



**International Union for  
Conservation of Nature**



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**Vietnamese Institute  
For Human Rights**

**TRAINING MANUAL**

**HUMAN RIGHTS-BASED APPROACH TO  
ENVIRONMENTAL PROTECTION**

**HANOI- 2011**

## **TRAINING MANUAL**

# **HUMAN RIGHTS-BASED APPROACH TO ENVIRONMENTAL PROTECTION**

**This Training Manual is developed in the cooperation with the International Union for Conservation of Nature (IUCN) and funded by the International Development Law Organization (IDLO), Australia and the United Nation Democracy Fund (UNDEF).**

**HANOI - 2011**

**Chief Author**

**TS. NGUYỄN ĐỨC THÙY**

**Authors Group**

(in order *ABC*)

**Dr. ĐẶNG DŨNG CHÍ**  
**Prof. Dr. TƯỜNG DUY KIÊN**  
**Dr. HOÀNG VĂN NGHĨA**  
**Prof. Dr. NGUYỄN THANH TUẤN**  
**Dr. NGUYỄN ĐỨC THÙY**  
**Dr. NGUYỄN DUY SƠN**  
**Dr. VÕ THANH SƠN**

**Editorial Board**

**Dr. NGUYỄN ĐỨC THÙY**  
**Prof. Dr. TƯỜNG DUY KIÊN**

## FOREWORDS

Protection of environment and of the right to live in a clean environment is a big issue that proposes challenges not only to Vietnam but also to many other countries, particularly the developing countries, in the region and in the world. In Vietnam, achievements gained from the country's industrialization and modernization and the attraction of investment projects have helped creating more and more jobs for labors, contributing to the economic growth and the improvement of citizens' material and spiritual life, but also at the same time causing the severe degradation of the environment.

Over the past years, the Party and the Government of Vietnam have made great effort in improving policies and laws on environment. The implementation of those policies and laws, however, has not met the requirements. One of the main reasons is the limited awareness of the Party's committees, governments and associations and unions at various levels and of the citizens on environment protection – they not yet got deep understanding on the natural resource degradation and environment pollution's dangerous impacts on the community's health and the country's sustainable development. Natural resource degradation and environment pollution are now directly affecting the enjoyment of human rights, firstly the right to live in a clean environment.

Well aware of the close relationship between environment and the human rights, with the support of International Union for Conservation of Nature in Vietnam (IUCN), and the United Nations Democracy Funds (UNDEF) and the Vietnamese Institute for Human Rights under the Hochiminh National Academy of Politics and Public Administration develops training document “*Human rights - based approach to environmental protection*”.

This training document is developed with the aim of enhancing awareness of officials of the Party's committees, governments and associations and unions at various levels on the importance of the connection between environment protection and human rights protection, through that improving their skills and capacity to integrate human rights in making policies and laws on environment and in accessing human rights in environment protection.

This document consists of the following topics:

*Topic 1: Environment and sustainable development in Vietnam*

This topic aims at providing learners an overall picture of the current situation of and challenges facing the environment in Vietnam; thus they can see the impacts of the environment degradation and pollution on citizens' health and lives and on the country's sustainable development. Learners are also expected to see the Government's efforts in solving the environmental and natural resource issues towards ensuring sustainable development.

*Topic 2: Relationship between environment and human rights*

This topic is to make learners understand well the close relationship between environment and human rights. Learners are expected to clearly see that environmental issues are also the human rights issues, and thus good environment protection will be the condition to exercise human rights and vice versa, good exercise of human rights will positively impact on environment protection. It is necessary, therefore, to take the approach of intergrating human rights in environment protection.

*Topic 3: International and national laws on human rights to environment*

This topic is developed to help learners understand international standards and national legal provisions on the human rights that relate to or are impacted by environment, recognize states parties' responsibilities and duties in implementing international conventions on environment and human rights, and clearly see the diffulties and challenges in implementing the policies and laws relating to the connection between environment protection and human rights protection in Vietnam at present time.

*Topic 4: Role of social organizations in monitering the implementation of environment protection laws and in protecting environment*

This topic aims at making learners well aware that not only state agencies but also the whole society take the responsibility of protecting the environment, particularly the increasingly important role of social organizations, including the political – social organizations, political – social – professional organizations, the unions and the communities. Those organizations have recently made positive and effective contributions to the monitoring of environment protection laws implementation in Vietnam.

*Topic 5: Ensuring the right to access to information, right of participation in and judicial access in the environment field in Vietnam*

This topic targets at making learners recognize the importance of the ensurance of the right to access to information on environment, the right of citizens to monitor the environment protection laws implementation and the right of citizens to participate in the making of environment-related laws and policies. Learners are also expected to get thourough understanding of the procedures in lodging complaints against the acts of violating laws on environment. The above-mentioned three rights are considered as three pillars in the system of the human rights in environment field. The effective implementation of these three rights will positively impact to the protection of environment.

**VIETNAMESE INSTITUTE FOR HUMAN RIGHTS**

*11-2011*

## ABBREVIATIONS

ADB	Asian Development Bank
ASEAN	Association of South East Asian Nations
BOD5	Biochemical oxygen demand 5 day test (Amount of dissolved oxygen required for the biodegradation of the organic matter in water, when tested in 5 days).
CECR	Centre for Environment and Community Research
COD	Chemical oxygen demand (a measure of the capacity of water to consume oxygen during the decomposition of organic matter and the oxidation of inorganic chemicals).
CODE	The Consultancy on Development
CSO	Civil Society Organizations
DDT	Chemical pesticides
DO	Amount of oxygen dissolved (and hence available to sustain marine life) in a body of water such as a lake, river, or stream.
MRD	Mekong River Delta
SER	South Eastern Region
ECO-ECO	Institute of Ecological Economy
ENV	Education for Nature – Vietnam
EITI	Extractive Industries Transparency Initiative
EU	European Union
HIV/AIDs	Human Immuno-deficiency Virus
	Acquired Immunodeficiency Syndrome
IUCN	International Union for Conservation of Nature
UN	United Nations
MPI	Ministry of Planning and Investment
MPE	Monitor and Protection of Environment
ARD	Agriculture and Rural Development
NGOs	Non-governmental Organizations
PanNature	People and Nature
SOs	Social Organizations
HCYU	Hochiminh Communist Youth Union
PC	People’s Committee
UNEP	United Nations Environment Program
VASS	Vietnam Academy of Social Science
VCCI	Vietnam Chamber of Commerce and Industry
VPOs	Voluntary Private Organizations
NPs	National Parks

VUSTA Union of Science and Technology Associations  
WARECODE Center for Conservation and Development of Water Resources  
WCED World Commission on Environment and Development  
WHO World Health Organization  
WCS World Conservation Strategy

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## Module 1

### ENVIRONMENTAL PROTECTION AND SUSTAINABLE DEVELOPMENT IN VIETNAM

#### Objectives

*After the completion of this lesson, the participants should be able to:*

- + Understand the relationship between environment and sustainable development.
- + Understand the real situation of natural resources' degradation and environmental pollution in Vietnam and their effects on the health of the population.
- + Understand the efforts of the Government in solving problems related to natural resources and environment; the implementation of relevant national programmes aimed at socio-economic development via sustainable development.

#### THE MESSAGES

- 1. Sustainable development in socio-economic and environment as a general trend and urgent requirement of Vietnam and the world in recent times.*
- 2. Environmental protection, a vital task of humankind, as a factor of health protection and quality of life, and as a basis for socio-economic strategy, regarding political and social stability and international cooperation.*
- 3. The challenges of natural resources and environment, specially water, air pollution in Vietnam and their effects on socio-economics, health, and livelihood of the people in both urban and rural regions.*
- 4. The efforts of the Parliament and Government in making policies and laws on environment protection in recent periods, however there are still the shortcomings in apply and implementation in practices.*

## **BASIC CONTENTS**

### **I. The relationship between environment and sustainable development in Vietnam**

- 1. Definition, Contents, and Principles of Sustainable Development*
- 2. Vietnam Sustainable Development Orientation and Strategy (Agenda 21)*

### **II. Challenges to natural resources and environment and their impacts on the health of inhabitants of Vietnam**

- 1. Forest Loss and Causes Leading to Forest Degradation*
- 2. Land Degradation and Agricultural Land Loss*
- 3. Air Pollution in the Urban and Industrial Area*
- 4. Solid-Waste-Led Pollution*
- 5. Water Shortage and Pollution*
- 6. The Impact of Natural Resources Degradation and Environmental Pollution on the Health of Community*

### **III. Government's efforts in solving the problems related to natural resources and environment and moving towards sustainability**

- 1. Building and Completing the Uniform Law System to Solve the Problems of Resources and Environment*
- 2. Implementing Related National Target Programmes to Recover Resources*

## A. WARM-UP

### Questions:

1. Please provide some examples illustrating the major disasters of environmental pollution in Vietnam at present?
2. Please identify the causes leading to natural resources' degradation and environmental pollution of Vietnam?
3. Please describe the recent connection between environmental issues and sustainable development in Vietnam?

## B. THE CONTENTS OF LECTURE

### I. THE RELATIONSHIP BETWEEN ENVIRONMENT AND SUSTAINABLE DEVELOPMENT IN VIETNAM

#### *1. Definition, Content, and Principles of Sustainable Development*

The term 'sustainable development' was first used in the World Conservation Strategy, as proposed by IUCN in 1980. The general aim of the strategy was 'to achieve sustainable development through protecting creature resources' and the term sustainable development was mentioned within limitation, stressing the sustainability of ecological development in order to call for the protection of creature resources. In 1987, in the report "Our Common Future," of the World Commission on Environment and Development (WCED) for the first time introduced a fairly comprehensive definition of sustainable development as the ability to "*satisfy current needs without doing harm to capacities of future generations of satisfying their own needs.*" This definition is currently still the most widely used definition.

The connotation of sustainable development was re-established in Rio conference, 1992, and revised at Johannesburg conference, 2002: "*Sustainable development is development with reasonable, close and harmonious combination of the three aspects of development: economic development, social equality and environmental protection.*"

In general, sustainable development is a harmonious development of all three aspects, economy, society and environment, for continuous improvement of living standard not only for current generation but also for future generations.

Sustainable development is not simply environmental protection: Sustainable development means a combination and harmony of all three main

aspects relating to human life, economy, society and environment whenever possible, and effectively balanced through policies, mechanisms, tools and policy enforcement.

Sustainable development is a harmonious development: Sustainable development is the harmonious development of all 3 aspects, economy, society, environment, to meet current generations' physical, cultural, and spiritual demands without damaging or obstructing the capacity of providing resources for future socio-economic development, or decreasing living standard of future generations.

In other words, sustainable development is to achieve both goals at the same time: 1) Effective economic development; 2) Harmonious social development; living standard improvement; 3) Environmental improvement, ensuring steady, long-term development for current and future generations.

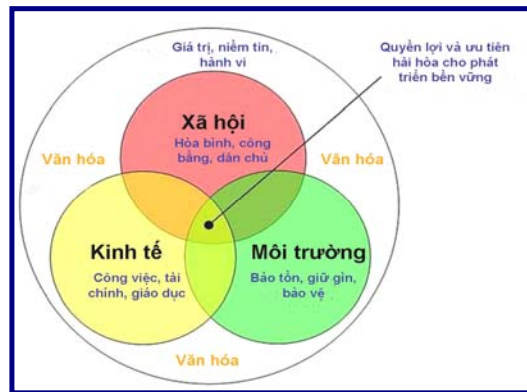


Figure 1. Model of Sustainable Development

### Principles of Sustainable Development

At 1992 the World Summit in Rio de Janeiro, economic, social and environmental activists agreed together with politicians on sustainable development, regarding it as shared responsibility of countries and mankind, and unanimously passed the Rio Declaration with 27 basic principles on sustainable development and AGENDA 21, identifying world actions of sustainable development in the 21<sup>st</sup> century. These are the most common principles for countries to apply in building sustainable development principles with suitable natural, socio-economic and policy conditions. After the Summit, many countries developed national AGENDA 21.

### Goals of Sustainable Development

Sustainable development is not only a strategy or ethic but a process of harmonizing multifaceted human and human society development into nature.

The Summit agreed on millennium sustainable development goals with 8 targets by 2015: (i) extreme poverty eradication; (ii) primary education made compulsory; (iii) gender equality and women position improvement; (iv) children death rate decrease; (v) reproductive health; (vi) HIV/AIDS, malaria & diseases prevention; (vii) environment sustainability; and (viii) global partnership for development.

## ***2. Vietnam Sustainable Development Orientation and Strategy (Agenda 21)***

Vietnam participated in the world's activities to build Agenda 21 at an early stage. In 1992, Vietnam Government representatives attended the Earth Summit on Environment and Development in Rio de Janeiro (Brazil) and signed a common declaration on environment and development, global Agenda 21, committing to build national and local sustainable development strategy. In 2004, Vietnam ratified National Strategy on environmental protection to 2010 and orientation to 2020. Vietnam also participated in many international commitments to environmental protection and social development. In 2000, Vietnam committed to world millennium goals.

On August 17, 2004, the Government issued Decision 153/2004/TTg themed "Vietnam sustainable development orientation (Agenda 21)," including long-term goals, principles, priorities, policy orientations and implementation measures of sustainable development in Vietnam.

A national sustainable development council was founded by the Prime Minister's decision 1032/QĐ-TTg on 27/9/2005 with the council's functions, responsibilities, structure revised in Decision 248/QĐ-TTg on 24/2/2009. Chairman of the Council is Deputy Prime Minister Nguyen Thien Nhan. Standing vice chairman is Minister of Planning and Investment. The Council has 30 members, including Deputy Prime Minister as chairman, Minister of Planning and Investment as standing vice chairman, and authorities from agencies, organisations, enterprises, and media. The standing assisting agency is a sustainable development office based in the Ministry of Planning and Investment.

### ***a) Goals, Views, and Principles of Vietnam Sustainable Development***

AGENDA 21 is strategic framework for action plans. By analyzing Vietnam sustainable development conditions, the agenda established sustainable development principles, goals and long-term views, priorities, and means and solutions for the achievement of sustainable development in the 21<sup>st</sup> century.

The general goal for 2001-2010 socio-economic development strategy put forward by Vietnam Communist Party's IX National Representative Conference was: "Rapid, effective, sustainable development; economic growth

is accompanied with social progress, equality and environmental protection” and “Socio-economic development is attached to environmental protection and improvement, ensuring the harmony between artificial environment and natural environment, cherishing bio-diversity”.

The XI<sup>th</sup> National Congress of the Vietnam Communist Party in 2011 adopted the Political Program on Country Construction in the Transitional Period to Socialism and the Economic – Social Development Strategy 2011-2020 which identifies that “sustainable development is the underlying requirement of the Strategy”, and that “rapid development must be connected to sustainable development”. Economic development is considered as the core task; the country’s industrialization and modernization must be implemented in close connection with knowledge economic development and environment protection. The economic development must be sustainable, economic structure transformation must be accelerated, the growth model to be renovated with special importance attached to intensive development and knowledge economy development. Economic growth must be in harmony with culture development, social advancement and equality, and continuously enhanced living quality of the people. In economic – social development, special importance must be attached to environment protection and improvement and proactive handling of the climate change. Sustainable development is the basis for rapid development, and rapid development creates resources for sustainable development. Sustainable development and rapid development must be associated with each other in the economic-social development planning and policy making<sup>1</sup>.

The general goal of sustainable development is to achieve material well-being, spiritual and cultural richness, citizen equality and social integrity, and harmony between human and nature; development is the close and reasonable harmony of economic growth, social development and environmental protection.

