

Preliminary result on world heritage and human rights in Vietnam: a legal review

Human rights based approaches within the world heritage system is a completely new theme in Vietnam. The country's World Heritage legislation currently involves different bodies of law for natural and cultural heritage, which have evolved since Vietnamese independence in 1945. Since the 1980s awareness regarding human rights issues has increased, yet, protection mechanisms in Vietnam are still incomplete. Heritage legislation reveals several shortcomings if approached from a human rights-based perspective. So far, Vietnamese legal documents fail to clearly express the relationship between human rights and heritage.

Since joining the World Heritage Convention, the legislative framework for heritage preservation in Vietnam has continuously evolved. The most important legal instrument in this field is the 2001 Cultural Heritage Act, which was amended and supplemented in 2009 and its guiding instruments. In the natural heritage field, other than the application of the Cultural Heritage Act, related legal documents such as the Law on Environmental Protection, Law on Biodiversity, Law on forest protection and development, Land law and the guiding instruments thereof are applied.

By analyzing the Vietnamese legislation, it is our aim to explore the linkage between human rights and law related to world heritage. Among the many sources examined figure Vietnam's Constitution, laws and sub-law related to the management of both cultural and natural heritage. The aforementioned analysis is carried out through the human rights-based approach, giving special consideration to four different themes: Fair hearing, participation, consultation; resources, property, land; development, livelihood and ethnic minority rights.

1. Fair hearing, participation, consultation

This group of rights is expressed by the provisions relating to the right to lodge complaints, initiate lawsuits and right to denunciations as well as questions of the right of access to information; right to participate in decision-making process specified in the relevant laws.

1.1. Cultural Heritage

- **Law on Cultural Heritage:** Organizations and individuals have the right to lodge complaints, initiate lawsuits, and to

denounce acts which violate Vietnamese legislation on cultural heritage. The current legislation still lacks provisions regarding the right to participate in discussions and decisions of individuals and communities related to the heritage they own or preserve.

- **Construction Law:** Construction planning in general and in World Heritage sites in particular shows discrepancies between national interests and the interests of the community affected. People have the right to comment to construction planning or to adjustment of construction planning.

1.2. Natural Heritage

- **Law on Environmental Protection and its Decrees:** It grants the periodical publication of information with regard to environmental issues at least once a year.

The law recognizes local communities representatives' right to request producers and companies environmental information regarding their operation. Furthermore, the law also enables them to request state management agencies to furnish the public with the results of investigations, inspections; to take part in the environmental evaluation and to implement all necessary measures in order to protect rights and interests of any residential community. Both organizations and individuals are entitled to file a complaint or lawsuit against any breach of environmental protection. Moreover, the role of consultation and supervision of the residential community involved is recognized.

Thus, the Law has recognized the peoples' right of accessing information as well as the State's obligation to provide information. In fact, people do not have

POLICY MESSAGE

Vietnam's current natural and cultural heritage legislation presents major gaps, as shown by the legal review of the country's policies towards World Heritage and Human Rights related issues. Vietnam's legislation and World Heritage regulations should be adapted in accordance with the provisions of the recently adopted UNESCO policy on Sustainable Development. The latter would encompass provisions on the right of participation of people and communities. In particular, there is a need to build specific legal provisions regarding the rights of ethnic minorities living within or next to world heritage sites. There is equally a need for further policy development on benefit-sharing, participation and co-management specially regarding special use forests.

grounds to get access to the information because the Law on Information access has just been approved and will come into force from July 1st 2018.

- **Law on forest protection and development :** Disputes shall be solely settled at a court of law. The current legislation contains no provisions enabling the participation of the local community affected by the project at hand, nor requires its consent for the project completion.

+ **Decree 23/2006/ND-CP** on the implementation of the Law on Forest protection and development and **Decree 117/2010/ND-CP** on the organization and management and the special use of the forestry: No rules concerning the participation of citizens in the planning and reforming forestry regulations.

+ **Decision 126/QĐ-TTg** on pilot share interest in management, protection and sustainable development and the special use of forest's resources in some provinces. It lays out the principle of benefit sharing, as voluntarily agreed between the company's management board and the communities in question. Possible disputes arising between the communities, households, individuals and the management board shall be resolved by the management council by means of

reconciliation. The thus reached decision allows a number of rights for people (communities, households and individuals) such as the right to have representatives in the Management Board; the right to participate in discussions and decisions about benefit sharing; the right to participate in monitoring the implementation mechanisms.

