

# THE ROLE OF THE LAWYER TO DEFEND THE ACCUSED, DEFENDANT WHO IS PERSON WITH DISABILITIES IN AGAINST TORTURE IN VIETNAM

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This paper is partial fulfillment of the requirements for the Doctor of Law degree (the doctor thesis title “Protection the Rights of Access to Justice of the People with disabilities in Vietnam today/ Đảm bảo quyền tiếp cận công lý của người khuyết tật ở Việt nam hiện nay”) that PhD. Candidate Nguyen Ngoc Lan is working on at School of Law, Vietnam National University, Hanoi.

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The right to access the justice system of person with disabilities (PWDs) is provided for in clause 1, Article 13 of the 2007 United Nations Convention on the rights of person with disabilities, accordingly, all member states must protect people with disabilities have access to the judicial system effectively, on an equal basic with other, in which providing procedural convenience and age-appropriate, the purpose of enabling person with disabilities to participate directly or indirectly in all legal proceeding, including at effectively investigate or other steps. As with other human rights in general, person with disabilities also have the inviolable rights set forth in the 1984 United Nations convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Over the past years, with the judicial reform process, as a member of the UN Conventions, Vietnam has promoted the development and completion of the legal system, research and conduct internalization of the provisions of the Conventions in accordance with the laws of Vietnam, including the Criminal Code, the Criminal Procedure Code and other judicial laws, in order to ensure the rights of persons participating criminal proceedings in general, rights of defendants who are disabled people in particular. The Criminal Procedure Code 2015 has provisions to guarantee the

right of defense of person with physical weaknesses, person with mentally impaired, as well as the rights of the Lawyers to act as defenders for the accused or defendant who has physical and mental weakness.

In recent years, there are still violations on against torture in many provinces of Vietnam. Some cases have signs of injustice related to the use of torture, forced bow and corporal punishment ...

With this paper, the authors focuses on analyzing some provisions in the United Conventions on the Rights of Persons with disabilities 2007 (CRPD), The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, the provisions of the Criminal Procedure Code 2015, The Criminal Code 2015 and some other Laws related to the role of the Lawyer on defend for accused are person with disabilities in the prevention and control torture in Vietnam.

Thus, the authors want to point out the limited issues, the causes of the limitations in the provisions of the Vietnamese Laws and the practical implementation of the provisions of Vietnamese laws on the role of the defend Lawyers and the right to access justice system of person with disabilities in criminal proceeding; and the Authors offered a number of solutions to well implement the role of the defend lawyer for accused who is a disabled person in the prevention and control of torture in Vietnam.

## **1. The regulation of Person with disabilities in the International Instrument and Vietnamese Law**

Persons with disability are persons have one or more physical or mental deficiencies which, therefore, cause a significant and long-term impairment of the ability to perform everyday activities. Under the Anti-Disability Discrimination Act of the British Parliament, a disability lasting less than 12 normal months is not normally considered a disability, unless it is being repeated. As for the American Disability Act of 1990 (ADA), a person with a disability has a physical or mental impairment that significantly affects one or more important activities in life. Classified by the World Health Organization, there are 3 levels of attenuation: defective, handicapped and disabled. The defect refers to the loss or abnormality of a physical/psychological body structure. Handicapped refers to the impairment of functional function, which is a consequence of the defect. Disability refers to the adversity or disadvantage of a person with a disability due to the impact of the surrounding environment on his or her

disability. According to the International Organization for People with Disabilities, people with disabilities become disabled due to lack of opportunities to participate in social activities and lead a life like other members.<sup>1</sup>

According to Article 1 of the Convention on the Rights of Persons with Disabilities, PWDs include persons with permanent physical, mental, intellectual or sensory disabilities that, when interacting with various barriers, may be detrimental to their full and effective participation in society on an equal basis with others. Thus, it can be seen that the definitions of PWDs mostly refer to the ability to fully participate in society, the disability is not only a physical deficiency, but also a lack of opportunity to integrate into society. This convention is consistent with all people, not just those people with disabilities. Vietnam has ratified most of the important human rights convention, including CRPD. Defining PWDs, the Law on People with Disabilities of Vietnam, 2010, provides: “*Persons with disabilities by definition of this Law are those who have impairment of one or more parts of their body, or functional impairment, which are shown in different forms of disability, and may cause difficulties in work, daily life and learning*”.<sup>2</sup>

According to the National survey on people with disabilities in Vietnam, conducted by the General Statistics Office, Vietnam has about 6.2 million people with disabilities, accounting for 7.06% of the population; of which 58% are female, 28,3% are Children. It might also be pertinent to note that 28% out of the said percentage of PWDs account for people with extreme disabilities i.e. 8,96,644 and 69,257. These PWDs are direct beneficiaries of Vietnam’s social welfare policy.<sup>3</sup> By the end of 2019, nearly 3 million PWDs had been granted a certification of disability.