As of environment protection, the specific goal clearly set in the Economic – social Development Strategy 2011 – 2020 is to improve environment quality, as follows:

- By 2020, forest coverage rate reaches 45%;
- Most population can access to clean and hygienic water;
- Newly established manufacturing and business enterprises must use clean technology or pollution-reduced equipments, and waste processing

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<sup>1</sup> Communist Party, Documents of the Congress XI, National Politics Publishing, Ha Noi - 2011, page 98,99

technology. 80% of previously-established enterprises reach the regulated environment standards;

- Urban areas types 4 to 1, processing zones and industrial zones have concentrated sewage processing system;

- 95% of normal-typed solid wastes, 85% of harmful wastes, and 100% of medical wastes, are processed in conformity with regulated standards;

- Heavily polluted areas are improved and restored;

- Proactive handling of climate change, natural disasters and sea level rise.

*b) Eight Major Principles of Vietnam's Sustainable Development:*

- Humans are the center of sustainable development

- Economic development is central task of the next development stage

- Environment protection and improvement must be an indispensable factor of development

- Development must adequately satisfy the needs of current generation without damaging the life of next generations

- Science and technology are the foundation and driving force of industrialization, promoting rapid and sustainable national development

- Sustainable development is the mission of the Communist Party, authorities of all levels, local agencies, organisations, enterprises, communities and citizens

- The construction of independent economic development must be attached to international economic integration for national sustainable development

- Socio-economic development must be attached to environmental protection as well as national and social security

*c) Priorities*

**5 Priorities in Economic Development**

- Maintain rapid and stable economic growth through continuous improvement of efficiency, scientific and technological capacity, resource saving and environment.

- Make production models and technology cleaner and more environmentally-friendly, based on saving non-recyclable natural resources, mitigating toxic waste, and upholding individual way of life.

- Implement “clean industrialization,” which means early planning of industrial development together with environmentally-friendly employment structures, technology and equipment; prevention and treatment of industrial pollution, building a “green industry”.

- Implement sustainable rural and agriculture development, producing more goods to meet market demands, and ensuring food safety and resources (land, water, air, forest and bio-diversity).

- Implement sustainable development areas in local communities.

### **5 Priorities in Social Development**

- Focus on reducing poverty and creating jobs; offer equal chances for participating in social, cultural, and political activities, economic development and environmental protection.

- Further reduce the population growth rate and population pressure on job creation, health care, education, vocational training, and environmental protection.

- Manage urbanization and migration for sustainable development of urban areas; maintain reasonable population distribution and labor distribution to ensure local sustainable socio-economic development and environmental protection.

- Improve education quality to raise education and vocation levels to better meet the demand of national development.

- Improve quantity and quality of healthcare, and working and living environments.

### **9 Priorities in Resource Use and Environmental Protection**

- Prevent land degradation, to improve efficiency and sustainability.

- Protect water and use it sustainably.

- Exploit reasonably, using economically and sustainably mined natural minerals.

- Protect the marine, coastal, and island environment, and develop marine resources.



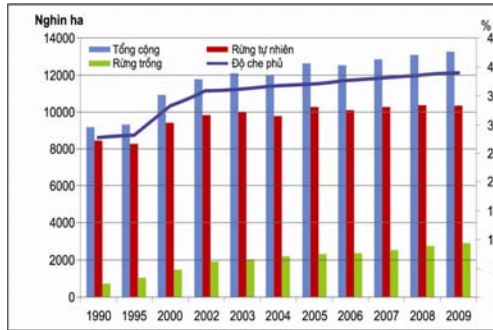
- Protect and develop forests.
- Decrease air pollution in urban areas and industrial zones.
- Manage solid and toxic waste effectively.
- Preserve bio-diversity.
- Mitigate climate change and diminish its damage in order to prevent natural disasters.

## **II. CHALLENGES TO NATURAL RESOURCES AND ENVIRONMENT AND THEIR IMPACTS ON HEALTH OF INHABITANTS IN VIET NAM**

### ***1. Forest Loss and Causes Leading to Forest Degradation***

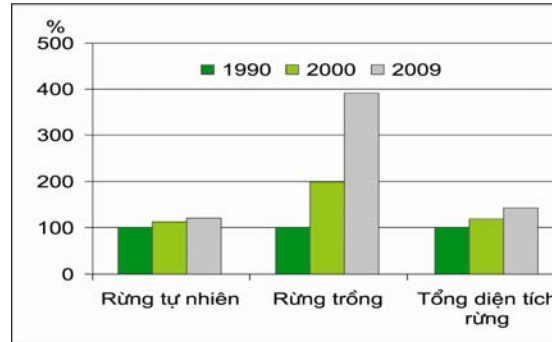
Forest is the most valuable plantation resource of Vietnam. It is not only the foundation for socio-economic development but also plays a vital ecological role in the process of balancing the climate; ensuring the cycle of oxygen and other fundamental elements on earth, maintaining the stability and fertility of land, constraining floods and draughts, preventing landslides and coastal erosion, diminishing the destructive force of natural disasters from climate change, minimizing salivation by conserving sources of salt water and underground water, and decreasing the level of air and water pollution.

Through the process of development, the forest coverage of Vietnam has rapidly declined and the quality of forest in the remaining areas has exceedingly decreased. Before, the whole area of Vietnam had been covered with forest, while the few past decades have brought about severe forest degradation. The nationwide forest area has decreased from 43% of the natural area in 1943 to 27,7% in 1992. In recent years, total forest area tends to increase but most of the increased area is the planted forest. Industrial crop area (for planting rubber, coffee, cashew trees,...) has increased rapidly, making the forest coverage continuously increase, from 27.85 5% in 1990 to 39.1% in 2009 (see chart). Area of primeval forest/multi-layer forest (usually 3-7 layers), however, has considerably decreased. Meanwhile area of planted forest or one layered forest has highly increased, about 13 times as compared to the increasing speed of the natural forest area just from 1990 to 2009.



**Biểu đồ 7.1. Diễn biến diện tích và độ che phủ rừng giai đoạn từ năm 1990 đến 2009**

Nguồn: Cục Kiểm lâm, 2



**Biểu đồ 7.2. Tốc độ gia tăng diện tích rừng giai đoạn 1990 - 2009 (coi diện tích rừng năm 1990 là 100%)**

Nguồn: Cục Kiểm lâm, 2

According to statistics, although the forest coverage rate in Vietnam has increased, quality of forest has concernedly decreased. In the total national forest area of 12.3 million ha, primeval forest area is only 0.57 million ha (8%), meanwhile the primeval forest area in other countries in the region account for 50% of their total national forest area. Most of the existing natural forest area is the poor forest with wood reserve under 100 m<sup>3</sup>/ha; such as the rừng hộp in the High Lands. Quality of woods in and biological diversity of the newly restored forest are not high. The planted forest has monotonous structure with low biological diversity. The natural forest that has been rarely impacted and the primeval forest which contains high value of biological diversity mainly locate in the protective forest and reservation area<sup>2</sup>

## ***2. Land Degradation and Agricultural Land Loss***

### *a) The State of Land Resource and Land Degradation*

Vietnam has about 25 million acre of sloppy land (76% of the natural land area) with numerous limitations for agricultural production, in which over 12.5 million acre is unsuitable land and more than 50% of plain area is “problematic land”, including 0.82 million acre of alkaline soil, 0.54 million acre of sand, 2.06 million acre of impoverished soil, 0.5 million acre of harshly eroded land, 0.24 million acre of inundated salted land, 0.47 million acre of wetland, and 8.5 million acre of thin-surface land on hilly and mountainous terrain. The above-mentioned land types account for 14.13 million acre or 42.8% of natural land countrywide.

Land degradation is a popular trend for large land areas especially the hills and mountains where ecological balance has been severely destroyed due to the lack of forest cover. Stalinization, aluming, and bogginess in an area of millions of acre in plain are also the main causes constraining the productive

<sup>2</sup> Resources : National Report on environment 2010

capacity of land. In many areas, the land degradation has also led to degradation in the system of plants, animals, and local environment, and to the decline of per-capita agricultural land at an alarming level. Additionally, the incidents of land cracks and landslides have become more severe in the North Western and Central areas at an ever increasing rate.

Desertification in Vietnam is also severe, concentrated mainly in narrow sand lines along the Central coastal area, spanning over 10 provinces from Quang Binh to Binh Thuan with an area of 43,000 acres. Over the past 40 years, the process of desertification due to moving sand has been extremely significant, especially in areas that experience the dry and hot weather of the dry season, along with the low average annual rainfall, such as in the coastal areas of Southern Midland.

The impact of land degradation and cultivation land shrinkage forced Vietnam to face the huge challenge of solving multiple serious problems related to land environment, in order to ensure food security and survival for the whole nation of nearly 100 million people by 2010.

#### *b) Land-Use Shift has Contributed to the Increased Land Degradation*

The yearly planning of land-use, 5-year and 10-year plans, has served as the legal foundation for agencies to manage land sources, facilitating the rural areas in forming economic models, eradicating hunger and reducing poverty, and at the same time contributing to the recovery, protection and development of forest. However, the development of land-use still has shortcomings, especially in the development of industrial zones, use of agricultural land and forestland, and development of golf courses.

#### *- Development of Industrial Zones*

To meet the demands of economic development, industrial zones have embarked rapid progress in Vietnam over the past few decades, bringing about huge economic benefits, however, together with a multiplicity of burning issues to be addressed. According to the plan, by 2010 there would be 443 industrial zones countrywide with an area of about 61,485 acres (MPI, 2005a). However, the land-using effectiveness is low due to a number of the industrial zones having leased land area under 50%, accounting for 55% of the total number of industrial zones; the ones up for lease account for 19.3%<sup>3</sup>. Furthermore, under the investment promotion policy, every province has established industrial zones worsening the situation, in which low fill-up rates lead to huge land waste. To facilitate business activities, industrial zones tend to be situated close to national roads, provincial roads which are plain areas, causing the loss of a large area of agricultural land especially in Red River Delta and Mekong River

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<sup>3</sup> MPI, 2005a: page 51

Delta. The fragmented agricultural land areas, which have been stuck between industrial zones also produce bad cultivation results due to the broken-up water system.

*- The State of Forestry Land Development and Use*

Over the past 20 years, the Government has put tremendous effort into the recovery and protection of the forest. From the 90s to 2005, about 2 million acre of forest has been planted anew (0.56 million acre under Program 327/556 for the period of 1993-1997, 1.55 million acre under Program 661, and 0.5 million acre 1998-2010), located re-plantation of 2 million acre of new forest with the goal of increasing the forest coverage to 43% by 2010 (MPI, 2005b).

However, in order to increase the economic effectiveness of the use of forest land, the Ministry of Agriculture and Rural Development recently made a policy to change the 100,000 acre of the exhausted forest in Tay Nguyen into a rubber forest in the period of 2007-2010, specifically Gia Lai province's allocated 51,000 acre, with the aim to contribute to the socio-economic development of this particular area and especially to improve the livelihood of the ethnic-minority people living in extreme poverty with the investment capital of up to 2 trillion VND<sup>4</sup>. Due to the absence of specific guidelines, the Government's policies in reality have led to shortcomings and the risk of destroying good forest area. In addition, the vigorous development of coffee in Tay Nguyen demands a volume of irrigation water for dry season, making the underground water in this area subside. In case of the plan to shift a large area of natural forest, most of which is dipterocarpaceae forest– the forest suited to the exhausting conditions of a 6 month dry season– to rubber forest, the exhausted state of underground water in this area will become more severe.

*- Building Golf Courses for Tourism and Economic Development*

According to a report of the Ministry of Planning and Investment in 2008, there were 141 golf courses countrywide in 39 provinces, with 49,268 acres of land in which 2,625 acre was originally rice land used for land-use shifting purposes. While over the span of 16 years the Prime Minister granted permission to 34 golf course projects, the locales upon decentralization in less than 2 years (2006-2008) licensed 104 projects, with most of them in the Central Midland (27 courses) and the Northern Plain (25 courses).

The rapid development of the golf courses has led to numerous environmental and social issues. In regard to environment, the operating of a golf course takes a fairly large amount of chemicals, of about 1.5 tonnes a year (three times as much as used for agriculture), to kill pesticides and fungi on grass surfaces, and consumes a daily amount of 10,000 m<sup>3</sup> of water for a 36-

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<sup>4</sup> Lao Dong Online dated August 9, 2008 and Tuoi Tre Online dated May 9, 2008).

hole golf course; (the cause of water pollution in water reserves and the excessive use of water resources). Under the social perspective, the shift of thousands of agricultural and forestry lands, especially the shifting of rice-cultivating land into golf-course projects, has caused farmers to lose their cultivation land, increasing the unemployment rate in areas of project implementation.

### *c) Agricultural Land Shrinkage*

In Vietnam, agricultural land accounts for 28.4% of the natural land area, though recently the agricultural land area, especially rice-cultivating land, has shrunk at an alarming rate. In the period from 2000 to 2007, the rice-cultivating land decreased by 361,935 acre (an average annual shrinkage of 51,705 acre), shaving off 257,413 acre (71.1% of the area shrinking) from the Red River Delta and Mekong River Delta. This agricultural land area decrease is mainly due to the process of urbanization, the development of industrial zones, transport roads, golf courses and other infrastructures.

Another challenge is that the average per-capita cultivation land area is too low, ranked 159 among the total of 200 countries in the world and equaling 1/6 of the world average. In 1940, Vietnam's average per-capita cultivation land was 0.2 acre, in 1960 – 0.16 acre, in 1970 – 0.13 acre, in 1992 – 0.11 acre, in 2000 – 0.10 acre, and further declining due to population increase. Over the recent years, an annual 72,000-acre average of agricultural land has been shifted for the purpose of a different use. Therefore, though the rice production has increased by an average of 2% a year, the rice production hike is insignificant in affecting food security.

Therefore, to prevent the shrinkage of agricultural area, the Ministry of Agriculture and Rural Development has recommended that the 3.5 million acre of rice-cultivating area be maintained at all costs to ensure food security.

### ***3. Air Pollution in the Urban and Industrial Area***

Over the recent decades, Vietnam's economy has rapidly developed with GDP growth averaging about 7%, and the country became a middle-income nation with over USD 1,000 a person in 2009. The urbanization process is also progressing at a rapid pace, with 22% of population living in urban area. However, the urban population has been on the constant rise in line with booming industries, leading to the ever-increasing environmental pollution, especially air pollution.

The major polluting source of urban air is comprised of transport activities, industries, craft-making industries and construction, among which transport-led pollution accounts for about 70%. Taking the polluting sources countrywide into consideration (including urban and other areas), it is estimated that transport activities contribute up to 85% of CO<sub>2</sub> and 95% of

evaporating gases (evaporating organic chemicals – VOC), while the industrial activities mainly contribute SO<sub>2</sub>. For NO<sub>2</sub>, transport and industry represent equal contribution rates.

*Among the industries*, the old industries including the handicraft industries and job villages (mostly built before 1975), are often small and medium enterprises with outdated production technology and limited toxic-waste-treating capacity, representing one of the major polluting sources at present. The new industries mostly allocated in industrial zones, though equipped with waste treatment facilities, produce large and concentrated amount of waste, making them subjected to negative impact on the environment of the surrounding residential areas, upon poor environmental management. The ranked order of the air-polluting industries is: thermal power, cement and construction material production, chemical industry, fertilizer industry, metallurgy, paper, sugar, food and other industries.

