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## Transgender rights under us law and experience in building transgender rights in Vietnam

**Hoang Le Buu**

Thu Dau Mot University, Vietnam

\* Corresponding Author: **Hoang Le Buu**

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### Abstract

Gender transition is an issue related to individual human rights, both a legal and social issue. For a long time, the rights of transgender people have received attention from many countries around the world. The United States and the Netherlands are two countries where the fight for transgender rights is strong and there are laws regulating gender transition. This article focuses on analyzing the legal provisions of the United States and the Netherlands on the rights of transgender people and suggests some solutions for building and perfecting the law on transgender rights for Vietnam.

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### 1. Introduction

The moral rights of transgender people are receiving attention from many countries around the world, notably a number of movements and activities for the personal rights of transgender people. Typically, the "LGBT Flag" first appeared in 1978 and has gone through many designs. Currently, this flag includes 6 colored stripes including: red, orange, yellow, green, blue and purple. This is a symbol of the LGBT community, which includes gays, lesbians, bisexuals and transgender people, representing a connection without borders or limits. The 6 colors of the LGBT flag symbolize diversity, community, while also expressing the hope and desire to express oneself and fight for the personal rights of the LGBT community around the world.

Although they have become a community in society, in reality, transgender people are often discriminated against and stigmatized in society, even in their own homes. This, invisibly, makes it difficult for transgender people to have their personal rights guaranteed and to integrate into the community. For the most part, they often encounter the situation of not being able to express their views and opinions, and they don't even have the opportunity to assert their position in society. Realizing that transgender people are also human beings, they also need to live, they also need to have jobs and especially they need to receive social recognition and be treated equally.

Recognizing the importance of ensuring the personal rights of transgender people, the authors chose to analyze the legal regulations of the United States and the Netherlands on gender change and suggest some solutions. Build and improve laws on gender transition for Vietnam.

### 2. Overview of transgender people and transgender rights

Gender reassignment is a medical term used to refer to the act of changing a person's gender by medical means. People who are dissatisfied with their gender often tend to change their gender. This syndrome appears when the fetus reaches 3-4 months, when the fetal brain differentiates into male and female, but this differentiation is contrary to their biological genetic structure. This is the process by which, through medical means, a person can completely or completely change his or her gender. Besides Hormone conversion therapy, sex reassignment surgery is the most commonly used method to perform gender reassignment for humans in the most complete way. Gender reassignment surgery is often performed on people whose gender identity differs from their birth biological sex. They use this method to satisfy their need to have a body consistent with their desired gender.

A transgender person is a person whose desired gender is different from the sex they were born with. People born male but think they are female and vice versa, people born female think they are male. They have psychology, thoughts, feelings, attitudes and ways of living that are different from their gender at birth. Biologically, transgender people are also not associated with genital abnormalities. Although biological factors have a lot of influence on gender transition, most people still have complete genitals. In medicine, people born with genital conditions that do not clearly identify as male or female are called intersex people. Transgender people are not necessarily intersex. Therefore, transgender people do not necessarily have to undergo surgery. The definition of transgender people is only the internal feeling about their gender, and whether or not to have surgery depends on each person's economic conditions, health and personal needs <sup>[1]</sup>.

Human rights include all aspects related to humans, everyone has the same civil, political, economic, cultural and social rights, and has equal natural needs. . The same goes for transgender people, they also need to be treated equally like everyone else, they also need to be protected and respected by the state and society like everyone else in society. In the past, transgender people often faced discrimination from people, so they often lived in private, did not dare to reveal themselves, and even suffered insults from their own family members. However, in recent years, society has begun to reconsider this issue and many countries around the world have recognized and allowed transgender people to live according to their true gender and psychology. Transgender rights are closely linked to human rights. First of all, the rights of transgender people are associated with freedom. People whose birth gender is not as expected need to change their gender. They want to be free to change their gender by surgery. transgender surgery and moreover, they want to change their gender legally - change their gender on their personal documents. Second, transgender people also need to be treated equally like everyone else. They do not want to be discriminated against in life, health care or job opportunities because they are transgender. . Third, transgender people should also have the basic civil rights that a normal person enjoys. They have the right to live, develop themselves, have health care, and do things not prohibited by law.

In today's world, the rights of transgender people are recognized in documents on the rights of the LGBT community. The right to equality is the basic foundation for other human rights of this community. Right in the preamble of the United Nations Charter (1945) it is stated that the basic rights, qualities and values of human beings are equal, without any distinction. The Universal Declaration of Human Rights (UDHR, 1948) continues to affirm that all people are born equal in rights and are protected in dignity (Article 1), all members of the human family are entitled to fundamental rights and freedoms without distinction of any kind as to race,

color, sex, language, religion, political or other opinions, nationality or social origin, or property , birth, or all other circumstances (Article 2). The principle of non-discrimination continues to be recognized in two fundamental human rights conventions, the 1966 International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Cultural, Social and Cultural Rights. Economy 1966 (ICESCR). According to this principle, United Nations member states must respect, protect and promote human rights without any discrimination or discrimination, which includes the element of "bias". sexuality" and "gender identity".