The disability rate tends to increase with age. The rate of female is higher than male. Among the six socio-economic regions, the regions with the highest disability rates are the North and South Central Coast, and the Southeast and the Central Highlands are the lowest. The disability rate in rural areas is 1.5 times higher than that in urban areas.

People with disabilities are classified into different levels of disability (as defined in Article 3 of Decree No. 28/2012 / ND-CP detailing and guiding the implementation

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<sup>1</sup> Nguyen Thi Bay, Majoring in Human Rights Law (master thesis), VNU Law Faculty, 2013.

<sup>2</sup> Clause 1, Article 2, Law on People with Disabilities in Vietnam, 2010.

<sup>3</sup> <http://www.molisa.gov.vn/vi/Pages/chitiettin.aspx?IDNews=26029>.

of the Law on People with Disabilities in Vietnam), accordingly: i) Particular severe disability : As people with disabilities lead to complete loss of their function, self-control or make them unable to move, to dress, to keep personal hygiene and to complete other everyday tasks without other people to watch, to help and to take care completely; ii) Severe disability: People suffering from serious impairments are those whose impairments lead to partial loss or deficiency of their functions, self-control or make them unable to move, to dress, to keep personal hygiene and to complete other everyday tasks without other people to watch, to help and to take care of; and iii) Light disability : This category has people not belonging to the two categories mentioned above.

The CRPD addresses many aspects of society, providing an important legal basis for countries member to develop policies suitable for PWDs, protect them have the same rights as people non disables, including to equal recognition before the law, The Art 12 of CRPD regulated:

*“1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.*

*2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.*

*3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.*

*4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person’s rights and interests.*

*5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit*

*property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.”*

The Art 13 of CRPD has regulated about the right to access to justice of PWDs:

*“1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.*

*2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.”*

Thus, we can see that the CRPD has specifically recognized the equal rights of PWDs before the law, the equal rights on access to judicial systems as others. In the society development situation, PWDs have a lot of difficult to inclusive for the life, is one of the vulnerable group. Therefore, the Convention requires states member in all respects to create the most favorable conditions for PWDs, especially to have equal access to the judicial system.

To access to the justice systems of PWDs is also systematically guaranteed through the justice implementing system, based on the people who working in the judicial sector, criminal judgment enforcement must have legal knowledge, professional qualifications and skills. All actions or behaviors of people whose working in the judicial domain must be fair and objective, for the transparency of justice.

Concretizing the CRPD, Vietnam has legalized the rights and obligations of PWDs in Art 4 of the Law on People with disabilities, detail is: i) to participate on an equal basis in social activities; ii) to live independently and integrate into the community; iii) to enjoy exemption from or reduction of certain contributions to social activities; iv) To provide with healthcare, functional rehabilitation, education, vocational training, employment, legal assistance, access to public facilities, means of transport, information technology and cultural, sports, tourist and other services suitable to their forms and

degrees of disability; v) Other rights provided by law. These provisions have basically ensured their compatibility with the provisions of the CRPD. In terms of access to justice, The Law on Legal Aid stipulates that PWDs have the right to get legal aid and other rights in accordance with the law. For example, protection of the right to defend the accused in general and for PWDs in particular is provided for by the 2015 Vietnam Criminal Procedure Code, this Code provides that an accused person may exercise the right to defend themselves, have their defense counselled or be appointed by the competent procedural authorities.