*Transport activities*, mainly due to the types of motorcycles and cars, have become the major air-polluting source in urban areas, especially in big cities like Hanoi, Ho Chi Minh City, Hai Phong, and Da Nang. The traffic congestion of these cities in recent years has also led to the dramatic pollution of air.

*The construction activities* of houses, bridges, and roads have been vigorously developing across the country, especially in urban areas. The activities of digging, filling, demolishing old structures, and scattering construction material and debris during transportation often cause severe air pollution. The practical measured results show that about 60-70% of the dirt in the urban air is resulting from construction activities.

The level of dirt and toxic gases in many places has overly surpassed the standard, especially in some of the big cities like Hanoi and Ho Chi Minh City, where the pollution is 2-3 times higher than normal.

#### ***4. Solid-Waste-Led Pollution***

Solid waste resulting from production, business and livelihood activities varies from 0.8-1.2kg/person/day in big cities to 0.5-0.7kg/person/day in small cities. Every year about 15 million tonnes of solid waste is created, 80% of which comes from households, restaurants, markets and commercial sections. 12.8 million ton of solid waste is in water, 6.9 million tonnes of which is disposed from urban areas yearly. The total volume of solid waste from industrial zones makes up about 2.7 million tonnes a year. An estimated 160,000 million tonnes (nearly 1% of the total) every year is harmful toxic waste. 77% of the solid waste in Vietnam's urban areas has been treated by measures not up to environmental protection standards. A great number of garbage and waste disposal parks are considered environmental dangers to people living nearby. Only 17 out of the 91 garbage parks in Vietnam meet the

sanitation standard. In pursuance to Decision N 64, 49 garbage disposal parks are open and inappropriately operated. However, the handling of these environmental issues is difficult and costly.

The industrial environment, especially in old industrial zones, the chemical sectors, metallurgy, cement and processing have been polluted by solid waste, waste water and toxic wastes which have not been treated as regulated. The domestic industrial establishments are mostly of small or medium size and scale, and equipped with outdated technologies (only 20% of the old plants have embarked on technological reform). About 90% of the old factories lack waste water treatment facilities. At present, there have been a number of industrial, processing, hi-tech zones, however, just a third of them have built a technical infrastructure and only a few have the central waste water treatment facility.

Meanwhile, the collection and treatment of solid waste in urban, industrial zones, and rural areas have been lackluster, failing to meet the standard, with the collection rate increased from 40-67% to 70-75% (in big cities) and about 20-35% (in small cities), averaging 55% (countrywide). In the rural areas, the rate of solid waste collection is estimated at 10-15%. The amount of solid waste is expected to significantly increase in the future. By 2010, the urban population is projected to reach 30 million or higher accompanying the sizable hike of production and consumption (ADB, 2009). The re-collection of recyclable solid waste is about 13-20% in which an estimated 1.5-5% of the total organic waste is transformed into microbiological fertilizer. At present, 32 out of 61 cities countrywide have the construction investment projects building burial grounds with proper sanitary facilities, and among them 13 cities have already launched the construction.

## **5. Water Shortage and Pollution**

### *a) Water Resource State*

Vietnam has a dense system of rivers and canals in which 13 big systems of rivers are over 10,000km<sup>2</sup> in area. The country's surface water resource is rather plentiful, accounting for about 2% of total river flows in the world. The total flow amount of Mekong river per year is about 500km<sup>3</sup>, accounting for 59% of the total flow amount per year of all rivers nationwide, for Hong river system the number is 126.5km<sup>3</sup> (14.9%), the Dong Nai river system 35.3km<sup>3</sup> (4.3%), the Ma river, Ca river and Thu Bon river are the same about 9km<sup>3</sup> (1%), the rest 94.5km<sup>3</sup> (11.1%)<sup>5</sup>.

Besides the river systems, Vietnam has about 3.600 water reservoirs with different sizes, total of which medium and large size reservoirs account

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<sup>5</sup> Source: General Department of Water Resources Management (National Report on environment 2010)

less than 15%. Besides, Vietnam also has numerous natural lakes, and Ba Be is one of the biggest among them.

Vietnam's underground water resource is rather rich with total potential reserve about 60 billion m<sup>3</sup> per year. The reserve, however, differs from regions, very rich in Mekong river delta but rather poor in the North Central Coast. The exploitation amount nationwide, however, is less than 5%.

Surface and underground water resources are the precious resources for the country's economic-social development. Vietnam's water resource, however, is facing many challenges, noticeably the decline and pollution in large scale.

#### *b. Decline of water resource*

According to statistics, Vietnam's total surface water reserve is at about 830-840 billion m<sup>3</sup> over 60% of which is from foreign countries<sup>6</sup>. The decline of water resource in the river and reservoir systems nationwide is getting more and more serious. The major reasons of this include the excessive exploitation of water resource and the impact of climate change.

According to recommendations of international organizations on water resource, the allowed threshold for exploitation is within 30% of flow amount. In reality, almost all provinces in the Central and High Lands have exploited more than 50% of flow amount. Particularly in Ninh Thuan province, 70-80% of flow amount has been exploited. The exploitation of water resource has made it seriously degraded in terms of both quantity and quality, particularly in such big rivers as Red river, Thai Binh river and Dong Nai river.

As impacted by the climate change, rainy season and amount of rains tend to occur abnormally in Vietnam, and as the results of which drought or flood in some local areas come more frequently and in larger scale. The decline and abnormal happenings of water resources reflect the fact that Vietnam has faced and is now facing the danger of water shortage in dry season and flood in rainy season, which cause heavy losses in term of both people's lives and property in many regions of the country.

#### *c) Water Pollution*

The present water environment has been severely polluted, especially along river basins, in the urban areas and industrial zones.

#### *- River Basin Pollution*

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<sup>6</sup> Source: General Department of Water Resources Management (National Report on environment 2010)



The surface water of all the river basins cannot meet drinking water standards due to organic pollution. The average amount of BOD5 exceeds Vietnam's category A in almost all rivers, about 1.2-2 times as much as that of standard. The rivers with the high volume are Tra Khuc, Giang, Dong Nai, Hong-Thai Binh and Cuu Long (2-3 times as much as of standard), while rivers of Kone, Sre Pok and Ba have lower volumes. Also at some hot spots such as sub-basins of the Nhue-Day River and the Sai Gon River fragment that flows across residential areas, the BOD5 is 12.5 times as much as that of the A standard. The organic pollution in general is within the B standard (except for at hot spots) (ADB, 2009).

The factors of organic substance and Solid Substance (SS) are the major polluting sources in many rivers. However, in reference to pollutants of concern, some of the chemicals and heavy metals from industrial and exploratory activities are worth more attention, since they affect the human health and ecosystem. Related to toxic substances are fertilizers and pesticides used in agriculture. 4 out of the 10 provinces having the most severe water pollution belong to the Dong Nai River Basin. The 3 river basins with severe water pollution problems given special attention are the basins of Cau, Nhue-Day and Dong Nai Rivers. The pollution level at the river branches in the lower basin of Dong Nai River is the highest in the country. Thi Vai River has the most severe pollution degree in the basin with a "dead" river fragment of over 10km.

The Nhue - Day River basin area has also been heavily polluted in many places. Even in the rainy season, the amount of BOD5, DO, NH4+, and coli form cannot meet the environmental TCVN standard B. For the Cau River basin, the clause of Cau River flowing across Thai Nguyen City is severely polluted. The amount of SS, BOD5 and COD exceeds TCVN (standard A) significantly with the river water containing organic substances and oil products. Many other places in the sub-basin of this river are also polluted especially by organic substances (ADB, 2009).

#### *- Water Pollution in Cities*

An annual estimated 15 million tonnes of solid waste is disposed – about 80% comes from households, restaurants and commercial markets. 77% of the solid waste in Vietnam's cities has undergone improper environmental sanitation treatment. Only 17 out of 91 garbage grounds in Vietnamese cities meet sanitation standards (ADB, 2009). According to the report of the national environmental state 2006, the most polluted water environment cities and provinces are listed in an order as follows: Ho Chi Minh, Hanoi, Binh Duong, Hai Phong, and Dong Nai.

The water pollution is most evident in the cities of Hanoi and Ho Chi Minh. In these cities, as the household waste water does not undergo a central treatment system and directly discharges to the receiving sources (river, lake,

channel, streams). Many large productions and health facilities do not treat waste water and a large amount of solid waste in the city is not entirely collected, which contribute to the major sources polluting the water. At present, the pollution level in channels, rivers, lakes in big cities is significantly high.

Hanoi has a total waste water amounting up to 300,000-400,000m<sup>3</sup>/day. At present, only 5 out of 31 hospitals have a waste water treatment facility – 25% of the total hospital waste water; 36 out of 400 production facilities treat waste water; the uncollected household garbage of about 1,200m<sup>3</sup>/day is discharged into the land areas close to lakes, channels and ditches in cities; the indicators of BOD, diluted oxygen, NH<sub>4</sub>, NO<sub>2</sub>, and NO<sub>3</sub> in urban areas have all exceeded the standard. In Ho Chi Minh City, the garbage reaches up to 4,000 ton/day with only 24/142 large health facilities treating waste water; 3,000 polluting production facilities are subject to relocation (VOV News Online). In other cities like Hai Phong, Hue, Da Nang, Nam Dinh, and Hai Duong, household waste water is also not treated, resulting in the degree of the water sources surpassing the allowed standard and thus polluting with waste water at the receiving point .

Surface water pollution, especially the pollution degree of organic substances, tends to increase mainly because of untreated urban and industrial waste water discharged directly into ponds, lakes and rivers. Only 3% of the urban waste water is treated , 100% of cities are without central waste water treatment system, and about 20/82 industrial zones have waste water treatment system. Most rivers and canals running through urban and industrial areas have only B level of water standard (before 1975 many rivers attained the A standard). Urban rivers and canals, especially those in Hanoi, Ho Chi Minh City, Da Nang, Hai Phong, etc., are even more polluted, with many of them producing foul odor or becoming ‘dead’ rivers.

#### *- Water Pollution in Industrial Area and Craft Village*

By 2010, the industrial activities were projected to contribute 45% to the national GDP. In 2007, there were 154 industrial facilities (excluding the provincial and local industrial zones and clusters), among which 97 were located at the basins of Red River-Thai Binh, Dong Nai and the basin cluster of Dong Nai River.

Nearly half of the total water for industrial use is in the basins of Red River-Thai Binh, 25% in Dong Nai River, 7% in cluster of Dong Nai Rivers and 10% in Cuu Long River. Although there are 154 industrial and processing zones countrywide, only 43 factories treat waste water centrally. About a half of the non-state businesses are located outside industrial zones with few or no waste water treatment system. In 2006, an estimated 2,803 industrial enterprises countrywide discharged over 155 million m<sup>3</sup> of waste water a year equaling 850,000 m<sup>3</sup> a day. The daily untreated waste water in Vietnam equals the amount of water in 340 Olympic swimming pools.

The craft villages have shown remarkable development especially in the basin of Red River-Thai Binh, where 60% of craft villages countrywide are concentrated. In 2002, there was an estimated 2,000 craft villages with about 40,500 businesses, among which 80% were household businesses with 1-3 employees.

Craft village produces high professional health and pollution risks. Almost all households in the village use their house and garden as the production sites and directly discharge waste into the surrounding environment. This directly affects not only the surface but also the underground water, polluting the drinking water source in the village. Water source pollution from craft villages is one of the increasingly important issues.

*- Water Pollution in Rural Area*

In Vietnam, the rural population accounts for nearly 76% of the national population living in a large area on 90% of the total area of the country's land.

Rural environmental sanitation is inadequate, especially regarding clean water for living, chemical use in agriculture, and collection and use of animal manure. Living practices of many groups of people are not hygienic, which is one of the reasons causing common diseases in rural Vietnam. Manure and waste sanitation should be considered as one of important criteria to evaluate in the renovation of "villages in the process of industrialization and modernization of Vietnam".

Regarding the water pollution in rural and agricultural production areas, the infrastructure in rural Vietnam still lags behind; most of untreated human and animal waste is absorbed into the soil or washed away, making water pollution worse organically and in the respect of microorganisms. In agricultural production, the abuse of plant-protecting chemicals and polluted water sources in rivers, lakes, and canals greatly affects the water environment and people's health.

Therefore, in rural areas, the expansion of water supply and sanitation network is an important aspect in the fight against poverty. For the poor in the rural Vietnam, access to clean water and sanitation is a problem. In 2005, there were over 60 million people living in rural area. Among the 20% of the poorest, there are only 22% of clean water users compared with 78% of 20% of the richest people. Regarding sanitation, among 20% of the poorest people, only 2% has access to sanitation in comparison with 20% of the rich.

The rate of the national properly sanitized water supply (according to traditional standard of MARD) is estimated to reach approximately 66% and the rate of adequate toilet is 50%; 70% of schools, kindergartens meet the standard, 58% of commune health stations and 17% of rural market have the access to clean water and adequate toilet. However, should it be under the

clean water standard of the Ministry of Health, only 25% of rural population has access to clean water at home, and the sanitized conditions access rate is even lower. In other words, by the end of 2006, there were about 21 million rural people lacking properly sanitized water and 42 million people not having “clean water” (ADB, 2009).

## ***6. The Impact of Natural Resources Degradation and Environmental Pollution***

### *a) The Impact of Natural Resources Degradation on People’s Livelihood*

The connection between degradation of natural resources, especially forest resources, and the life of ethnic people, has been vastly studied and assessed. At present, an estimated 24 million people from 54 different ethnic communities live in mountainous areas, which account for  $\frac{3}{4}$  of natural area, which is also the region retaining abundant forest ecosystem. The lives of many ethnic and mountainous people depend on land for agricultural cultivation, even by cascade field cultivation methods, forest products such as timber, bamboo for house making, firewood, forest ecosystems to maintain living water sources, and forest environment to conduct their own traditional culture.

Should forest degrade and disappear in correlation with land degradation, flood and draught will occur more often, resulting in the threats to people’s lives. This is one of main reasons forcing thousands of ethnic minorities (Tay, H’mong people, etc.) to migrate to the Central Highlands, as land and forest resources in many mountainous Northern provinces were exhausted in the 90s of the last century. Another paradox is that the mountainous areas retaining the valuable forest ecosystem are the places where the poverty is highest.

### *b) The Impact of Environmental Pollution on Public Health*

The quality of environment including soil, water and air has great impact on human health, not only by natural conditions but also socio-economic conditions. According to WHO, good health is the state of being completely comfortable as regard to body, spirit and social relations. Every feature and phenomenon of the inside or outside environment would have impacts on health. The person of good health is the person of good adaptability to environment, and vice versa, illness reflects the inadaptability. Thus, good health is a standard for human body adaptability and also a standard for environment. State of health of an individual and a community partly reflect the quality of water, air, food, house and house comforts.

When our living environment is polluted, air, land and water in the environment contain the toxic elements harmful to human beings’ health. When toxic elements enter a human body, they can cause the physiological and

biochemical changes, breaking the body's biological balance and disordering the normal living function, leading to pathological status of the body's organs and of the whole body.

From the early 50s of the 20<sup>th</sup> century, researches on the impacts of environment pollution to human health were initiated. World medical researchers believed that 80% of human diseases connected to environment pollution. During the past 30 years, about 40 million new diseases have arisen and they all originated from environment pollution<sup>7</sup>.

*- Air pollution's consequences*

Air pollution has great impacts on human health, particularly on the breathing system. Researches conducted in Vietnam have shown that when the air is polluted, human health declines, the body aging process accelerates, and the lung's functions are weakened, causing such diseases as asthma, bronchitis, cancer, nervous breakdown, heart diseases, and making human life expectancy reduced. The most-heavily-impacted groups are the old-aged people, the pregnant women, children, people working in open-air,...