This pilot is implemented till December 2015. After concluding and evaluation of this pilot project, this model could be implemented across the country. This is a good sign that promises to bring more benefits to the people in special-use forest zones in general and people living in natural heritage sites in particular.

- **Land Law:** Land users have the right to file an administrative complaint or lawsuits regarding possible violations of their lawful land use rights and other infringements thereof. Generally speaking, the relevant law recognizes the right to file a complaint or lawsuit, although it does not guarantee a fair hearing.

Citizens have the right to supervise and report on wrongdoings and violations in the land management and use by themselves or through representative organizations. They also have the right to access to land information system of the State, but this right is limited as people have to wait for the coming into force of Law on Information access.

- **Law on Biodiversity:** The right to discuss and participate in decision-making with regard to policies and operations in conservation zones is recognized in Decree 65/2010/ND-CP on detailing and guiding a number of articles of the Biodiversity Law.

2. Resources, property and land

2.1. Cultural heritage

The ownership right and copyright over cultural heritage are defined by Civil Code and Law on Cultural Heritage. The State protects the lawful rights and interests of owners of cultural heritages.

2.2. Natural heritage

- **Law on Cultural Heritage:** This Law does not contain any provisions on traditional use of forests or productive land within the heritage sites.

- **Law on forest protection and development:** The law protects the ownership rights of both individuals and households, as well as the exploitation and benefit rights of village communities. The latter also have the right to transfer,

donate, lease, mortgage, provide guarantee or contribute capital with, their value according to law provisions; individuals may bequeath their forest use rights. Only households and individuals are seen as forest owners. The village population communities who have the same customs, practices and traditions of close community association with forests in their production, life, culture and belief, do not have the right of forest owners but they still have the right to manage, exploit and benefit from allocated forests.

- **Land Law:** Taking the rights-based approach, the most resilient issues of the Vietnamese Land Law are those related to property rights. Since all of people do not possess the land where they live, they can be unilaterally resettled by the government.

In general, ownership of land is always a hot issue in Vietnam. Vietnamese people do have ownership over the forests resources or the house they live in. Nevertheless, they cannot own the land upon which the forest grows or their house stands. It affects the rights and interests of people.

3. Development and livelihood

This group of rights is expressed by the provisions relating to the right to labor, business right, right to exploit resources, right to compensation as specified in the relevant laws.

3.1. Cultural Heritage

State agencies, organizations and individuals have the responsibility to protect and promote the values of cultural heritages. Organizations and individuals that own or manage relics, collections and/or museums have the business right.

Vestiges, antiques and national precious objects under the ownership of the State, political organizations or socio-political organizations must be managed in museums and must not be sold, purchased, donated nor presented as gifts. Vestiges and antiques under other ownership forms may be purchased, sold, exchanged, donated or bequeathed as inheritance at home and abroad. National precious objects under other ownership forms may only be purchased, sold, exchanged, donated and bequeathed as inheritance in the country.

3.2. Natural Heritage

- **Law on Biodiversity:** Within conservation zones, households and individuals have

FEATURED CASE STUDY

Phu Giay (Vu Ban district, Nam Dinh province) is a famous historical and cultural relic site in the North of Vietnam. In early 2015, the People's Committee of Vu Ban district - the management authority - issued new regulations on management of the relic site. Accordingly, the person in charge of incense matter (who is a custodian of Phu Giay and offers incense in this relic site) will have a term of 5 years. Meanwhile, traditionally, this person will be elected by local people from those who are of moral excellence and significant contributions in conservation and restoration of this relic site. He/she will perform this task until the end of his/her life without being replaced if he/she still wins the trust of people. Opposing this policy of Vu Ban district, local people prepared a petition with over 1,500 signatures and submitted it to the Department of Heritage, the Ministry of Culture, Sport and Tourism. The Department of Heritage then delivered this application to the Department of Culture, Sports and Tourism of Nam Dinh province to settle within its jurisdiction.