For PWDs, the point b clause 1 Art 76 of the 2015 Criminal Procedure Code regulated: persons facing charges and not capable of defending themselves due to physical defects; those with mental disabilities or those under 18 years old, the procedural authorities shall appoint defense counsels for that person. And in the Clause 2 this Article has regulated that the Competent procedural authorities must demand or ask suitable organizations to assign defense counsels for the person who regulated in the Clause 1 this Article, with detail are: i) A bar association assigns a law firm to appoint defense counsels; ii) A governmental legal aid center appoints a legal assistant or lawyer to defend persons qualified for legal aid; iii) The committee or affiliations of Vietnam Fatherland Front appoint people's advocate(s) for their personnel who face charges.

In addition, the Criminal Code also has provisions to ensure that PWDs are people with special attention by State/ Government, protect special policies when they participate in criminal proceedings as an accused or the defendant in the case, for example they are entitled to extenuating circumstances of criminal liability or be released from prison before a conditional period.

Point p Clause 1 Article 51 of Criminal Code 2015, The offender has a serious physical disability or extremely serious physical disability is the mitigating factor of the offender; or point dd Clause 1 Article 66 this Code regulated that person with particular severe disability or severe disability is one of the cases that is considered to be released from prison before a conditional period (when all conditions are met as prescribed by law); A person who commits an act that is dangerous to society is suffering from a mental disease or another disease that causes him/her to lose his/her awareness or control of his/her behaviors is exempt from criminal responsibility (Art 21 The Criminal Code 2015).

However, when comparing the concept of PWDs under the law on People with disabilities and the concept of PWDs in the CRPD, we find the scope of regulations of PWD in the Law on Criminal Procedure 2015 and Criminal Code 2015 amended and supplemented in 2017 are not consistent, especially between the provisions of the Law on people with disabilities 2010 and the provisions of the Criminal code 2015. The term “mental impairment, mental disability”, “intellectual disability”, “physical weakness”, “mental weakness” have not been definition clearly by the Law on Persons with disabilities 2010, The Criminal Procedure Code 2015. This leads to an inconsistent understanding in the application and enforcement of the law, which also means that PWDs in one of these cases will be disadvantaged, unable to access justice when the person applies and law enforcement has inconsistent understanding of the law. Besides, we cannot clearly distinguish the concept of how the terms “intellectual disability”, “mental disability” and “mental defect” need to be understood, because according to the point Art 4 of the Law on people with disabilities, intellectual disability, mental disability are cases entitled to legal aid, and cases “mental weakness” is not mentioned in the Law on People with disabilities.

Thus, there is no consensus about cases of disability enjoying the right to legal aid between the Law on People with disability 2010 and those with disabilities that have the right to defend (designate defense) according to the Criminal Procedure Code 2015. According to the Art 2 of the Law on Legal Aid 2017, Legal aid means the provisions of legal services free of charge to legally-aided persons in a legal aid-related case in accordance with this law, contributing to the assurance of human rights and citizenship in the access to justice and equality before the law. Therefore, these are issues that need to be specifically researched, guided and answered by competent authorities to ensure the process of law application and enforcement in the case of PWDs participating in the criminal procedure as the accused, defendants in the criminal cases.

## **2. The role of the Lawyers to defend the accused, defendant who is person with disabilities in against torture in Vietnam**

### *Defense counsels - Lawyers:*

In this paper we would like to present more content on the concept of “ Defense counsels – Lawyers” before clarifying the content of the role of the Lawyers to defend for the accused, the defendant is the PWDs in the prevention, against torture.

In practicing, many people still confuse between Lawyers and The Jurist - the person who research and practice in the filed of law, or there is a similarity between lawyers and defense counsels, even the identity of lawyers, Jurist. So, people think “the Lawyer are jurist and is trained more in professional skills (lawyer skills), join the Bar association, thereby being recognized as a Lawyer to practice professionally in litigation and legal advice or either of these”<sup>4</sup>. And another view point is “ The lawyer is a person who relies on the law to defend for the litigant before the court”<sup>5</sup>, or “Lawyer are professional defense activists and work in the Bar association”<sup>6</sup>..

The above views point are simple and incomplete understandings, not based on any specific criteria or conditions as prescribed by law to distinguish between Lawyers and jurist or defense counsels. The cause of this confusion and inconsistency, on the one hand, is the lack of development of the legal system in general and the underdeveloped judicial profession in Vietnam in particular; on the other hand, the translation of the term related to a foreign language is inaccurate, inconsistent, and people do not have much access to legal services.