According to statistics of the Ministry of Health, in recent years, the nationwide-most-caught breathing diseases include the pneumonia, sore throat, acute tonsillitis, bronchitis, and bronchiolitis. Major cause of those diseases is the air pollution<sup>8</sup>.

*- Water pollution's consequences:*

Water pollution impacts on human health through two channels: (1) eating & drinking: people eat vegetables, fruits or seafood that are grown up in the polluted water; and (2) people get in touch with the polluted water environment during their daily working lives.

According to statistics of the Ministry of Health, nearly half of the 26 infectious diseases have connection to the polluted water sources. The most typical disease is acute diarrhea; others include cholera, typhoid, digestion diseases, hepatitis A, encephalitis, cancers,...

*- Land and solid waste pollution's consequences*

Excess of protein in land or in plants causes harms to environment and human health. Due to the excess or wrong provision of protein, nitrogen and phosphorous contained in water are, together with water, let out to the water

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<sup>7</sup> National Report on environment 2010

<sup>8</sup> National Report on environment 2010

reservoir/gulf, causing the water source pollution. The excess protein is changed into NO<sub>3</sub> or NO<sub>2</sub> and these two directly poison the marine creatures. Human health is seriously damaged if the consumed water source or planted products, particularly the fresh vegetables or fruits, contain the excess amount of NO<sub>3</sub>, and in this case there would be two possibilities of damages: (1) causing the methaemoglobinemia – the transfer of oxygen in children's bodies get blocked; and (2) causing stomach cancer in adults' bodies.

*c. Impacts on socio-economic development*

According to the World Bank (WB), losses caused by environment pollution that Vietnam may suffer can reach 5.5% of the country's GDP. Thus, the economy lost about 3.9billion USD per total GDP of 71billion USD of year 2007 and about 4.2billion USD per total GDP of 76 billion of year 2008. Also according to WB, Vietnam faces a loss of 780million USD each year in the field of community health due to environment pollution.

*- Economic losses due to the increasing burden of illness*

Economic losses due to the impacts of environment pollution on human health include the following items: medical examination bill, medicine expenses, the earnings for a working day that lost due to absence from work for illness treatment, the time lost for taking care of the ill person,ect... According to a survey conducted in Phu Tho and Nam Dinh provinces, the estimated economic loss due to impacts of air pollution on human health is averagely 295,000 VND per one person per year<sup>9</sup>. Another survey shows that by December 2010, the total of expenses on treatment of breathing diseases, economic losses due to absence from work for illness treatment and expenses for absence from work for taking care of children and adults getting breathing diseases that the Hanoi urban residents had suffered was 1,538 VND per person per day, the Hochiminh city urban residents had suffered was 729 VND per person per day (exclusive of losses of lives due to air pollution)<sup>10</sup>. From this data, it can be calculated that the total economic loss due to getting breathing diseases in Hanoi (for 2.5 million of urban population) is 66.83million USD/year and in Hochiminh city (for 5.6 million urban population) is 70.96 million USD/year.

*- Economic losses due to the environment pollution's impacts on aquiculture and agriculture*

Pollution of water environment is the major cause of damages to the aquiculture sector; air pollution, surface water pollution and land pollution

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<sup>9</sup> National Report on environment 2010

<sup>10</sup> National Report on environment 2010

affects agricultural and planting productivity. Statistics show that, aquatic productivity, particularly productivity of raising fish in floating rafts, has been considerably reduced due to the surface water pollution. The massive death of fish in Dong Nai river in 2008 and 2010 and in Nhuê - Đáy river valley in recent years.

Surface water in rivers, lakes and canals is the main irrigation source in agriculture. When this kind of water get polluted, agricultural activities in rural areas will be considerably affected.

Exhaust fumes that not yet processed and contain high concentration of such toxic substances as CO<sub>2</sub>, Nox, SO<sub>2</sub>, and found in the industrial manufacturing areas, particularly in the small-sized industrial basements, trade villages in rural areas, also cause planting productivity and economic damages<sup>11</sup>.

Besides, environment pollution also impacts on tourism, causing economic losses due to burden of environment restoration and improvement expenses, and heightening risk of environment conflicts.

### **III. GOVERNMENT'S EFFORTS IN SOLVING THE PROBLEMS RELATED TO RESOURCES AND ENVIRONMENT AND MOVING TOWARDS SUSTAINABILITY**

#### ***1. Building and Completing the Uniform Law System to Solve the Problems of Resources and Environment***

The law system of environmental protection has been gradually completed in the direction towards the goals of sustainable development.

+ In 1993, the Environmental Protection Law was enacted by the National Assembly and became the first law in Vietnam's law system on environmental protection. Since then, environmental protection has made significant developments. The system of state management agencies on environmental protection has been established and developed to level of province, central city.

A series of legal documents on environmental protection was issued to demonstrate the attention and focus of the Party and the State to this task in the process of implementing sustainable development such as the Decree on guiding the implementation of Environmental Protection Law (1994), amended (2004); Decree on handling administrative violations in the environmental field (1996, replaced in 2004); Decree on conservation and sustainable development of marsh lands (2003); Decree on environmental protection charge for waste

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<sup>11</sup> National Report on environment 2010

water (2003); Decree on management of wildlife export, import and transit (2002); Decision of the Prime Minister approving the National Plan to control environmental pollution by 2010 (2005).

+ The Party and the State have issued many important guidelines to guide environmental protection in general as well as the development of the legal system on environmental protection in particular, such as Directive N of the Politburo on strengthening environmental protection in the period of accelerated industrialization and modernization of the country (1998) and Politburo's Resolution on environmental protection in the period of industrialization and modernization of the country (2004).

+ The Water Resources Law was ratified by the National Assembly in 1998 and came into force in January 1999. The notable feature of the Water Resources Law is the interdisciplinary and coordinative approach to water resources management through the establishment of the National Council on Water Resources at the national level and the Basin planning management units at local level.

+ The Prime Minister issued the Decision approving the National environmental protection strategy until 2010 and up to 2020 (2003); the Decision promulgating Sustainable Development Strategic Direction in Vietnam (Vietnam Agenda 21) (2004), and Decision promulgating the Government Action Program to implement the Resolution of Politburo on environmental protection (2005).

+ In 2005, the amended Environmental Protection Law was enacted by the National Assembly in order to codify new policies of the Party and State on environmental protection (such as the addition of the strategic assessment of the environmental impact on strategies, planning, and socio-economic development plan at the national, sector and field levels; clearly and particularly to regulate the assignment, allocation and decentralization of State management on environment in the direction of promoting responsibilities for ministries, sectors, local government at all levels; detailing rules fostering friendly application in practical environmental management and protection).

Regarding the areas of biological resources and biodiversity, many legal documents have been compiled and issued.

+ The Action Plan on Biodiversity of Vietnam (BAP) was drafted and approved by Prime Minister on December 22, 1995. BAP was created in the context of Vietnam Government having signed the International Convention on Biodiversity in 1993 and ratified by the National Assembly in 1994. Since then, BAP is a legal document and guideline for Vietnam's action in biodiversity protection at all levels from central to local, sector and union.



+ The Law on Forest Protection and Development was approved by National Assembly on December 3, 2004 and came into effect on April 1, 2005. This is an important law demonstrating the policies of the Party and the State on forest protection and development in the period of industrialization and modernization of the country. This law has been supplemented and adjusted to replace the Law on Forest Protection and Development of 1991.

+ Vietnam Forestry Development Strategy for the period of 2006-2020 was signed by Prime Minister on February 5<sup>th</sup> 2007, which, until 2020, will establish, manage, protect, develop and sustainably use 16.24 million acres of land for forestry planning; raising the percentage of forested land to 42-43% by 2010 and 47% by 2020.

+ In 2008, the Biodiversity Law was adopted by the National Assembly and came to effect in July 2009, including 8 chapters and 78 articles. The law has been viewed as complete and uniform on biodiversity in terms of regulations on ecosystems, and conservation and sustainable development of species and genetic resources.

## ***2. Implementing Related National Target Programmes to Recover Resources***

### *a) Protect Forest and Recover Land:*

+ *Programme 327 (1993-1997)* aims to cover bare land with plants, utilize coastland, breed sea products, etc., through planting, protecting, reforesting, etc. Decision 556 (1995) added 327 on planting protective forests and forests for special use (since 1995). The programme has invested 2,300 million VND in developing and protecting forests of 6.79 million ha, reforesting 1 million ha, and planting 560,000 ha.

+ *Programme 661/5 million ha of forest (1998-2010)*: aims to increase the speed of planting and covering bare land with plants, protect forests, and increase covered area to 43% (2 million ha of protective forest, forests for special use (1 million ha newly planted), reforesting 1 million ha, planting 3 million ha of productive forest). 5,900 billion VND (1998-2005) has been invested in planting 1.55 million ha (63% of the plan), with 0.77 million ha of productive forest (26% of the plan) (Ministry of Planning and Investment, 2006).

+ *Decree 02 (1994), Decree 196 (1999) on assigning land and leasing forest land* to organisations, households, individuals, and communities for better utilisation, ensuring that land has an owner. In 2002, 12.8 million ha was assigned (70.4% of forest land), in which 4.5 million ha went to State enterprises, 4.8 million to households and organisations, and the rest to management board of protecting forests and forests for special use.

*b) Develop Rural in Accordance with Forest Protection*

Once of the major economic policies to stabilize people's life is settling agriculture and housing since 1968 to decrease forest land cultivation.

+ *Resolution 38/CP (1968) on settled agriculture and housing campaign* for ethnic people within 40 years in the North and 30 years in the South. Resolution 22/TW (1989) follows up with relation to local socio-economic development.

+ In the past 10 years, this task has been attached to economic development programmes in poor areas (135), hunger eradication and aid for mountainous areas (134), forest planting (327/661), and other socio-economic programmes.

*c) Hunger Eradication*

These socio-economic development policies include hunger eradication 135, 134 and sustainable poverty alleviation in 62 districts nationwide.

+ *Programme 135*, or socio-economic development programme for very poor villages of ethnic and mountainous areas, in accordance with Decision 135/1998/QĐ-TTg of the Prime Minister in 2 phases.

+ *Programme 135 phase 1* (1997-2006) and phase 2 (2006-2010) aimed to develop production, improve people's living standard, and improve infrastructure for 1,870 especially poor villages, with a budget of 10,000 billion VND for phase 1 and 12,000 for phase 2. The phases have put into use over 37,000 basic constructions, to improve the living condition of local people.

+ *Programme 134*, or aid of farmland, accommodation, and water for poor ethnic people in accordance with Decision 134/2004/QĐ-TTg, started in 2004, aims to speed up poverty alleviation in these areas. After 4 years of implementation, the Programme has provided 380,000 houses, 1,500 ha of land to 72,000 households, 30,000 ha of farmland to 83,500 households<sup>12</sup>.

+ *Resolution 30a/2008/NQ-CP on assisting speedy and sustainable poverty alleviation* for 62 poor districts is a socio-economic development programme, by the Government of Vietnam in order to create quick improvement in living conditions to poor households and ethnic people in 62 poor districts nationwide with 4 major measures: (i) Support production, create jobs, and increase income (including sending people overseas to work); (ii)

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<sup>12</sup> (Source: <http://www.ubnd.gov.vn>).

Train and improve education level; (iii) Provide more staff at managerial level and task forces; (iv) Invest in infrastructure at village, district level.

*d) Build Systems of Reserve Zones for Eco-Diversity Preservation*

A system of reserve zones has been built, known as forests for special use, including 3 types: national forests, natural preserve zones and landscape protection zones. Up to 2005, 128 forests for special use were established with 2.5 million ha (7.6% area of natural land nationwide), including 30 national forests, 59 natural preserve zones and 39 landscape protection zones.

## C. Group Discussion

### Environmental Status of Industrial Zones

**Wastewater:** Wastewater discharged from industrial zones contains diverse components, mainly suspended matter, organic matter, grease and some heavy metals. About 70% of more than 1 million m<sup>3</sup> of wastewater per day from industrial zones has been discharged directly into receiving waters without treatment causing environmental pollution of surface water. Surface water quality in these areas has been affected by waste from degraded industrial zones, particularly in the basin of rivers: Dong Nai, Cau and Nhue - Day.

**Exhaust:** air pollution in the industrial zones is local, mainly in the old industrial zones where their factories are using outdated production technology or have not been installed with exhaust treatment system. The problem of air pollution in industrial zones is mainly dust pollution, CO, SO<sub>2</sub> and NO<sub>2</sub> appear in some old industrial zones.

- **Diseases caused by air pollution:** silicon pulmonary disease caused by industrial pollution is a lung pathosis due to breathing SiO<sub>2</sub> or free silicon. The disease is characterized by the phenomenon of diffuse pulmonary fibrosis. Currently, silicon pulmonary disease accounts for the highest percentage in the world. In developing nations, the incidence of silicon dust originated pulmonary disease in occupations involving exposure to silicon dust accounts for 21% to 54% (as assessed by WHO) of the total number of occupational diseases.

- **Impact on economy:** see page 26-27

Source: National Environment Report 2009: Environment in Vietnam industrial zones

#### *Group 1.*

Discuss about the practical situation and causes of environmental pollution. Find the solutions to reduce environmental pollution in Viet Nam today?

#### *Group 2.*

Discuss about the harmful effects of environmental pollution on human health. Relate it to the practical situation of environmental pollution in the locality where you live, and find solutions to overcome?

**Group 3.** Discuss the impact of pollution on the sustainable development of the nation. Relate it to the practical impact of environmental pollution for sustainable development in the locality where you live. Propose solutions to ensure sustainable development for the locality?

#### **D. In-Depth Discussion (Class Discussion)**

What priority measures should be adopted to reduce environmental water pollution in of Vietnam today?

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## **Module 2**

### **THE RELATIONSHIP BETWEEN ENVIRONMENT AND HUMAN RIGHTS**

#### **LESSON OBJECTIVES**

*After the Completion of this lesson, the participants should be able to:*

- + Understand the relationship between human rights and environmental protection**
- + Understand the principles and rights affected by environment**
- + Understand human rights approaches to environmental protection**

#### **THE MESSAGES**

- 1. Human rights and the environment have a very close relation to each other**
- 2. Effective protection of the environment is the condition for implementing human rights and successful implementation of human rights will help create effective environmental policies**
- 3. Human rights based approaches to environmental protection is an effective way to protect the environment in modern-day life.**



## MAIN CONTENTS

### **I. The relationship between environment and human rights**

- 1. Concept and basic features of human rights*
- 2. Concerns of International Community About the Environment and Human Rights*
- 3. The interaction between environment and human rights*

### **II. The content of principles and human rights to the environment**

- 1. Principles on Human Rights and the Environment*
- 2. Human Rights to Environment*
- 3. Responsibility and Obligation (Part IV)*
- 4. Special Notice (Part V)*

### **III. The human rights approaches to environmental protection**

- 1. The Mobilisation and Utilization of Existing Rights*
- 2. Re-Explain the Existing Rights*
- 3. Building New Standards on Human Rights in Relation to Environment*

## **A. WARM -UP:**

### **Questions:**

1. Please name and list some basic human rights defined in the constitution, national and international law.
2. According to you, among the rights to be listed here, which are related to environmental protection? Why?
3. According to you, how may the protection of these rights affect environmental protection?

## **B. CONTENTS**

### **I. THE RELATIONSHIP BETWEEN ENVIRONMENT AND HUMAN RIGHTS**

#### *1. Concept and basic features of human rights*

Due to the differences in historical background, economic-social development levels, political system, traditional values and national culture, countries' approaches to human rights differ. Thus, there exist different concepts of human rights and not yet an official one agreed upon.