On the basis of international human rights documents, documents that directly address the rights of the LGBT community in general and the rights of transgender people in particular have been passed, typically:

- Declaration on Sexual Orientation and Human Rights, adopted by the United Nations Human Rights Committee in March 2005;
- Joint Declaration on human rights violations based on sexual orientation and gender identity adopted by the United Nations Human Rights Council in December 2006;
- Yogyakarta Code of Conduct on Sexual Orientation and Gender Identity, adopted by the United Nations Human Rights Council on March 26, 2007;
- Universal Declaration on human rights, sexual orientation and gender identity adopted by the United Nations General Assembly on December 18, 2008;
- Joint Declaration on ending acts of violence and human rights violations based on sexual orientation and gender identity adopted by the United Nations Human Rights Council in March 2011;
- Resolution on "Human rights, sexual orientation and gender identity" passed by the United Nations Human Rights Council in June 2011.

To ensure the legal rights of transgender people, the United Nations Human Rights Committee has urged countries to "recognize the right of transgender people to change their gender by providing them with legal documents." new birth certificate". The United Nations High Commissioner for Human Rights also recommends that countries: "support the implementation of transgender people's right to be legally recognized as their desired gender and provide identification documents proving gender and name. call them what they want." <sup>[2]</sup>.

Thus, it can be seen that although international human rights documents do not have a separate regulation for the right to change gender, this right can be considered included in human rights. Up to now, international organizations and United Nations human rights agencies have basically recognized the right to change gender and the rights of transgender people such as equality, freedom, health care and especially recognition. legally recognized, change gender on identification documents.

<sup>1</sup>Vu Cong Giao (2018), Overview of laws on gender change in the world and in Vietnam, Proceedings of the scientific conference Experience of some countries around the world on gender change laws and lessons for Vietnam, Tri Thuc Publishing House.

<sup>2</sup>Vu Cong Giao (2018), Overview of laws on gender change in the world and in Vietnam, Proceedings of the scientific conference Experience of some countries around the world on gender change laws and lessons for Vietnam, Tri Thuc Publishing House.

### 3. US Law on the rights of transgender people

The United States is a country with many strong movements fighting for the rights of transgender people, however, US laws on transgender people are still not really advanced compared to the laws of other countries and are still in the process of complete. In the United States, there is no separate law on gender change in general or the rights of transgender people in particular. This issue is regulated in various documents at the federal and state levels<sup>[3]</sup>. Legal documents in the United States currently do not have a definition of transgender or transsexual. US law also does not regulate the conditions for gender reassignment. Content about gender change regulated by US law focuses mainly on two issues: the procedural process to be legally recognized for transgender people and the issue of equality of rights and freedom from discrimination. discrimination against transgender people.

Currently in the United States, the rights of transgender people are guaranteed depending on the laws of each state. The federal government does not have a separate transgender anti-discrimination law, however a number of federal court decisions have interpreted the equal rights clause of the United States Constitution and also in Title VII of the Civil Rights Act on combating employment discrimination based on sex in the direction of combating discrimination based on gender identity.

In the field of labor, transgender people in the United States who feel they have been discriminated against in employment can file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC issued a ruling in 2012 in the Macy's Holder case, and clarified its position on the issue of discrimination based on sex in violation of Title VII of the Civil Rights Act. The EEOC has also noted that section VII should be interpreted to prohibit sex discrimination as well as discrimination on the basis of sex. At the same time, transgender people also face many difficulties in using the toilet that corresponds to their gender after transitioning. In June 2015, the US Labor and Health Administration (OSHA) issued "Guidelines for using restrooms for transgender workers" sent to all businesses in the United States<sup>[4]</sup>. Accordingly, it is necessary to limit or not allow transgender workers to use the restroom according to their gender. Accordingly, transgender people are prohibited or restricted from using the restroom that corresponds to their gender after gender transition. However, according to OSHA, which bathroom transgender people use will cause a big controversy in the corporate environment. Therefore, OSHA's guidance document only stops at the "calling" level<sup>[5]</sup>.

In the field of education, the Education Law amended in 1972 in section IX prohibits gender discrimination in educational programs funded by the federal government including public schools and some private schools. This Act is interpreted to prohibit discrimination based on gender identity. In 2016, the U.S. Department of Education and the Department of Justice

issued a document to schools funded by the federal government, which recommended that schools use appropriate names and titles for students and for students. Allow students to use restrooms and locker rooms appropriate to their gender.