This case has shown that the regulations on management of relic sites must respect the customs and beliefs of the locals. Without getting the consent of the people, these provisions will not be implemented in practice.

the rights to lawfully exploit the natural resources found therein; to participate in and benefit from business and service activities; to enjoy policies on incentives, support, compensation and resettlement under law; to observe the Regulation on management.

+ **Decree 65/2010/ ND-CP** details and offers guiding principles to interpret the Biodiversity Law. The same aims at the preservation of people's livelihood in conservation zones, including: Right to work, right to participation and the right to receive benefits from commercial, exploitation activities in conservation zones have been calculated in this Decree.

- **Law on forest protection and development 2004**

The households and individuals have the rights to exploit the forests; to enjoy the added value of forests. In case of recovery the entire or part of the forests, forest owners shall be compensated for their labor fruits, investment results or recovered property.

The population of village communities shall have the right to exploit and use forest products and other forest yields for public purposes and domestic use within the community; to enjoy the fruit of their labor and investment the profits thereof; to be provided with technical guidance and capital supports according to the State's policies; to be compensated for the fruit of their labor and investment results for forest protection and development.

+ **Decision 126/QĐ-TTg** on pilot share interest in management, protection and sustainable development of special-use forest: Communities, households and individuals have the rights to exploit, use of resources, breed animals and plants in the allowed list that is defined in the agreement; to participate, implement the agreement and make recommendations to the management board; to be improved knowledge on forest protection, nature conservation and sustainable development of the special-use forests.

- **Land Law:** Land users have the rights to enjoy the results of their labor and investment on land; to receive the State's guidance and assistance in the improvement and fertilization of agricultural land; to be protected by the State against others' infringements of their lawful rights and benefits involving land; to receive compensation when land is recovered by the State; exercise the rights to exchange, transfer, lease, sublease, inherit, donate, mortgage land use rights and to contribute to land use rights as

capital; have the right to fair compensation, whenever the State nationalizes their land.

In general, livelihood has been noted in related legal texts but the benefit of people living in heritage sites is still limited. It is necessary to adopt the legal texts that are basis for share interest in management of heritage sites.

- **Law on Environmental Protection:** Organizations and individuals have the responsibilities and right related compensation for environmental damages.

4. Indigenous/ tribal/ ethnic minority rights

Ethnic minority groups are a vulnerable group in society. Ethnic minority groups living within heritage sites are most vulnerable as so many of their rights have been limited, while at the same time they do not benefit out of it, even when their familiar living environment becomes part of the world's heritage list.

The Vietnamese Constitution states that all the ethnicities are equal; all acts of discrimination against and division of the ethnicities are prohibited. Every ethnic group has the right to use its own spoken and written language, to preserve its own identity, and to promote its fine customs, practices, traditions and culture. The State shall implement a policy of comprehensive development and create the conditions for the minority ethnicities to fully utilize their

internal strengths and develop together with the country. These above mentioned constitutional provisions will be specified in the legislation to implement the policies of the state for ethnic minority people. These regulations can be applied to protect rights of minority groups living within a world heritage area.

Equality of rights and non – discrimination and the right to preserve the own identity of minority groups has been affirmed and specified in many other Vietnamese legal documents. Moreover, to ensure the livelihood of ethnic minorities, the State of Vietnam issued special preferential policies for these areas, which have been expressed in many legal documents.

In general, the policies on ethnic minorities of the State of Vietnam seek to be comprehensive and covering issues such as livelihood, culture and ensuring civil rights. However, ensuring the rights of minorities in practice, is much more difficult. The Vietnamese State still has to find a viable solution in order to strike the balance between development and the preservation of national cultural identity

The right of minorities to participate in the decision-making process for issues, which have a direct effect on them has not been considered by the current legislation. Although legal aid and legal education programs for ethnic minorities are implemented, their results are limited.

DEFINITIONS

Human rights: There is no human rights definition in Vietnamese Constitution. The article 14 of this Constitution stipulates:

1. In the Socialist Republic of Vietnam, human rights and citizens' rights in the political, civil, economic, cultural and social fields shall be recognized, respected, protected and guaranteed in accordance with the Constitution and law.
2. Human rights and citizens' rights may not be limited unless prescribed by a law solely in case of necessity for reasons of national defense, national security, social order and safety, social morality and community well-being.