The World Declaration on Human Rights, which was adopted by the UN General Assembly on 10 December 1948, together with the two Conventions of 1966<sup>13</sup> created an international Code of human rights. These three documents, however, do not provide an official definition of human rights, but instead list a series of fundamental human rights and freedoms and states parties' responsibility to respect, protect and implement those rights and freedoms.

Though different definitions exist, human rights can be understood in the simplest manner as *the natural privileges that every person enjoys right from their birth, without discrimination of age, educational level, profession, social position, language, political attitude, ethnic, gender, etc...* *Human rights and freedoms are acknowledged and ensured by the national and international law systems.*

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<sup>13</sup> Convention on civil rights and political rights; Convention on the right of Economic, Social and Cultural rights, adopted by General Assembly of UN 1966

From the above definition, it is possible to generalize the most basic features of human rights as follows:

*- Human rights are of universal value*

Human rights are popular for everyone. Every person, without discrimination of national origin, ethnic, social position, gender, language, health condition, profession, etc... is equal in enjoying the fundamental rights and freedoms. At present time, this universal value of human rights is the basis of the international human rights laws which was affirmed in the World Declaration on Human Rights in 1948 and reiterated in various other related UN statements, conventions and resolutions.

*- Human rights can not be transferred*

Human rights can not be transferred as they derive from the dignity and worth inherent in the human person and are closely associated with personal record. Human rights can not be dispossessed of, except for the particular circumstances in which specific legal procedures must be followed. For example, a person's individual freedom can not be limited, except for the case that there are legal evidences showing the person's acts of law violation and the dispossession of that person's freedom must follow the procedures regulated by laws.

*- Human rights are interdependent and indivisible*

All human rights are interdependent and indivisible whatever they are – civil and political rights (for example: the right to live and be equal before the law or the freedom of speech) or economic, social and cultural rights (for example: the right to work, right to be ensured social security, right to insurance and education, right to development and self-determination). The dispossession of a person's specific right will affect the person's enjoyment of other rights. Therefore, all human rights must be respected equally, not this one more important than other one. This is due to a reality that civil, political, economic, social, cultural rights are unified and this unification originates from a human's integrality, reflecting the basic needs of a human's life in both aspects of body and spirit. Lack of one of the rights, a person can not live, develop comprehensively and perfect his or her manner.

*- Human rights bring in themselves the cultural and historical values and depend on the economic – social development level*

Human rights are of universal value, but the ensuring of those rights can not be detached from the specific historical circumstances, economic-social development level and cultural tradition of each country, nation and

region. The Vienna Declaration and Programme of Action reaffirmed that “All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms”<sup>14</sup>.

## *2. Concerns of International Community About the Environment and Human Rights*

There is a strong link between the environment, health and human rights, especially the right to live in a clean environment. This has been the concern of not only each nation alone, but also the international community. However, the issues of environmental protection, public health, and human rights have been regarded as separate aspects of policy planning by the State agencies and non-governmental organisations at both national and international levels. The past few decades have witnessed the strong development of science and technology as well as the rapid emergence of association and economic exchanges among countries and regions in the world, known as economic globalization. At the same time within each country, especially a developing one, industrialisation and rapid urbanisation bring people more benefits. However, such development processes are directly affecting the environment and public health. Now the international community has recognised the intimate relationship between environmental protection and human rights protection, putting the responsibility on policy-makers at both national and international levels.

Theoretically, environmental protection, public health and human rights can be completely separated. However, the separation of those three categories would prevent individuals from realizing and protecting all their rights. Human rights in the context of sustainable development recognises that human beings have the right to live, and they should be entitled to a minimum standard of living and security. It requires that each individual must be protected from harmful substances and unsafe products, and has the right to learn to preserve and share natural resources fairly. Therefore, if environmental policy and public health are not listed as priorities, the fundamental rights of every individual such as human dignity, equality, non-discrimination and the capability to be involved in community-affecting policy, would not be attained. Therefore, the link between environmental protection, health, and human rights protection was established in the early years of the 70s in the last century.

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<sup>14</sup> The World Conference on Human rights, (Vienna) Austria, adopted the Vienna Declaration and Action Programme, 1993

In 1972 the UN held a conference on The Human Environment and declared that “Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself”<sup>15</sup>.

In the Stockholm Declaration of Human Environment<sup>16</sup>, the first principle established the relationship between human rights and environmental protection, declaring that, “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”. The principle also addressed the responsibility of individuals to protect and improve the environment for present and future generations

Twenty years later, in Resolution No. 45/94 dated 14/12/1990 about the need to ensure a healthy environment for the well-being of individuals, the UN General Assembly restated the language in the Stockholm Declaration<sup>17</sup>, stating that all individuals should live in an environment which guarantees minimum health care and well-being. The Resolution reiterated the efforts to ensure a better environment.

In 1992, the World Summit on Environment and Development held in Rio de Janeiro, Brazil, addressed the link between human rights and environmental protection in several working terminologies. Principle 10 stated<sup>18</sup>:

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided”.

The right of access to information, participation, and compensation related to environmental conditions were assigned in the Rio Declaration. Beside Principle 10, the Declaration included regulations on the participation of different segments of the population, such as women (Principle 20), youth (Principle 21), and indigenous and local communities (Principle 22). The

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<sup>15</sup> The conference on The Human Environment was held from 5 to 16/6/1972, in Stockholm, Sweden

<sup>16</sup> <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=97&ArticleID=1503&l=en>

<sup>17</sup>

<sup>18</sup> <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163>

participation of the public was also emphasized in Agenda 21. The introduction asserted that:

“One of the basic prerequisites for achieving sustainable development is the broader participation of the public in making decisions. Moreover, the need for new forms of participation emerges in a more particular context of environment and development. This requires the participation of individuals; groups and organisations in assessing environmental impact, as well as recognising and taking part in the decision-making processes that potentially affect the community in their residence. Individuals, groups and organisations should have relevant access to information on environment and development investigated by different national agencies. This information relates to products and activities that may have bad impacts on the environment, and measures to protect the environment<sup>19</sup>”.

Agenda 21 also appealed governments and legislators to establish administrative procedures and judicial system to restore law and redress actions affecting the environment; illegal actions or actions that violate existing rights. It was also advisable that governments and legislators provide access for individuals, groups and organisations whose rights are recognised by law. Part III Chapter 23 defined the essential participation of women, youth, indigenous and local residents, non-governmental organisations, local government, business and industry workers, scientists, and farmers. The Agenda also encouraged governments to create policies to facilitate the direct information exchange between governments and the masses in environmental issues. According to the EIA, this process is a potential mechanism for developing participation.

In the past decade, since the work for the Rio Conference began, regional and global agreements on human rights and the environment have been signed; specific regulations of the rights defined in Principle 10.

In 1998, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters was adopted on 25th June 1998. In the preface, the convention reiterated a number of documents formerly issued, and admitted “adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life<sup>20</sup> itself”. The convention also recognised that “every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in

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<sup>19</sup> European Charter on Environment and Health was approved by the First Ministerial European Conference on Environment and Health of WTO in 8/12/1989

<sup>20</sup> The international documents and legal text of some countries about the right of access to information, People’s Public Security Publishing House, p.35.

association with others, to protect and improve the environment for the benefit of present and future generations<sup>21</sup>”.

In Resolution 2001/111 the Human Rights Commission recommended the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Environment Programme (UNEP) to organise a group of experts to “review and assess the progress achieved from the United Nations Conference on Environment and Development in promoting and protecting human rights related to the environment and issues within Agenda 21<sup>22</sup>”.

### ***3. The interaction between environment and human rights***

The relationship between environment and human rights may be describe as following:

#### ***3.1. Environment is an Issue of Human Rights***

After the disaster of World War II (1945), the United Nations was established, along with the UN Charter in 1945, asserting for the first time the importance of human rights and fundamental freedom respect in maintaining freedom, and justice and peace in the world. Three years later, the UN General Assembly adopted the World Declaration on human rights, regulating a series of rights and fundamental freedoms for individuals. From this point on, the concept of human rights and international protection for the rights and fundamental freedoms of people were officially put on the UN Charter and contemporary international law. United Nations began to set up and adopt a series of declarations, international conventions on human rights, and formally added a human rights law to international law.

Meanwhile, environmental protection was not yet approached until after the 1970s of the previous century. The Stockholm Declaration in 1972 was identified as a turning point, marking the new linkage approach between human rights and environmental protection. There seemed to be a gap between these two issues, as far as public policy planning was concerned. However, the international community is now aware that there is an intimate relationship between human rights and environmental protection.

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<sup>21</sup> Op.cit

<sup>22</sup> The workshop was held in Geneva in January 16, 2002, with the participation of government representatives, civil society and international organisations. Report of the workshop was based on reviews from different nations and was submitted to the Human Rights Commission at session forty-eight (E/CN.4/2002/109).

The relationship between the environment and human rights is well reflected in accordance with the guarantee of implementing rights such as the right to life, right to physical integrity of individuals and families, right to health, prosperity and development of individuals, social groups and communities, etc. All these rights are conditional based on living and natural environment around human beings. This is identified as an important aspect in the life of all individuals as well as in the whole of society.

The destruction of the environment and the ecosystem, as well as environmental pollution, is causing enormous challenges and increasingly serious consequences that are affecting human life. Thus, there is a strong demand for living in a clean environment and ensuring environmental health. It is the essential groundwork for the realisation of human rights. The need to protect the environment is closely associated with the need to protect human rights. In other words, the destruction of the environment directly impacts the enjoyment of human rights.

- The right to air: if the air is polluted, the right to life can not be guaranteed. According to WHO, approximately 2.4 million people die each year due to air pollution.

- The right to health: Closely linked to the right to life and often violated due to air pollution, land pollution and water pollution.

- The right to water: although not yet codified in international treaties, access to clean water is regularly quoted and recognised as a human right. It is a right to clean water and sanitation. The right to water is closely linked to the right to life and health.

- The right to food: due to environmental disruption, the right to physical accessibility of food is gradually under pressure.

- The right to development: sustainable development recognises economic growth, but if such growth is accompanied by environment destruction there will be no long-term social progress.

- The right to property: as sea levels rise, people living on the mainland or islands will lose their property.

- The right to housing: environmental degradation will force individuals and community to relocate to areas with un-guaranteed health and living conditions.

- The right to information and participation: these are rights (procedures) to receive information from the Government. It is the Government's obligation



to provide information for its people.

- The right to work: environmental destruction deprives people of the right to work. For example, fisherman go bankrupt due to environmental pollution in rivers and canals.

- The right to culture, family and the rights of the indigenous: The Declaration on the Rights of the Indigenous accredited natural resources conservation and environmental protection as human rights.

- The rights of women and children: as far as environmental degradation is concerned, women and children are more affected than men. Since their immune systems are not fully developed, children are often vulnerable to toxin and bacterial infections.

The very few simple examples above have demonstrated the close relationship between the environment and human rights. It is to say that environment is a part of human rights and environmental protection goes along with human rights protection. Everybody has the right to live in an environment of a quality that permits a life of good health and well-being. The environment is protected for the for the benefit of present and future generations. A human rights approach to environmental protection enhances the feasibility of sustainable development and conserves the core values of society. It would create not only rights but also obligations, so as to enhance the awareness of environmental protection.

### *3.2 Environmental Protection is a Prerequisite to Realize Human Rights*

Human rights can not be achieved if protection of the environment is not guaranteed, since environmental change directly affects the enjoyment of human rights. Hence, there is a strong need for environmental protection and environmental enhancement in order to protect human life. It is also a prerequisite to ensure human dignity and value, as well as develop and complete personalities, and to promote the welfare of individuals and the community.

In reality, as far as the relationship between environmental protection and human rights protections is concerned, the question of whether or not the purpose of environmental protection is to promote the quality human life is often raised, since environmental protection and human rights are based on different social values and measures.

Although both human rights and environmental protection seek to attain the highest quality of sustainable life for humanity, their goals can conflict with each other. "The essential concern of human rights law is to protect existing

individuals and communities while the aim of environmental law is to sustain life globally by balancing the needs of and capacities of the present with those of the future" (Shelton: 1991).

Therefore the international community recognises environmental protection as a prerequisite for protecting human rights. Human activities have badly polluted the environment on a global scale and this has caused serious harm to human health. For this reason, the human rights to life are directly affected due to air pollution, water pollution and land pollution.

- According to UNEP, the overexploitation of upstream water sources and subterranean water systems, along with water pollution in rivers, streams, ponds and lakes due to untreated household and industrial sewage in many countries, especially developed ones, have created a great pressure on water shortage. A lack of clean water not only badly affects human life, but is also a source for germs of diseases, impacting the lives of vulnerable people in particular (poor people, ethnic people, people living in regional and remote areas, women, children, etc.).

- UNEP also reports that within about 30 years, unless urgent actions are implemented by governments, over 70% of the Earth's surface will be affected by the impact of roads, mines, cities and the development of infrastructure.

- The destruction of old forests is becoming more and more serious in developing countries, causing droughts, floods, etc.

Alarmed by such realities, in the context of ecological environment protection, international human rights law have placed the responsibility to realise human rights on the shoulders of the State. This means that the State is obliged to respect, protect and implement human rights regarding the environment.

- Firstly, the State is obliged to promote, preserve and enhance environmental quality. Necessary preventive measures must be taken to avoid unsustainable exploitation of natural resources and the implementation of cooperation projects that adversely affect the environment and public health.

For example to ensure the right to life, the State is obliged to take steps to actively increase life-span through some specific measures; ensuring the right to live in a guaranteed environment with minimum working standard, etc. It is also the State's responsibility to ensure that economic, social, and cultural rights prescribed in international conventions are implemented in reality, including mechanisms of the national reporting obligation under the provisions of the convention.

The State approves a series of measures, legislations, policies, and judicial and administrative methods to prevent harmful acts that cause damage to the environment.

### *3.3 Protection and Implementation of Human Rights is Essential to Effective Environmental Policy*

Human rights need to be implemented to ensure effective policies on environmental protection. According to many researchers and activists, it is important for the community to have access to environmental information and justice; as well as to participate in environmental decision-making. These are the so-called procedural rights.

In reality, access to information and justice, and public participation play an important part in the realisation of environmental rights. These rights encourage democratization in environmental policy. In other words, citizens, especially the affected ones, would be able to play a more active role in State decision and policy related to the environment, thereby limiting the power of those who issue the policy and ensuring a balance between economic growth, environmental protection, and sustainable development. Therefore, the implementation of procedural rights is a necessity for an effective environmental policy that would maintain healthy environment, an environment that protects the masses and the vulnerable in society, such as children, women, poor, ethnic minorities, etc.

- *Ensuring access to environmental information*: the State is liable to provide and disclose authentic data and public information related to activities, practices or projects that have direct or indirect impacts on, or potential risk to the environment. This includes not only information about pollution but also indicators on which activities will definitely cause harm to the environment, such as the exploitation of natural resources, soil erosion, or the possible impact of unusual occurrence such as earthquake, tsunami, etc.

- *Ensuring the public's right to participate in the promulgation of environmental resolutions*: decisions related to the environment will directly affect the life and health of the community, especially the ones living in its immediate surroundings. Therefore, the participation of the public would help redress promulgated policy, minimize shortcomings, and gain support from people of all classes. When the State and its people are on the same wavelength, the people have more motivation to accept and execute the policy. In Vietnam, due to lack of information or information bias, the State fails to convince its people of reasonable investment plans. In some places, people protest to have a factory relocated, even though the company has been operating for quite a time and is certified as bearable to the environment. Therefore, public participation is of great importance in shaping environmental policy.

