take leadership roles in advocating for their own rights.

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255 See Mental Disability Rights International, *Hidden suffering: Romania’s segregation and Abuse of Infants and Children with Disabilities* (2006) (describing Romania’s experience moving children from large to smaller institutions).

256 Situational Analysis of Children with Disabilities in Viet Nam, *supra* note 1, at 145.

257 *Id.*

258 *Id.*

## **ANNEX 1: Promulgation of Inclusive Education in Developing Countries**

In the US, Congress enacted the Education for All Handicapped Children's Act in 1975, which required, for the first time, that all children with disabilities are entitled to "a free and appropriate public education." Although this law, now known the Individuals with Disabilities Act, has its critics, it is undeniable that since the IDEA was enacted, children with disabilities in the US enjoy the same right to access education as children without disabilities.

Other countries also have recognized the right to inclusive education for children with disabilities, and are providing the necessary resources to support this model. For example, as a result of the Dakar Framework for Action, which draws on the results of the global EFA 2000 Assessment, countries such as Bangladesh, Brazil and Egypt are now earmarking close to 6 per cent of their gross national product (GNP) for education.<sup>259</sup> For some African countries, education absorbs up to a third of the national budget, although several of them spend as much on debt repayment as on health and basic education combined.<sup>260</sup>

A 2000 UNESCO Report on the Guangxi autonomous region, which in 1996 transformed a special school for 500 children with visual impairments into a mainstream school that now educates 1,700 children, found that these children had benefited from the support of teachers trained in the project and that the inclusive school provided additional benefits to the community in dispelling long-held prejudices against people with disabilities.<sup>261</sup>

In Constanta, Romania, UNESCO has reported that where the major obstacle to inclusive education was the resistance of some parents and teachers, "tenacity and the clever use of adequate strategies" resulted in overcoming the fear and resistance. "The headmistress and staff estimate that the future of inclusive education provided by their school will be good and they intend to continue and develop the experience."<sup>262</sup> Further, in Kenya, the Kenya Society for the Blind also has increased the enrolment of blind children in regular schools.<sup>263</sup>

UNESCO also reports that in the Silahis ng Kaunlaran Centre (Manila) all children follow the mainstream curriculum and the inclusion practices are specific to the needs and conditions of the children. For example, although hard of hearing pupils are provided supplemental special auditory training and speech development, they follow the same program as other students. The same situation applies to blind children who receive class instruction from the regular teacher and supplemental teaching and assignments in Braille.<sup>264</sup> And, in India, the World Bank reported in 2003 that the Andhra Pradesh District Poverty Initiatives Project was facilitating inclusive education by giving parents of children with disabilities a voice and support from other parents, and the disabled children confidence,

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259 See UNESCO Report, available at [http://www.unesco.org/education/efa/ed\\_for\\_all/](http://www.unesco.org/education/efa/ed_for_all/) For a report specifically on inclusive education, and countries' responses to international mandates in this area, see [http://www.unesco.org/education/efa/efa\\_2000\\_assess/studies/inclusion\\_summary.shtml](http://www.unesco.org/education/efa/efa_2000_assess/studies/inclusion_summary.shtml)

260 See UNESCO Report, available at [http://www.unesco.org/education/efa/ed\\_for\\_all/](http://www.unesco.org/education/efa/ed_for_all/) .

261 UNESCO, *Inclusive Education on the Agenda*, Paris, UNESCO, 1998. <http://unesdoc.unesco.org/images/0012/001234/123486e.pdf>

262 Id. (excerpt taken from Romanian case study on inclusion, commissioned by UNESCO in 1999).

263 UNESCO, *Inclusive Education on the Agenda*, Paris, UNESCO, 1998. <http://unesdoc.unesco.org/images/0012/001234/123486e.pdf>

264 Id. (summarized from a country case study on the Philippines commissioned by UNESCO).

recognition, and the appropriate levels of opportunity and hope.”<sup>265</sup> These are just a few examples of the many successful initiatives worldwide to promote inclusive education.

Further, a report on Asia by the International Disability Rights Monitor found in 2005 that the majority of countries in the report have educational policies promoting inclusive education of people with disabilities, although a mixture of inclusive and special schools is common and implementation varies. In China in 2004, for example, 66.23% of students with special needs were studying in mainstream schools. On the other hand, in the Philippines, only 23 of 49,779 schools integrate children with disabilities into the mainstream education system. Moreover, there are concerns about the quality of inclusive education in some countries such as India and the Philippines, where class sizes for children with disabilities can be almost double the national average. Only Cambodia and Japan focus nearly exclusively on special education.<sup>266</sup>

These examples should provide confidence to the government of Viet Nam and its partners that the goal of inclusive education is accomplished in many countries throughout the world today, despite obstacles and concerns about funding. Reports from various countries indicate that the development of full inclusion in education requires attention, not only to the structure of schools and classrooms, but also to the related conditions that facilitate learning for all, as well as the development and support of creative partnerships, involving both governmental, non-governmental organizations, teachers, and the families, themselves.

In sum, the right to inclusive education, at all levels, for children with disabilities is possible in Viet Nam as it has been in other countries. International law and policies support the elimination of Viet Nam’s current system of separate schools and programs for children with disabilities and the creation of a new legal mandate requiring an inclusive education system. Viet Nam has many challenges ahead before it can develop and implement an inclusive education system. However, in order to comply fully with the inclusive mandate of the CRPD, Viet Nam must use this opportunity to amend its Disability Law to guarantee an inclusive educational program for all children. Enforceable laws and policies are needed to end the practice of placing babies and older children with disabilities in orphanages and institutions and to develop a plan for the return of these children to their communities and the general education system.

All Vietnamese children are entitled to inclusive educational settings that will help them to grow into healthy and productive citizens. As discussed above, the transition to an inclusive educational system will require many steps, and partnerships between the Government, NGOs, school personnel, and families to ensure the provision of good care and education for children, especially those who are disadvantaged. Viet Nam now has the opportunity to enforce the right to education for all children with disabilities within its new Disability Law and to create a new system of care that promotes the integration of children with disabilities within the community and in mainstream schools, rather than in segregated schools, orphanages, and institutions.

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265 World Bank, *Disability and Development in India* (2003) <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20092924~menuPK:34457~pagePK:34370~piPK:34424~theSitePK:4607,00.html>

266 IDRM Report on Asia (2005), Executive Summary, at p. XIV.