### 4. Experience in building and perfecting the law on transgender rights in Vietnam (Buu)

In Vietnam, there are no specialized legal documents specifically regulating the right to gender change. The 2015 Civil Code is currently the only current document regulating the rights of transgender people. The right to change gender is first stipulated in Article 37 of the 2015 Civil Code. In the 2015 Civil Code, the right to change gender is stipulated as follows: "Gender change is carried out in accordance with the provisions of law. Individuals who have changed gender have the right and obligation to register for changes in civil status according to the provisions of law on civil status; have moral rights consistent with the converted gender according to the provisions of this Code and other relevant laws<sup>[6]</sup>. It can be understood that any individual wishing to change gender will be recognized by the state by registering to change civil status. However, currently this is simply the first step in recognizing transgender rights in the Vietnamese law system. Through analysis of US law and Dutch law, countries that have recognized the rights of transgender people can learn from experience to improve and develop laws for transgender people in Vietnam.

The first, It is necessary to clarify the concept and properly understand transgender and transsexual people. How to determine whether a transgender person is required to perform a gender reassignment surgery procedure and have a certificate from a medical facility that performed the surgery and hormone injections? Or the fact that a person declares that he or she has a gender identity different from the biological sex at birth and is transgender... At the same time, the concept of gender in Vietnam is also limited to the meaning of Male and Female without regulations on transgender people and other subjects in the LGBTQ+ community.

The Second, the 2014 Civil Status Law needs to update and supplement regulations related to the issue of gender re-determination according to Article 37 of the 2015 Civil Code<sup>[7]</sup>. The Civil Status Law also needs to specifically stipulate measures to ensure the right to register the birth of a child born with unclear genitalia...

Third. It is necessary to soon promulgate the Gender Change Law, a specialized law to concretize the principles to create conditions to ensure gender equality for transgender people. Currently, there is a draft Law on Gender Change, but it needs to be reviewed and completed in order to soon promulgate a Law on Gender Change.

### 5. Conclusion

The laws on transgender rights of the United States and the

<sup>3</sup>Nguyen Bich Thao (2018), Laws on transgenderism in the United States and suggestions for Vietnam, Proceedings of the scientific conference Experience of some countries around the world on transgender laws and lessons for Vietnam, Tri Thuc Publishing House.

<sup>4</sup>OSHA (2015), A Guide to Restroom Access for Transgender Workers, <https://www.osha.gov/sites/default/files/publications/OSHA3795.pdf>, accessed February 29, 2024

<sup>5</sup>Phuc Duy (2015), Controversy: Do transgender people use men's or women's restrooms?, Thanh Nien Newspaper, <https://thanhvien.vn/tranh-cai-nguoi-chuyen-gioi-su-dung-nha-ve-sinh-nam-hay-nu-185521066.htm>, accessed March 30, 2024

<sup>6</sup>Article 37 of the 2015 Civil Code

<sup>7</sup>Mai Thi Dieu Thuy (2017), Completing the legal framework to protect the rights of transgender people today, Journal of Law and Practice - No. 01/2017, p72-p79

Netherlands have created a lot of experience to improve the legal framework for transgender people in Vietnam. In general, completing the legal framework to ensure the rights of transgender people in Vietnam is still quite new, but this is an urgent issue to help transgender people escape discrimination and easily integrate into life. social living. Improving the rights of transgender people is also a trend in countries around the world. This is also the highest expression of human rights and civil rights.

## 6. References

1. Vu Cong G. Overview of laws on gender change in the world and in Vietnam. In: Proceedings of the Scientific Conference Experience of Some Countries Around the World on Gender Change Laws and Lessons for Vietnam. Hanoi: Tri Thuc Publishing House; c2018.
2. Nguyen Thi Hong Nhung, Mai Hoang Phuoc. Law on procedures for changing civil status information for transgender people in Vietnam; c2021-2024. J Democracy Law [Internet]. Available from: <https://danchuphapluat.vn/phap-luat-ve-thu-tuc-change-the-thong-news-ho-tich-for-people-chuyen-world-in-viet-nam>. Accessed March 1, 2021-2024.
3. Nguyen BT. Laws on transgenderism in the United States and suggestions for Vietnam. In: Proceedings of the Scientific Conference Experience of Some Countries Around the World on Transgender Laws and Lessons for Vietnam. Hanoi: Tri Thuc Publishing House; c2018.
4. Institute for Social, Economic and Environmental Studies (iSEE). Experiences of some countries around the world on gender change laws and lessons for Vietnam. Hanoi: Tri Thuc Publishing House.
5. OSHA. A Guide to Restroom Access for Transgender Workers; c2015. Available from: <https://www.osha.gov/sites/default/files/publications/OSHA3795.pdf>. Accessed February 29, 2024.
6. Mai Thi DT. Completing the legal framework to protect the rights of transgender people today. Journal of Law Practice. 2017;(01/2017):72-79.