Heritage: In Law on Cultural Heritage of Vietnam, there is not a definition on heritage in general, there are definitions on intangible cultural heritages, tangible cultural heritages, historical – cultural relics and famous landscapes and beauty spots.

Related to the world tangible cultural heritages, there are two definitions:

- Tangible cultural heritages are material products of historical, cultural or scientific value, including historical-cultural relics, famous landscapes and beauty spots, vestiges, antiques and national precious objects.
- Historical-cultural relics are construction works and sites, as well as vestiges, antiques and/or national precious objects pertaining to such works and sites and having historical, cultural and/or scientific value.

Related to the world natural heritages, famous landscapes and beauty spots are natural sceneries or places where exists a combination of natural scenery and architectures with historical, aesthetic and/or scientific value.

Ethnic minorities: Decree 05/2011/ND-CP dated 14 January 2011 on Ethnic minorities work defines: Ethnic minority group means an ethnic group with a population smaller than that of the ethnic majority group within the territory of the Socialist Republic of Vietnam. . Vietnamese legal texts use only the term "ethnic minority", the term "indigenous" or "tribal" are not used in Vietnam. In Vietnam, there are 54 ethnic groups. In which, Kinh is the ethnic majority group that accounts for 86% of the population. The remaining ones are 53 ethnic minorities.

POLICY IMPLICATIONS RESEARCH

An overview of Vietnamese legal texts shows that people's participation rights is a common challenge for many sectors. When it comes to heritage, there is virtually no legislation or regulatory guidance providing for people's participation or benefit-sharing other than general obligations of citizens to protect heritage. In particular, local communities do not have the right to participate in the design, drafting and implementation of regulations and zoning arrangements of heritage management. In order to promote and protect the rights of people living within world heritage sites, the Vietnamese Government may consider the following recommendations:

With regard to human rights law and World Heritage, a stronger emphasis on the right to participation is needed. People's participation in the process of drafting legal texts, law implementation and monitoring the activities of state bodies is a key right, which needs to put into practice in heritage legislation. In order to increase the role of people living within heritage areas, at local level, it is necessary to build on local democracy regulations and more specifically create participatory mechanisms and spaces in World Heritage management as such. This could involve a specific regulation to link the right to participation of people in local matters in general and in management and protection of world heritage in particular. Furthermore, there is a need for a stronger and inclusive mechanism ensuring minority rights. This needs to address not only the livelihoods, but also the right to participation as well as right to education, right to health care and development both through national and provincial policies. Related to legal texts on heritage, it is necessary to take human rights issues into account when drafting, amending or supplementing of relevant laws, decrees and decisions. Each legal text need to add right to participation alongside social, economic and cultural rights. Ensuring and protecting the rights of people living in the heritage sites is an essential requirement in building, modifying and implementing the management policy on heritage.

Future legislation on world heritage needs to answer the following questions: What are the "communities" concerned? How is the selection process of the community representatives? How can one secure effective participation of communities representatives in the Management Board? What is the role of communities? These questions could be considered in revisions of the Law on Cultural Heritage, protected area legislation as well as in the Decree on management of World Heritage sites in Vietnam. Such policies should also address the right to access information related to heritage and the rights to benefit-sharing from World Heritage.

Furthermore, it is necessary to build specific provisions for ethnic minorities living in the heritage area. Rights of ethnic minorities should be guaranteed such as the rights to maintain traditional lifestyles and livelihoods. They need to allow for sustainable hunting, gathering of non-timber forest products from traditional areas to ensure their lives in a way that does not harm biodiversity. Ethnic minorities and other communities should also have the rights to participate in management decisions and a right to share benefits from tourism and conservation. This requires a clear policy to engage communities in management decision-making regarding the protection and sustainable development of special-use forests, especially in world and national natural heritage sites. Benefit-sharing should be seen as a right, rather than an act of empathy or charity.

Author information and contact details

Nguyen Linh Giang

Vietnam Academy of Social Sciences

lgiang77@gmail.com

linhgiang@isl.gov.vn



UNIVERSITÄT
LUZERN

*Project: Understanding Rights
Practices in the World Heritage
System: Lessons from the Asia
Pacific*