Therefore, we believe the relevant functional agencies such as the Vietnam Bar Federation, Bar associations, Legal Aid centers of provincials level and competent procedural authorities at all levels need promote the propaganda and dissemination of laws, likes law on legal aid, Law on Lawyers ... so people can have access to the legal system, including laws on judicial assistance, especially those eligible for legal aid under the Law on Legal aid, ensuring legitimate rights and benefits when people participate in criminal proceeding as defendants, accused.

In Vietnam, a person who wants to become a lawyer must have requirements such as having good health, loyalty to the Fatherland, comply with the Constitution and the law, have good ethical qualities, have a bachelor of Laws degree, attend and graduate from a law training course, pass the law practice internship, pass the law transfer exam to have a Lawyer certificate, register to join a bar association to get a lawyer’s card.

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<sup>4</sup> The government coordinating council on Law dissemination and education (2011); Lawyer and the Law on Lawyers in Vietnam, Law propaganda issue No 4, part 1, Hanoi, p2

<sup>5</sup> Institute of Linguistics (1997), “Vietnamese Dictionary”, Danang publishing House, Danang, p.570

<sup>6</sup> Vo Khanh Vinh (editor) (2014), Scientific commentary of the Criminal procedure code, people’s public Security Publishing House, Hanoi, p.129

Thus, the criteria and conditions for becoming a lawyer are fundamentally different from those of Jurist. To become a lawyer, it is necessary to have a law degree, to pass the lawyer training course, pass the apprenticeship period and pass the exam to get a practice certificate (Lawyer certificate), while a Jurist does not only need these conditions and only need knowledge of the law

With the standards and conditions in the law for a person to become a lawyer, Vietnam State requires very high and very strict requirements for the lawyers, especially in the current period when the Party and the State is focusing on judicial reform, improving the quality of people working in judicial and legal support. As well as the criteria and conditions required to be appointed procurators and judges are specified in the law on organization of the people's procuracy 2014 and the law on organization of the people's court 2014, the standards to be recognized as a lawyers are also strictly regulated by the Law on Lawyer.

A person who is allowed to practice law must meet conditions in the Art 10 and 11 of Law on Lawyers: i) Vietnamese citizens who are loyal to the Fatherland, observe the Constitution and law, have good moral qualities, possess a law bachelor diploma, have been trained in legal profession, have gone through the probation of legal profession and have good health for law practice and ii) possess a law practice certificate and join a bar association. The condition of a law practice is the professional requirement (have a law bachelor diploma, complete a lawyer training course and complete the exam of a lawyer training program). This regulation is consistent with the professional practice specified by the law on lawyers in many other countries<sup>7</sup>.

With the above provisions, we can understand: *The Lawyers is a title in the judicial field, only those who are qualified to practice law in accordance with the law to practice in legal proceedings and legal consult or represent outside of the proceedings for individuals, organizations and other legal services.*

Lawyers or other person can become defense for the accused in criminal cases when they are asked by the accused, the criminal procedure code collectively calls them “*defense counsels*”. According the Criminal procedure code 2015, defense counsels are Lawyers, Representatives of persons facing charges, People's advocates, Legal

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<sup>7</sup> The government coordinating council on Law dissemination and education (2011); Lawyer and the Law on Lawyers in Vietnam, Law propaganda issue No 4, part 1, Hanoi, p13

assistants for charged persons given legal aid<sup>8</sup>. With strict standards, conditions and procedures for selection and appointment to become a lawyers, as well as the professional practice, quality and efficiency of lawyers in recent years, the lawyers has affirmed their position and the role in society. Deploying the spirit of the Politburo's Resolution No 49-NQ/TW dated 02 June 2005 on the Judicial Reform Strategy to 2020, especially the implementation of Decision No 1072/ QD-TTg dated 5 July 2011 of the Prime Minister approves the Strategy for the development of the Lawyer profession until 2020, the number of Lawyers in Vietnam develops strongly in quantity and quality. By the end of 2020, Vietnam has a 15,107 lawyers (fifteen thousand one hundred and seven), increase of 1,248 lawyers than 2019 (in 2019, Vietnam has 13,859 lawyers) <sup>9</sup>. Many lawyers have affirmed their qualifications, expertise and confidence in participating in the international legal services.