According to the Rio Declaration, public participation includes the participation of different segments of the population, such as women (Principle 20), the youth (Principle 21), the indigenous and local communities (Principle 22). The participation of the public is also emphasized in Agenda 21, asserting that one of the basic prerequisites for achieving sustainable development is the broader participation of the public in making decisions.

The Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters in 1998 assigned that the public concerned in member countries shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner (Article 6).

+ Public participation concerning plans, programmes and policies relating to the environment (Article 7).

+ Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments (Article 8).

- *The right to justice access*: the right to justice access regards an important procedure for citizens to seek legal assistance when their access is denied, their rights and interests are infringed upon, or damage is specifically caused by environmental impact. The exercise of the right to justice access is important because it helps the public have their voice in the process of dealing with violated actions or compensation for environmental damage.

- Citizens can file complaints if they receive a shortage of environmental information (the right of access to information declined), cannot have justice access ( participation right declined), need legal counseling, or request environmental damage compensation.

## **II. THE PRINCIPLES OF HUMAN RIGHTS AND THE ENVIRONMENT**

In May 1994, a group of experts on human rights and international environmental law has a three-day meeting at Geneva and published the draft Declaration of Principles on human rights and the environment. The Draft Principles on Human Rights and the Environment makes a comprehensive statement of the essential components of human rights and the environment. If passed, this will be the first international instrument to establish international standard on human rights and the environment, and reflect international recognition of environmental rights.

The Draft Principles is composed of 27 points and 5 parts. The preface reaffirms the right of people to self-determination and development, and

addresses the linkage between human rights and the environment. It states that “human rights violations lead to environmental degradation and that environmental degradation leads to human rights violations”.

### ***1. Principles on Human Rights and the Environment***

The first part of the Draft Declaration presents a number of principles.

- Principle 1. Human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible.

- Principle 2. All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political, and social rights, are universal, interdependent and indivisible.

- Principle 3. All persons shall be free from any form of discrimination in regard to actions and decisions that affect the environment.

- Principle 4. All persons have the right to an adequate environment that equitably meets the needs of different generations.

### ***2. Human Rights to Environment***

#### ***a) Substantive Rights, Part II***

- All persons have the right to freedom from pollution, environmental degradation, and activities that adversely affect the environment or threaten life, health, livelihood, well-being and sustainable development within, across or outside national boundaries.

- All persons have the right to protection and preservation of the air, soil, water, sea-ice, flora and fauna, and essential processes and areas necessary to maintain biological diversity and ecosystems.

- All persons have the right to the highest attainable standard of health free from environmental hazard.

- All persons have the right to safe and healthy food and water adequate for their well-being.

- All persons have the right to a safe and healthy working environment.

- All persons have the right to adequate housing, land tenure, and living conditions in a secure, healthy, and ecologically sound environment.

- All persons have the right not to be evicted from their homes or land for the purpose of, or as a consequence of, decisions or actions affecting the environment, except in emergencies or due to a compelling purpose benefiting society as a whole and not attainable by other means.

- All persons have the right to participate effectively in decisions regarding the environment, to negotiate their eviction due to environmental activities and, if evicted, to timely and adequate restitution, compensation, and/or appropriate and sufficient accommodation of land.

- All persons have the right to timely assistance in the event of natural or technological or other human-caused catastrophes.

- All persons have the right to benefit equitably from the conservation and sustainable use of nature and natural resources

- Indigenous peoples have the right to control their lands, territories and natural resources, and to maintain their traditional way of life. This includes the right to security in the enjoyment of their means of subsistence.

#### *b) Procedural Right, Part III*

- All persons have the right to information concerning the environment.

- All persons have the right to hold and express opinions and to disseminate ideas and information regarding the environment.

- All persons have the right to environmental and human rights education.

- All persons have the right to active, free, and meaningful participation in planning and decision-making activities and processes that may have an impact on the environment and development. This includes the right to a prior assessment of the environmental, and developmental and human rights consequences of proposed actions.

- All persons have the right to associate freely and peacefully with others for purposes of protecting the environment.

- All persons have the right to effective remedies and redress in administrative or judicial proceedings for environmental harm.

#### **3. Responsibility and Obligation (Part IV)**

- All persons, individually and in association with others, have a duty to protect and preserve the environment.

- All states shall respect and ensure the right to a secure, healthy and ecologically sound environment.

- These measures shall aim at the prevention of environmental harm, at the provision of adequate remedies, and at the sustainable use of natural resources:

+collection and dissemination of information concerning the environment

+prior assessment and control, licensing, regulation, or prohibition of activities and substances potentially harmful to the environment

+public participation in environmental decision-making

+effective administrative and judicial remedies and redress for environmental harm and the threat of such harm

+monitoring, management and equitable sharing of natural resources

+measures to reduce wasteful processes of production and patterns of consumption

+measures aimed at ensuring that transnational corporations, wherever they operate, carry out their duties of environmental protection, sustainable development and respect for human rights

+measures aimed at ensuring that the international organisations and the agencies to which they belong observe the rights and duties in this Declaration.

#### ***4. Special Notice (Part V)***

- In implementing the rights and duties in this Declaration, special attention shall be given to vulnerable persons and groups.

- The rights in this Declaration may be subject only to restrictions provided by law, which are necessary to protect public order, health, and the fundamental rights and freedoms of others.

### **III. HUMAN RIGHTS – BASED APPROACH TO ENVIRONMENTAL PROTECTION**

There are many different views on human rights approaches to environmental protection. Human rights approaches to environmental protection help enhance the quality of life and centralise citizens in the field of

policy promulgation. Michael Anderson<sup>23</sup>, suggests three approaches: first, mobilise and utilise existing rights to achieve environmental objectives; second, re-explain the existing rights, including all environmental concerns and third, create new rights covering all environmental characteristics.

### ***1. The Mobilisation and Utilization of Existing Rights***

This includes civil, political, economic, social, and cultural rights and the right to autonomy. These rights are stipulated in the International Declaration of Human Rights in 1948, International Convention on civil rights, politics and International Covenant on economic, social, and cultural rights.

The International Covenant on civil and political rights provides the legal and moral framework to ensure the right to life, right to equality, right to participate in State and social affairs, right to meetings and association, right to freedom and personal security, and right to remedies and compensation. This guarantees a prerequisite for mobilising people's participation in environmental protection.

#### **Civil and Political Rights**<sup>24</sup>

- Right to life
- Right to freedom and personal security
- No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment
- Right to be equal before the courts and tribunals
- Right to be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law

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<sup>23</sup> Author of Human Rights Approaches to Environmental Protection”, University of Oxford Publication, United Kingdom, 1996, reprinted in 2003.

[http://books.google.com.vn/books?id=cZ8UoLz3JewC&dq=Human+Rights+Approaches+to+Environmental+Protection&printsec=frontcover&source=bn&hl=vi&ei=35XCS6GHGo6OkOXXKitjdBQ&sa=X&oi=book\\_result&ct=result&resnum=4&ved=0CB0Q6AEwAw#v=onepage&q&f=false](http://books.google.com.vn/books?id=cZ8UoLz3JewC&dq=Human+Rights+Approaches+to+Environmental+Protection&printsec=frontcover&source=bn&hl=vi&ei=35XCS6GHGo6OkOXXKitjdBQ&sa=X&oi=book_result&ct=result&resnum=4&ved=0CB0Q6AEwAw#v=onepage&q&f=false)

<sup>24</sup> Quoted in International Declaration of human rights in 1948 and International Covenant on civil and political rights in 1966



- Right to compensation
- Right to privacy protection
- Right to liberty of movement and freedom to choose one's residence
- Right to freedom of speech, association, and manifestation
- Right to participate in State and social administration

The International Covenant on Economic, Social and Cultural Rights provides legal framework for environmental protection by setting standards for the common well-being of individuals and the community. This includes legal rights to health, rights to natural resource administration, rights to minimum living standard, etc.

#### ***Economic, Social and Cultural Rights***

- Right to work
- Right to leisure
- Right to a decent living for one's self and one's families,
- Right to food
- Right to health care
- Right to social security
- Right to housing
- Right to education
- Right to culture enjoyment
- Right to form trade unions and join the trade union of one's choice

Collective rights and rights to self-determination are prescribed in the common article one in the two Covenants in 1966, which also contribute to environmental protection:

“All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence”.

## ***2. Re-Explain the Existing Rights***

Many environmental and human rights activists believe that the mobilisation and utilisation of existing rights are not enough to protect the environment. That is the reason why those existing rights need to be re-explained in a context relevant to environmental issues.

Many countries worldwide have re-explained the existing rights. For example, courts in India have made a considerable progress in re-explaining the existing rights, including rules related to environmental protection. According to the Indian Court, it is a human right to not only exist, but also to live in a healthy, unpolluted environment; an environment with ecosystem balances protected by the State.

Currently in Africa, Europe and America, regional human rights treaties are providing security details to protect environmental health and to recognize the importance of public participation related to environmental decisions. About 60 countries around the world have approved the constitutional right to environmental health. For example, the Constitution of the Republic of South Africa stipulates that everyone has the right “to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations”<sup>25</sup>.

Many other countries recognize the right to information access and right to compensation for damage caused by the environment. For example, in the Constitution of the Russia Federation, it is stated that “everyone shall have the right to a favorable environment, reliable information about its condition and to compensation for the damage caused to his or her health or property by ecological violations”<sup>26</sup>.

Constitutional defence of environmental rights is an opportunity for all citizens to influence the Government not to promulgate policies that may badly impact community life and the surrounding natural environment.

The African Charter in 1981 is the first human rights document to recognise the right for everybody to achieve minimum environmental standards for the common well-being of individuals and the community. The

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<sup>25</sup> Constitution of the Republic of South Africa, Article 24

<sup>26</sup> Constitution of the Federation of Russian 1993, Article 42

Organisation for Economic Co-operation and Development (OECD) has defined that “minimum environmental requirement” should be recognised as a basic human right. United Nations Economic Commission for Europe (UNECE) has drafted a charter on environmental rights and obligations in order to affirm the basic principles. According to that charter, everyone has the right to achieve minimum environmental standards for his or her health and well-being.

### ***3. Building New Standards on Human Rights in Relation to Environment***

This approach involves the recognition and implementation of environmental rights in the context of sustainable development. It is necessary to point out the strong relationship between human rights protection and promotion and environmental preservation, protection, and restoration.

The creation of new rights requires the international community to cooperate in setting up common international standards for coping with increasing challenges concerning the environment and development. The new regime contains common rules and standards on environmental protection and sustainable development, which are frequently updated, based on development and environmental impacts.

+ Projects and activities that deliberately degrade the environment often lead to human rights violations and destruction (for example infrastructure projects, dam building, etc.)

+ Projects and activities conducted through a process in which violation of participation, transparency, and accountability occur, will be accompanied by environmental costs (such as unsustainable exploitation of tropical forests, etc.)

+ Projects and activities with respect to protecting and restoring the environment, ensuring human life and safety will promote the realisation of human rights

+ Projects and activities conducted through a process in which there is respect for human rights, including the participation right, will create a friendly environments

## C. GROUP DISCUSSION

### 1. "Cancer Village" in Nghe An and Actions of the Authorities

Recently there has been strong concern regarding the possibility of another "cancer village" in Dong Thanh commune, Yen Thanh district, Nghe An, like the "cancer village" in Thach Son commune, Lam Thao, Phu Tho. Reporters of the Health & Life magazine made a trip to Dong Thanh to find out the truth.

#### *Seriously Polluted Water*

Dong Thanh is a commune located in the west mountainous district of Yen Thanh, Nghe An province, with 7500 inhabitants. According to the statistics of the local medical centre, there have been 29 cancer cases up until 22/12/2005, including 15 cases of liver cancer, 15 of lung cancer and 5 others of breast cancer. Most of the patients live in Hong Ky and Vu Ky hamlets.

In 2002, the people's committee of the village sent the 08/TT-UB statement, signed by the commune chairman Nguyễn Khắc Công, to most offices and departments in Nghe An province to report a number of deaths presumably due to cancer. On the receipt of the statement, the people's committee of Nghe An province directs competent authorities to inspect the issue. Initial investigation shows that the soil and water sources in the two villages is heavily polluted. People living in the two villages mostly use wells, with a depth of 7m. In Mr. Phan Thanh Hoanh's house, the well is 7m deep, providing visually crystal clear water, but the smell is very uncomfortable. Mr Hoanh said that in rainy days, the water turns yellow and the strong smell spreads.

As far as our research goes, the water source of the two village Hong Ky and Vu Ky is seriously polluted due to the use of DDT and 666 chemical by some organisations to kill insects. When these organisations left, they did not treat the chemical substances fairly, letting them be absorbed into water sources and causing severe water pollution for nearly 1400 people of the two villages Hong Ky and Vu Ky. This is probably the cause of the cancer cases. When asked, the poor people living there do know that the water source in their neighborhood is heavily polluted, but they do not have enough money to build a rain water tank, and therefore have no choice but to consume polluted water at the expense of their own lives.

### 2. Investigating the Causes of "Cancer Village"

At the forum of environmental health by the Ministry of Natural Resources and Environment and the Ministry of Health in Hanoi 25/10, the deputy Minister of Natural Resources and Environment Pham Khoi Nguyen, confirmed: "The recent emergence of some ["cancer villages"](#) in Phu Tho, Hai Phong, Ha Tay, Nghe An [...], are a worrying sign and have exposed a potential risk related to

health and the environment”.

According to some specialists, there are nearly 200.000 new cases of cancer each year

The main reason for the enormous increase of cancer cases is the serious degradation of the environment. Initial investigation in Thach Son (Lam Thao, Phu Tho) shows that many indicators of harmful substances such as arsenic, ammonia, and manganese exceed the permitted level, while the soil is contaminated with heavy metals such as copper, lead, and zinc.

During 1991-2005, there was a total of 106 people in Thach Son commune suffering from cancer. The number of people who died of cancer accounted for 34.86% of the total mortality rate. Among them were nine families in which both husband and wife died of cancer. In 7 other families, both parents and children died of cancer. Currently, the Ministry of Health is implementing an investigation of the cause of the "cancer village".

*(Source: Thanh nien)*

Discussion:

Divide students into three groups and have each group define:

1. What is the relationship between environmental issues and human rights mentioned in the articles? Can you point out the link to violated rights?
2. Identify the entities violating the rights.
3. Identify the cause for the rights of individuals, citizens and community being violated.
4. Is there any way to use human rights stipulated in the constitutions, national and international laws to address the environmental issues mentioned in the article?

#### **D. IN – DEPTH DISCUSSION (Class Discussion)**

1. In your opinion, is access to the right of environmental protection one of the best solutions for environmental protection in our nation? Why and why not?

2. In your experience, what difficulties and what obstacles may you face when you rely on human rights to protect environment? Why?

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### Vietnamese

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## Module 3

### INTERNATIONAL AND NATIONAL LAWS ON HUMAN RIGHTS TO ENVIRONMENT

#### OBJECTIVES

*After the completion of this lesson, the participants should be able to:*

- + Understand the international standards on human rights to environment
- + Understand the Vietnamese legal system on human rights to environment
- + Identify gaps and shortcomings in the regulations of Vietnamese laws and supplement suggestions for solutions.