In criminal proceedings, defense counsels – Lawyers are understood as Lawyers who are asked by the accused or by competent procedural authorities to participate in the proceedings to defend the accused and help the accused in legal issues to protect their legitimate rights and interests, thereby contributing to protecting the justice of the law, protecting socialist legislation. Although the proportion of lawyers participating in defense activities is not high, about 13% to 14% of defendants and accused in criminal cases (including cases requested to defend by proceedings agencies)<sup>10</sup>. However, the lawyers still has a particularly important position and role as a “Exculpate”, ensuring legitimate rights and interests for the accused in criminal cases, especially for PWDs, because most of these cases are the defense counsels assigned to defend the accused or defendants. The lawyer have some of the following characteristics:

*Firstly*, defense lawyer is a person who is sought by the accused person to defend, or requested by the competent procedural authority to defend. Lawyer, like other subjects that are defense counsels, are lawyers who only become defenders when they

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<sup>8</sup> Clause 2 Art 72 The Criminal Procedure Code 2015

<sup>9</sup> <https://www.liendoanluatsu.org.vn/post/h%E1%BB%99i-ngh%E1%BB%8B-t%E1%BB%95ng-k%E1%BA%BFt-t%E1%BB%95-ch%E1%BB%A9c-ho%E1%BA%A1t-%C4%91%E1%BB%99ng-n%C4%83m-2020-v%C3%A0-ph%C6%B0%C6%A1ng-h%C6%B0%E1%BB%9Bng-ho%E1%BA%A1t-%C4%91%E1%BB%99ng-n%C4%83m-2021>

<sup>10</sup> Lê Thị Diệp, “Rights and obligations of defense lawyers in the stage of criminal investigation” master thesis, academy of Social Sciences, Vietnam, hanoi, 2019, p.51.

meet all the conditions specified by the law and are asked to defend by the accused or by competent procedural authorities

*Secondly*, defense lawyer, as well as other entities that are defense counsels, must go to the competent procedural authority to seek defense, or are requested by the competent procedural authority register the defense and must be accepted by the agency or person competent to conduct legal proceedings.

*Thirdly*, Defense lawyer is different from other subjects who are defense counsels, who meet the standards, conditions and professional skills prescribed by the law for lawyers. When participating in legal proceedings, defense lawyer use professional skills to provide arguments and evidence to prove innocence of relieve criminal liability to the accused as well as to help the accused in legal to protect their legitimate rights and interests.

*Fourthly*, Defense lawyer has a legal status, has separate rights and obligations, regardless of the rights and obligations of the accused person.

*Fifthly*, Defense lawyer participating in the proceedings have no rights and interests related to the case, but the activities of defense counsels in the course of proceedings are aimed at protecting the legitimate rights and interests of the accused person.

*The role of the lawyer to defend the accused, defendant is a Person with disabilities in against torture:*

*Firstly*, During the participating in criminal proceeding, defense lawyer as a law professional, knowledgeable in the law and with their professional lawyer skills will help the accused to gain confidence that the case will be resolved quickly, impartially and objectively; the matters related to their crimes will be justified or mitigated as much as possible; as a Exculpate, through their legal powers, lawyer participating in criminal proceedings contribute to the resolution of the case in an objective, comprehensive and lawful; eliminates the tyranny of criminal proceedings, avoids infringement of the legitimate rights and interests of accused person, and demonstrates innocence or mitigates criminal liability to accused person.

*Secondly*, the presence of defense lawyer in the criminal proceedings, will contribute to the full and honest interrogation, avoiding the situation of harassment and corporal punishment against the accused; with the process of resolving criminal cases,

the activities of defense lawyer in the proceedings will help agencies and persons with criminal procedure competence immediately see the shortcomings and violations that need to be promptly supplemented and overcome.

*Thirtly, Defense lawyer* through their defense activities, help agencies and persons with criminal procedure competence to understanding the reality of cases, crime, offender, motive, purpose, to make procedural decisions ( investigation conclusions, indictments judgments or decisions of the Court ...) are grounded, lawful, enough deterrent but must also meet requirements of legal education.

In addition, with their obligations, defense lawyer participate in criminal proceedings, together with agencies and person with criminal procedure competence to contribute to the protection of legal justice and the socialist legislation, building trust of citizens in the strictness of the law. From that, raising awareness of law observance, actively and effectively participating in the fight against crime, contributing to maintaining social security and safety.

The art 15 of CRPD regulated: (1) No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation. (2) States Parties shall take all effective legislative, administrative, judicial or other 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

As a State Parties of the International Covenant, Vietnam has actively and proactively built and perfected the legal system, including the judicial laws, The Criminal Procedure Code 2015 and Criminal Code 2015, to protect the consistency between legal documents in the country; internalizing the convention's provisions in accordance with Vietnam's legal policies, ensuring compatibility with international conventions. In particular, the Criminal Procedure Code 2015 has comprehensively amended and supplemented the Criminal Procedure Code 2003, in which it is related to ensuring the rights of accused persons or defendants in criminal proceedings, avoid torture and corporal punishment in the process of custody, investigation, prosecution and adjudication. For accused persons of physical weakness, person with mental deficiencies are guaranteed the right to defend in case their representative or relative does not invite the defender, so the competent procedural authorities must appoint

defense counsels for them (Art 76 of the Criminal Procedure Code 2015). In this case, the defense lawyer is appointed the competent procedural authority to defend for defendant, accused who is person with disabilities (has physical weakness, mental defect. The defense lawyer will be a companion with the accused, the defendant is the person with disabilities in the proceedings of the criminal cases, affirming the defendant's rights, the defendant must be promoted by the competent procedural authorities with the Criminal Procedure Code; to ensure are not subjected to harassment, corporal punishment or being affected by methods of investigation, prosecution and adjudication against the law.

In order to protect the rights of defendants and accused who are person with disabilities in criminal cases, defense lawyers for defendants and accused have the rights specified in clause 1 Art 73 of the Criminal Procedure Code 2015, details is: (a) *Meet and inquire about persons facing charges; (b) Be present during the extraction of statements from arrestees and temporary detainees or the interrogation of suspects, and question arrestees, temporary detainees and suspects with the consent of individuals authorized to acquire statements or conduct interrogation. After authorized individuals end a session of statement extraction or interrogation, defense counsels may raise questions to arrestees, temporary detainees and suspects; (c) Engage in the activities of confrontation, identification, recognition of voice and other investigative activities as per this Law; (d) Be informed by competent procedural authorities of timing and location for taking statements or interrogating, and schedule and venue for other activities of investigation as per this Law; (dd) Read the records of legal proceedings, in which they have participated, and decisions on legal procedure against persons whom they defend; (e) Request the replacement of persons given authority to institute legal proceedings, expert witnesses, valuers, interpreters and translators; and request the changes or termination of preventive and coercive measures; (g) Petition for legal proceedings according to this Law; for summoning of witness testifiers, other participants in legal procedure or authorized procedural persons; (h) Gather and present evidences, documents, items and request; (i) Inspect, assess and confer on relevant evidences, documents and items and request authorized procedural persons to check and evaluate such; (k) Request competent procedural authorities to collect evidences, add or repeat expert examinations or reevaluate property; (l) Read, transcribe*

*and photocopy documents from case files related to their activities of pleading upon the end of investigations; (m) Engage in debates and questioning sessions in court; (n) File complaints about competent procedural authorities and persons' decisions and legal proceedings; (o) Lodge appeals against the Court's judgments and rulings if defendants are less than 18 years old or have mental or physical defects as per this Law.*

In addition, to avoid the fact that the accused, the accused who is a person with disabilities can be harassed or punished in the process of resolving cases, the Criminal Procedure Code 2015 also stipulates the interrogation, extraction statements must be recorded by sound or sound and visual means.

Clause 6 Art 183 of the Criminal Procedure Code 2015 regulation: *“Suspect interrogation at a detention facility or the office of investigation authorities or units assigned to investigate shall be recorded by sound or sound-and-visual means. Suspect interrogation at various places shall be recorded by sound or sound-and-visual means at the requests for the suspect or competent procedural authorities and persons”*. In the Clause 5 of this Art also regulation the responsibilities of investigators, investigation officers, procurators and checkers extorting statements and torturing suspects shall incur criminal liabilities as per the criminal code. This regulation is regulated detail in the Art 373 and 374 of The Criminal Code 2015 of Vietnam. With this regulation, the Criminal Code of Vietnam has internalized and ensured domestic law compatibility with the Convention against Torture and other Cruel, inhuman or degrading treatment or punishment 1984. The art 4 of this convention regulated *(1) Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture; (2) Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.*