#### MAJOR MESSAGES

1. Treaties and international agreements on human rights and environment adopted by United Nations are used as a legal basis to protect the safety, life, and healthy living environments of every human being.
2. Many policies and laws on human rights and environment have been adopting, but the enforcement of these documents are weak.
3. The shortcomings in terms of policies and laws need to be identified and overcome in order to protect the right to live in clean environment for every human being.



## **BASIC CONTENTS**

### **I. International Legal on Human Rights to Environment**

- 1. Overview of international laws on human rights to environment*
- 2. International provisions of human rights to environment*
- 3. National responsibility to protect the human rights to environment*

### **II. Vietnam's Laws on Human Rights to Environment**

- 1. Overview of Vietnamese laws on human rights to environment*
- 2. The provisions of Vietnam's laws on human rights in the relation to environment*
- 3. Issues to be addressed regarding improving the laws on human rights relating to environment protection in Vietnam today*

## **A. WARM UP**

### **Question:**

Please list some human rights to the environment and in your opinion, how are these rights guaranteed in practice in Vietnam?

## **B. LECTURE CONTENTS**

### **I. INTERNATIONAL LAW ON HUMAN RIGHTS TO THE ENVIRONMENT**

#### **1. Overview of International Law on Human Rights to the Environment**

Since its foundation, with joint efforts in maintaining peace and security, and protection of human rights and environment, the United Nations as well as the world community have adopted a series of international human rights documents linking the protection of human rights and environment.

##### ***(a) The International Instruments on Human Rights Relating to Environment***

*i) Universal Declaration of Human Rights in 1948.* This is the international instrument recognised as international customary law. This instrument refers to a range of basic rights and freedoms of human beings on civil, political, economic, social, and cultural areas. The declaration recognises the basic rights of human beings, from the right to life to the standard of living adequately in terms of health and prosperity, which includes the rights to food, housing, health care, etc.

*ii) The Geneva Conventions in 1949 and additional protocols.* The Geneva Convention on August 12, 1949, on the treatment of prisoners of war (Convention III) and the convention on the protection of civilians in war (Convention IV) was adopted by the plenipotentiaries of Governments at the diplomatic conference in Geneva with two additional protocols afterwards, including Protocol I (1977) and Protocol II (1977). These instruments involve many regulations related to protecting the rights of war prisoners and civilians to the access of safe food, clean water and sanitation.

*iii) The International Covenant on Economic, Social and Cultural Rights and The International Covenant on Civil and Political Rights in 1966.* These two conventions were adopted by the UN General Assembly in 1966,

along with the Declaration of Human Rights in 1948, which made up the international law on human rights. These two conventions ensure a range of human rights, civil and political rights including the protection of rights to life, freedom, equality and dignity, and economic, social, cultural rights which protect rights to health, sanitation, food, access to clean water, etc.

*iv) Declaration on the right to development in 1985.* This Declaration affirmed that the right to development is common and inalienable, an essential part of human rights, thus, nations should make commitments and applications of necessary measures to realize the right to development, and ensure equality of opportunity for all people in accessing basic resources. In the interpretation of this provision, the General Assembly clarified and reaffirmed in Resolution 54/175 that “the rights to food and clean water are fundamental human rights and their promotion constitutes a moral imperative both for national Governments and for international community<sup>23</sup>”.

*v) Other basic human rights treaties:* the Convention on the Elimination of All Forms of Racial Discrimination 1965, the Convention on the Elimination of All Forms of Discrimination against Women in 1979, the International Convention on child rights in 1989, the Convention on the protection of the rights of migrant workers and members of their family in 1990, and the Convention on the Rights of Persons with Disabilities in 2006. These are basic human rights instruments adopted by the UN. The contents of these documents contain terms related to the protection of human rights to environment, such as the right to life, right to health, right to food, etc.

### ***b) The International Instruments on Environment Related to Human Rights***

*i) Stockholm Declaration in 1972.* This is the first environmental document acknowledging that environment falls under human rights. Principle 1 recognizes human rights and fundamental freedoms, equality and adequate conditions of life, an equal environment for life in dignity and prosperity; and that every person should have the responsibility to protect and continuously improve the environment for present and future generations. Principle 2 also recognizes that natural resources, including air, water, soil, plants, and certain animals, should be protected for the benefit of not only the present generation, but also future generations.

*ii) Mar del Plata Action Plan<sup>24</sup>.* This document acknowledges that water is a human right, declaring that every person should have equal access to drinking water in sufficient quantity and quality to meet the basic needs of man. The first goal of this conference was to launch the International Decade of

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<sup>23</sup> Art 10, (I) Vienna Declaration, 1993

<sup>24</sup> Adopted at the Water Conference, Mar Del 1977

sanitation and drinking water supply (1980 - 1990) with the slogan “water and sanitation for everyone”.

*iii) World Summit on Children in 1990.* This action plan called for cooperation at national and international levels, to achieve global access to clean drinking water and sanitary facilities for the survival, protection, and development of children till 2000 in all nations.

*iv) Dublin Declaration in 1992.* Principle 4 of the Conference on Water for the implementation of sustainable development in 1992 reaffirmed the human right to water. It is essential to implement the fundamental rights of all people to have access to clean water and sanitation, at reasonable prices.

*v) The Rio Declaration on Environment and Development and Agenda 21* were adopted at the UN Conference on Environment and Development in 1992. This was the second world conference on environment and development. This conference continued to reaffirm that environment is part of human rights, adopting the principles and procedures that link human rights to environment.

*vi) Other international instruments.* Apart from the above documents, the international community also organised many international conferences such as International Conference on Population and Development in 1994; the World Summit on Social Development 1995; International Conference on Water and Sustainable Development in 1998; The Hague Ministerial Declaration on Water Security in the 21st century; Resolution 2002/6 of the UN Sub-Committee on the promotion and protection of human rights to promote the realisation of the right to drinking water in 2002; the World Summit on Sustainable Development in 2002, etc. These conferences reaffirmed the link between protection of human rights with environmental protection, including the right to life, right to health, access to water, etc.

Along with the global international instruments, there are many regional documents linking human rights with environment, such as the African Charter on human rights and the rights of ethnic groups in 1981; Additional Protocol to the American Convention on Human Rights in the area of economic, social, and cultural rights (Sal Salvador Protocol 1998); the African Charter on the Rights and Welfare of Children in 1990; The Protocol on Water and Health to The UN ECE Convention on the Protection and Use of Transboundary Waters and international channels, lakes in 1990, The UN Economic Commission for Europe (UNECE), etc.

## **2. The Contents of the Provisions of International Human Rights Instruments for the Environment**

### ***2.1 The substantive Rights***

### *a) Right to life*

According to international standards of human rights, the right to life is the fundamental, supreme and most essential of human beings which is not allowed to be violated under any circumstances; even in emergencies threatening the fate of nations and peoples, the State is obliged to ensure the right to life for every person.

The right to life is regulated and ensured in a variety of international human rights instruments. Most notably in the Universal Declaration of Human Rights in 1948 and the International Covenant on Civil, political rights in 1966.

To protect the inherent right to life, nations and international communities should be fully aware that war and violence on a large scale is the direct cause of the deaths of thousands of innocent people every year. So, wars must be prevented and limited; action must be taken against arbitrary deprivation of human lives within each nation; forced disappearance must be prevented and the application of the death penalty<sup>25</sup> should be limited. At the same time, the use of weapons of mass destruction must be prohibited. The production, testing, stockpiling, deployment and use of nuclear weapons should be prohibited and considered a crime against humanity.

Due to the development of increasingly powerful technology and the declining quality and impact on the environment, ecology, and climate change which negatively impact human rights, the comprehension of the concept of right to life has been expanded and developed to include the right to live in a healthy environment. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters is the first regional international instrument that recognizes the right to live in a healthy environment. In the preamble, the convention recalled a number of documents issued before, and recognised: “protecting the environment properly is essential for mankind's happiness and enjoyment of human fundamental rights, including the right to life”, and “also recognizes that everyone has the right to live in an environment adequate for health and happiness of themselves, and obligations in terms of both individual and collective, it has to protect and promote the environment for the benefits of the current and the future generations”.

The Human Rights Commission explained the phrase "inherent right to life" by expanding and developing the comprehension, so it should not only be understood in the narrow sense of only against arbitrary deprivation of human lives, but also that the protection of these rights requires States to adopt more proactive measures to sustain the lives of everyone, including the right to health and right to live in a healthy environment. Nations should take all possible

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measures to reduce mortality in children, increase life expectancy, and especially take measures to eliminate malnutrition and epidemics.<sup>26</sup>

*b) The Right to Adequate Food and Foodstuff*

Article 11 of the International Convention on economic, social, and cultural rights in 1966 stipulates: “States Parties recognize the right of everyone to have adequate standard of living for themselves and their families, including the right to adequate food, foodstuff, clothing, housing and continuous improvement of living conditions”.

According to the Committee on economic, social, and cultural rights, the right to minimum food and foodstuff means that everyone, male or female, adult or child, alone or together with other individuals in a community, at any time, must be provided with or have enough money to buy minimal food and foodstuff. This right should not be interpreted in a narrow sense to mean a minimum amount of energy, protein, and specific nutrients, but also to imply safe food containing no harmful substances. Nations are obliged to implement the key measures needed to reduce and eradicate poverty as defined in Clause 2, Article 11, even in times of natural disasters or other catastrophes.

- *The concept of adequate/minimum* is determined by common economic, social, cultural, climatic, ecological and other conditions. According to the Committee, the right to adequate food and foodstuff implicates available supply of food and foodstuff in terms of both quantity and quality sufficient to satisfy the dietary needs of individuals. The food and foodstuff must be non-toxic and acceptable in certain cultures.

- *The concept of availability* refers to the ability to be self-sufficient or obtain a food and foodstuff supply from farming activities, or to access to distribution systems that bring food and foodstuff from production places to places in need.

- *Accessibility* covers two meanings: physical accessibility and economic accessibility.

- Physical accessibility implicates that everyone can have access to adequate food and foodstuff, including groups of vulnerable people in society.

- Economic accessibility implicates that financial costs for all individuals and families to buy food and foodstuff to meet basic needs should be reasonable, particularly for vulnerable social groups.

- *Non toxic*: set requirements for foodstuff safety and other preventive measures from the State and private sectors to prevent infectious diseases

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<sup>26</sup> General Comment No. 6, Right to life

caused by poor environmental hygiene or improper performance of processes in different stages of food and foodstuff production lines; Toxic substances raised naturally in food, foodstuff should also be identified, prevented, or eliminated.

*c) The Right to the Highest Possible Level of Health*

Health is a fundamental human right, indispensable for the implementation of other rights. Everyone is entitled to the highest possible level of health in order to live a life with dignity.

Right to health is stipulated in various international instruments on human rights; Article 25, Clause 1 of the Universal Declaration of Human Rights 1948 and Article 12 of the International Covenant on Economic, Social, and Cultural Rights 1966.

In addition, the right to health is also recognised in Article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination in 1965; Article 11 (1, f) and Article 12 of the Convention on the Elimination of all forms of discrimination against women in 1979, and Article 24 of the Convention on the Rights of Children in 1989.

The right to health is closely related to and dependent on the implementation and realisation of the fundamental human rights that have been stipulated in the international human rights law, including the rights to food, housing, jobs, education, dignity, and life, without discrimination and with equality, prohibition of torture, privacy protection, access to information, and the rights to freedom of association, meetings, and movement. These rights and other fundamental freedoms constitute the right to health.

According to the World Health Organization: “Health is a state with complete physical, mental and social happiness, and not merely a disease or illness”.<sup>27</sup>

The Commission for economic, social, and cultural rights explains the contents of the right to health as follows:

- The right to health not is only understood as the right to be healthy, but also includes freedoms and privileges/entitlements. These freedoms include the right to autonomy of body and health, as well as sexual and reproductive freedoms. The freedoms are not intervened by means such as torture or corporal punishment, and are not used in research and scientific experiments without consent. In contrast, the right includes the right to equal access of health care systems, to achieve the highest possible level of health.

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<sup>27</sup> Charter of the World Health Organization 1948

- The concept of "attaining the highest possible level of health" refers to the biological, economic, and social premise of each individual, and the available resources of the nation. The genetic factors, bad health history, unhealthy lifestyle, or etc., is out of the State's obligations. Therefore, the right to health must be understood as the right to benefit from the facilities, goods, services, and conditions necessary to achieve the highest possible level of health.

- Article 12 (1) of the Convention states that "the highest attainable standard of physical and mental health" is not limited to the right to health care alone. Conversely, the right to health as expressed in Article 12 (2) shows that this right covers a wide range of socio-economic factors, which promote conditions of healthy life, and extends to the fundamental factors determining the health of a person such as food, foodstuff, and nutrition, housing, access to clean water, proper sanitation, safe and hygiene working conditions, and good environment for health.

And so, the Commission explained: the right to health care, provided in Article 12.1 as a general right, is not only related to timely and appropriately health care but also to the basic determinants of health, such as access to clean and drinking water, standard sanitation conditions, prohibition of adequate and safe food, nutrition and housing, healthy working conditions and environment, and access to education and information relating to health, including sexual health and reproductive health. Another important aspect is the public participation in decision-making processes related to health in communities, and at national and international levels.

The application and implementation of the right to health depends on the specific conditions in each nation.

- *Ensuring availability*: Health care facilities and public health, types of goods and services as well as other health programmes should be ready and sufficient in quantity. The major factors to ensure the right to health are: ensuring clean drinkable water; sanitation facilities are eligible for use; hospitals, clinics and other facilities related to health care are provided, etc.

- *Accessibility*: health care facilities and goods and services must be accessible to everyone without discrimination.

+ Ensure real access: health services and the determinants of health such as clean water and standard sanitation facilities should be located in accessible areas, including rural areas.

+ Ensure economic access: it may satisfy the average income of the people, not too high for affordability.



- *Acceptability*: all health care services and goods must respect medical ethics and be consistent with the cultures of individuals and communities.

- *Quality*: health care facilities, goods, and services must be conformable scientifically, medically, and be of good quality. This entails neither prescribed nor expired drugs, good medical equipment, safe drinkable water, and adequate sanitation.

Improvement of all aspects of environmental sanitation and industrial hygiene as stipulated in Article 12 (2) (b) include taking measures to prevent diseases and occupational accidents, ensure safe drinkable water supply and basic sanitation conditions, and prevent and minimize the circumstances in which people are exposed to toxic substances such as radiation substances, harmful chemicals, or other detrimental environmental conditions which directly or indirectly affect human health.

#### *d) The Right of Access to Water*

The right of access to water ensures that everyone has access to an adequate water supply, which is safe, acceptable and affordable for the lives of individuals and families. An adequate water supply is a necessary condition for combating the risk of death due to infection of water supply, reducing the risk of water-related diseases, providing water for consumption, cooking, as well as for the needs of personal hygiene and households.

The right of access to water is stipulated in various international instruments on human rights. Article 5 (2) Convention on the Elimination of All Forms of Discrimination against Women 1979 regulates: The Member States should ensure women's right to enjoy adequate living conditions, including the right of access to water sources. Article 24 (2) International Convention on the rights of children in 1989 states:

States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (E) anti-disease and malnutrition, included within the framework of primary health care, for example through the application of available technology and by providing adequate food, nutrition, and clean drinking water, taking into account the risk of environmental pollution.

Many other international treaties have such provisions, such as the articles 20, 26, 29 and 46 of the Geneva Convention in 1949 on the protection of civilians in war; Articles 54 and 55 of Additional Protocol I in 1977; Articles 5 and 14 of Additional Protocol II in 1977; in the Introduction of Programme of Action adopted at the UN Conference on Water; Agenda 21, paragraphs 18-47; Report of the UN Conference on Environment and Development; Dublin Statement on Water and Sustainable Development, International Conference on Water and Environment; etc.