In the process of defending for accused or defendants as person with disabilities, to ensuring the rights of defendants according to the Criminal Procedure Code, defense lawyers in addition to always accompanying the accused or defendants in order to ensure the rights of person with disabilities, at the same time with avoid the accused or defendants taking advantage of harassment, corporal punishment or other illegal methods of investigation, defense lawyers also have an important role to play in ensuring criminal policies matching with the Criminal Code 2015, specifically: enjoy a leniency

policy according to the provisions of Art 3 of the Criminal Code 2015; Mitigating factors criminal liability under Art 51 of the Criminal code 2015 in general and specified at point p clause 1 Art 51 this law “*The offender has a serious physical disability or extremely serious physical disability*”; criminal policies towards the accused, the defendants is a person with disabilities, and a person under 18 years old; other criminal policies for defendants who is person with disabilities are part of the general provisions of the Criminal code 2015.

The above provision of the Criminal procedure code 2015 show that defense lawyers play a particularly important role of defendants who are people with disabilities, especially in ensuring the rights of defendants in the processing to resolve cases, prevention and combat of harassment, corporal punishment or other illegal investigation measures against defendants; ensure that criminal policies useful for defendants, accused in general, as well as defendants, accused are people with disabilities in particular are applied and administered by competent procedural authorities and person shall apply and strictly observe the provisions of law.

### **3. Solutions, Recommendations**

From above analysis, we propose some solutions to enhance the role of Lawyers in criminal cases, especially the role of lawyers in defend the accused, defendants who is person with disabilities in criminal cases; and proposing solutions to improve the provisions of the law, ensuring legal rights and interests of person with disabilities to participate in criminal cases as accused, defendants, detail is below:

*Firstly*, strengthen propaganda and dissemination to raise people’s awareness of the role of lawyers in criminal proceedings, in order to influence people to trust the legal services of lawyers. The propaganda on the role of the lawyers should be directed to provinces and the areas that people have little access to legal aid services of lawyer.

*Secondly*, raising awareness for the proceeding agencies and defense counsels about the people with disabilities, the skill to working with PWDs, to further ensure the rights of PWDs in criminal cases.

*Thirdly*, Lawyer and Law-practicing organizations should strengthen the implementation of free legal counseling and legal aid for people in general, PWDs in particular, poor people who cannot access legal aid services, but still wish to receive legal aid from lawyers

*Fourthly*, : Lawyers need to improve their awareness, training and fostering legal knowledge, law practice skills, ensuring the provision of quality and effective legal services

*Fifthly* : Recommendation for the government agencies to amending provisions in Art 76 of the criminal procedure code 2015 on cases where the right to defense is guaranteed (designation of defense ) and Art 3 law on people with disabilities 2010 about the types of disabilities, to protection the consistency of the term “ people with physical and mental impairments” with the regulations in the art 76 of the Criminal procedure code 2015.

*Sixthly*, fully implementing the provisions of the CRPD, especially the specific provisions such as article 12 on equal recognition before the law, Article 15 on freedom of torture or cruel, inhuman or degrading treatment or punishment.

*Seventhly*, Vietnam must establish the Committee on the rights of PWDs or the national Committee, to implement the convention. The implementation of the convention requires not only the right laws s and policies, but also the financial resources and the ability to enforce laws and policies.

*Eighthly*, In accordance with the provisions of the CRPD, and in accordance with the provisions of the Law on Legal Aid, in art 2 of the law on legal aid “Legal aid means the provisions of legal services free of charge to legally-aided persons in a legal aid-related case in accordance with this Law, contributing to the assurance of human rights and citizenship in the access to justice and equality before the law” ; at point d Clause 7 Art 7 law on legal aid 2017 regulation people with disabilities are the one of object to get the free legal aid. The law, regardless of whether people with severe or mild disabilities are entitled to legal aid, means that every person with a disability is entitled to legal aid. Therefore, we believe that the competent authorities should clearly stipulate in Art 76 of the criminal procedure code the appropriate legal aid for PWDs who are defendants in criminal cases: the person with physical or mental defect is guaranteed the right to defend. Thereby, creating favorable conditions for agencies and persons who are competent to conduct legal proceedings to agree on awareness and application of the law. Thereby, ensuring the rights of people with disabilities in criminal cases.

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## **Reference**

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