Water is essential to ensure many rights recognised in international treaties on human rights. E.g. water is needed for food processing (the right to food and foodstuff (Article 11, Clause 1, the International Convention on the economic, social and cultural rights), to ensure environmental sanitation (right to health, enjoy the highest possible level of health (Article 11, Clause 1), and to maintain life (the right to work, enjoy cultural activities, participation in cultural activities).

#### Contents of Standards on Access to Water

- The right of access to water includes freedoms and permissions. These freedoms include the freedom of access to existing water supplies; no interference with access to such water supplies. For example, water sources are not arbitrarily cut off or contaminated. The permission includes the right of access to water supply systems and supply management, and equal opportunities for people to enjoy access to water.

- Under Article 11, Clause 1 and 12 of the International Convention on economic, social, and cultural rights, elements of the right of access to water must be consistent with human dignity, life and human health. Therefore, access to water should not be construed in a narrow sense as provided in sufficient volume and engineering, but this implies that water must be regarded as a form of social and cultural good rather than merely an economic commodity. Ways of enjoying access to water must also ensure sustainability in order to preserve water sources for future generations.

The Commission for the economic, social, and cultural rights supposed that the ability to supply water to people is different depending on the conditions of each nation, however the following criteria should be applied:

- *Ensuring availability*: The supply of water for people should be sustained and sufficient for the needs of individuals and families. These needs, first of all, include drinking water, water for personal hygiene, washing clothes, and cooking and cleaning for the family. Water supply for each person must conform to the guidelines of the World Health Organisation.

- *Quality assurance*: The water used for each individual and family must be safe, not containing nutrients or chemical compounds dangerous to human health. Furthermore, water for individuals and families should have acceptable color, smell, and taste.

- *Accessibility*. Everyone, without any discrimination, under the laws of member states, should have access to water, water services, and water conditions. Accessibility has four aspects:

+ *Direct access*. Water, water services, and water conditions must ensure safety for all population groups. Adequate safe and acceptable water

should be sent to every household, school, office and other facilities. All water equipment and water services must be large enough in quantity, culturally acceptable, and in accordance with the requirements of gender, age, and privacy. Physical security should not be threatened during access to the water facilities and services.

+ *Economic access*: water, water conditions, and water services should be affordable to all people. The costs, direct and indirect prices, related to safe water must be affordable and not harmful to or threaten the enjoyment of other rights recognised in the Convention.

+ *Non-discrimination*: water, water conditions, and water services should be accessible to everyone, including vulnerable and social marginalised groups, practically and lawfully, with no discrimination based on any reasons.  
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+ *Access to information*: this approach includes the right to seek, receive and disseminate information related to water issues.

## ***2.2 The Procedural Rights***

### ***a) The Right of Access to Environmental Information***

The right of access to information is one of three basic rights mentioned in Principle 10 of the Rio Declaration, 1992, and was reaffirmed at the Summit on Sustainable Development in Johannesburg in 2002. Only if the right of access to information of the public is secured can the State mobilise broad participation of people in the environmental protection. The public participation is a decisive factor in the success of environmental protection and sustainable development for the nation.

Principle 10 stated the importance of the right of public access to environmental information, public participation in environmental decision-making, and access to justice. In 2002, the nations of the world reaffirmed the commitment to this principle at the World Summit on Sustainable Development in Johannesburg.

In 1998, at the Fourth Ministerial Meeting on "Environment for Europe" in the city of Aarhus, The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) were signed with the participation of 39 nations and the European Community. The objective of the Convention is to "contribute to the protection of the rights of people of all generations present

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<sup>28</sup> See General Comment No. 15

and future lives in an environment appropriate to their health and their welfare".

Access to environmental information is provided for in Article 4 and Article 5 of the Convention, under which:

(a) The rights of the public to ask to be provided with information that the competent authorities have (and thus competent authorities have to provide information) (element "passive" or "reactive");

(b) The obligation of competent authorities is to collect, sort, process, and disseminate information proactively. Along with the above factor, these two factors are fundamental and complementary to each other in a mode of accessing information effectively.

Passively, to meet the requirements of the convention, the competent authorities must provide the environmental information within one month (two months for special cases) after the request and are not allowed to ask persons in need to explain their need for such information. Obviously, there are cases where the information can not be provided do to reasons such as lack of information, too generic of a request, the information is protected as trade secret with intellectual property rights, etc. The competent authorities may require payment for providing information on a reasonable basis.

Actively, competent authorities have the responsibility to collect and update information, so that the information is transparent and accessible, and actively disseminate certain types of information; for example, in publishing reports on environmental status, the gap between announcements should not be more than four years. In the event of imminent threat to health or the environment (after a nuclear or chemical accident, for example), information must be provided immediately.

#### *b) The Right to Participate*

Principle 10 adopted at the World Summit on Environment and Development in 1992 emphasized that: "Environmental issues must be resolved in the best way with the participation of all relevant personnel, at appropriate level".

Agenda 21 also calls on governments and policy makers to establish administrative and judicial procedures to restore law and adjust actions affecting the environment (illegal actions or violations of rights under the law), and provide access to individuals, groups, and organisations with the recognised legal benefit.

Clause 2 of Article 6 of the Aarhus Convention stipulates the public participation in decisions pertaining to specific environment activities. Clause 3

provides specific procedures for public participation with a reasonable time frame for different phases for the public to prepare and participate effectively during the environmental decision making process.

Article 7 stipulates the public participation in plans, programmes and policies related to environment. And Article 8 regulates the public participation in the preparatory process to revise laws or legal documents of legal bindingness which may be of general application.

*c) The Right of Access to Justice*

The right of access to justice is described in Principle 13 of the Rio Declaration, 1992. Accordingly, nations should draft a national law on liability and compensation for victims of pollution and other environmental hazards. The nations also need to cooperate in a more expeditious and determined way to further develop national law on liability and compensation for environmental harm caused by activities from within their authority or control to areas outside their jurisdiction.

Article 9 of Aarhus Convention stipulates: Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law. The final decision of the independent agencies will be binding on authorities keeping the information.

### **3. National Responsibilities in the Protection of Human Rights to the Environment**

As a signatory to international treaties on human rights and international treaties on the environment, the Member States shall have political, moral, and legal responsibilities to realise these rights.

These obligations include general legal obligations and specific legal obligations.

*a) General Legal Obligations*

Transform the international regulations on national legislation and to carry out any effective legislative, administrative, judicial, and other measures to ensure that international commitments are fully implemented in practice. The other measures mean that states must develop national programmes and targets to implement their commitments.

In the field of ensuring rights to the environment, the general legal obligation of the State is represented in each right and at each level specifically, and should be immediately implemented; and some obligations are gradually implemented. For example, when exercising the right to health at the highest possible level, this right must be implemented immediately without any discrimination (Article 2 (2)) and the obligations of performing measures (Article 2) (1) towards the realisation of Article 12 must be addressed thoroughly. These measures must be detailed, specific, and aim to fully realise the right to health.

For States' general legal obligations in implementing the right of access to water: despite of the fact that the process of implementation this right depends on the resources of each nation, under the provisions of the convention, State Parties are obliged to carry it out immediately, and ensure the implementation of this right without any discrimination based on any reasons (Article 2) (2) and the implementation of the obligations of performing measures Article 11 (1) and Article 12 (2). These measures must be specific enough and aim to fully realise the right of access to water.

*b) The Specific Legal Obligations*

- *The obligation to respect:* respect the right to request member states not to intervene directly or indirectly in the enjoyment of human rights.

For example, respecting the right of access to water. The State should not be involved in any actions that prevent or limit the right to equal access of water, and do not interfere arbitrarily in the water distribution mechanism customarily or traditionally; therefore they do not cut the supply or contaminate water illegally, such as for the discharge of State enterprises, the use and experiments of weapons which contaminate water sources, and do not limit the access of water or take any actions leading to destruction of sources, services, and infrastructure of water as a punishment in the armed conflict.

- *The obligation to protect:* This obligation requires the State to prevent and apply suitable punishments for anyone who violates a person's human rights; preventing, in a timely manner, anyone from intervening in the enjoyment of human rights.

For example, for the State's obligation to protect the right of access to water, the State must have legal, administrative, and even criminal measures to deal with individuals, groups, companies, groups, etc., who cause water pollution, deny equality in access to clean water, or violate the rights of individuals with access to water. In areas where water supply systems appear (water tanks, rivers, wells, etc.), and are operated and controlled by State or private subjects, nations must prevent harm to the principles of equal, acceptable, and accessible access to water sources adequately and safely.

- *The obligation to implement*: this obligation requires the State to gradually build programmes and policies for gradual realisation of human rights.

For example, to ensure the right of access to water, the State must take proactive measures such as building strategic and comprehensive programmes to ensure a sufficient supply of clean water not only for the present generation but also for the future generations:

- Minimize the depletion of water resources due to overexploitation, waste, or construction of dams; eliminate the pollution of river basins and water-related ecosystems caused by radioactive impurities, toxic chemicals, and human waste; adjust the water reserves; ensure that development achievements are not exchanged with the lack of clean water sources; reduce water losses during distribution; build a mechanism to respond to emergency situations; etc.

Additionally, the State must implement other obligations: actively invest in water supply equipment; educate people about equality in access to water; support individuals and communities in access to water; supply water for certain individuals or groups who have no water due to reasons beyond their control (e.g. those who are unable to pay for water services); ensure the affordability of water for the people; apply and use low-cost water supply technology and techniques; adopt policies to provide free, cheap and suitable water, etc.

## **II. VIETNAM LAW ON HUMAN RIGHTS RELATING TO ENVIRONMENT**

### **1. Overview of Vietnam Legal System on Human Rights to Environment**

Being aware of the importance of environmental issues and the ecosystem, the Vietnam Communist Party and State have issued many decrees and resolutions and a series of legal documents relating to environmental protection and human rights. First of all, was the Decree No. 36-CT/TW dated on 25 June 1998 of the Politburo on strengthening environmental protection in the period of industrialisation and modernisation of the country, and followed by Resolution no. 41-NQ/TW dated on 15 November 2004 of the Politburo on environmental protection during period of promotion of industrialisation and modernisation of the country.

Along with the documents issued by the Party, the National Assembly, the Government, and other State agencies have issued and passed many specific documents relating to environmental protection and natural resources.

#### *a) Specific legal documents on environment relating to human rights*

- *Law on Environmental protection in 2005*. This is the most important law on environmental protection. This law stipulates on environmental protection activities, policies, measures, and resources for environmental protection, rights and obligations of organisations, households, and individuals in environmental protection. Notably, environmental standards, assessment of impact on environment, environmental protection in production, trade, services, protection of marine environment, river and water resources, waste management, prevention and response to environmental accidents, dealing with pollution, environmental restore, human rights relating to access to information about environment, rights of complaints, denunciations, and compensation on environmental damages are provided in this law.

- *Law on Water resources in 1998*<sup>29</sup>. This law stipulates that water is a resource belonging to the ownership of the people under the State's unified management. Organisations and individuals are entitled to exploit and use water resources for life and production, and are simultaneously responsible for protecting water resources, prevention, resistance, and repair damaging consequences caused by water in accordance with law. The State protects the legitimate interests of organisations and individuals in the exploitation and use of water resources. The rights and obligations of organisations and individuals in exploitation and use of water resources are also specified in this law.

- *Law on Biodiversity in 2008*. This law stipulates the conservation and sustainable development of biodiversity; rights and obligations of organisations, households, and individuals in the conservation and the sustainable development of biodiversity.

- *Law on Atomic energy in 2008*. This law stipulates the activities in the area of atomic energy and ensures safety and security in those activities. Information regulation, providing information to the public about nuclear power plants (about the safety state of nuclear power plants for local people living in the vicinity of a nuclear power plant, radiation incidents, and nuclear emergencies), is regulated in the law with the principle of timely and honest guaranty to the people nearby. The law also regulates emergency response and compensation for damage related to radiation or nuclear activity.

- *Law on Minerals in 2010*. This law stipulates the basic geological survey of mineral resources; protection of untapped minerals, exploration and exploitation of minerals, the State management of minerals within the scope of mainland, islands, internal water, territorial sea, contiguous zone to territorial sea, exclusive economic zone, and continental shelf of the Socialist Republic of

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<sup>29</sup> This law is being amended, supplemented and expected to submit to National Assembly to pass in 13th National Assembly.



Vietnam. Regulations relating to environmental protection, land use, and water use are also in this law.

In addition, the National Assembly also adopted a variety of relevant laws such as the Law on land, Law on forest protection and development, Law on fishery, Law on petroleum and gas, Law on tax for environmental protection, Law on tax on natural resources, Law on economical and efficient use of energy, Law on tourism, Law on cultural heritage, etc.

*b) Documents with regulations on human rights relating to environment*

- *The 1992 Constitution (revised in 2001)*. Chapter V of the constitution provides a series of basic rights and obligations of citizens, including the right to healthcare; obligation of prevention of hygiene and public hygiene; citizens have the right to physical inviolability and to have their lives, health, honour, and dignity protected by the law, freedoms of speech and press, to receive information, to complaints or denunciations, etc.

Apart from the regulations of the constitution, many promulgated legal documents have regulations on protection of human rights relating to the environment and ecosystems, such as the Law on people's health protection, Law on examination and treatment, Law on protection of the rights of consumers, Law on foodstuff safety, Law on prevention and control to infectious diseases, Law on quality of product and goods, Law on fire prevention and fighting, Law on pharmacy, etc.

On the basis of legal documents, the Government has promulgated hundreds of law documents and integrated environmental protection into socio-economic programmes. In recent years, the Government of Vietnam has adopted many strategies such as the Comprehensive Strategy for Growth and Hunger Eradication and Poverty Reduction (2002), Strategy for National Environmental Protection (2003), and Strategic Orientation for Sustainable Development in Vietnam also known as Vietnam's 21<sup>st</sup> Agenda (2004), National Strategy on Rural Clean Water Supply and Sanitation until 2020, etc.

However, Vietnam is now facing big challenges relating to natural resources and environment issues. The indiscriminate exploitation, without planning, of natural resources such as forest, land, water, minerals, fisheries, etc., have depleted and degraded these resources, harming the environment and directly influencing the enjoyment of human rights. Although this has been partially limited, the environmental pollution continues to become more serious, and some places are suffering critical consequences.

## **2. Contents of Regulations of Vietnam Law on Human Rights Relating to the Environment**

### ***2.1 Substantive Rights***

### *a) Right to life and living in a healthy environment*

The right to life is a fundamental and important right of each individual and citizen, recognised and protected by the constitution and laws of Vietnam. Article 71 of the 1992 Constitution stipulates: citizens have the right to physical inviolability and to have their lives, health, honour, and dignity protected by the law. Article 32 of the Civil Code in 2005 also stipulates: Individuals have the right to have safety of life, health, and body ensured. Penal Code in 1999 has a specific chapter, the 12<sup>th</sup> chapter, which stipulates crimes on infringing upon human life, health, honor, and dignity, with severe penalties; in some cases a possible death penalty.

However, through studying the current regulations of the laws on ensuring the right to life of individuals, it is found that the comprehension of the concept “right to life” is still understood in a narrow sense, which is to not infringe upon life or body; in a broader sense, it means the right to live in a healthy environment.

Although there are no specific provisions of laws, or the interpretation of competent authorities about the concept of right to life, in reality the right to live in a healthy environment is protected through a variety of laws and law documents relating to the application of environmental standards in Vietnam.

Article 10 of Law on environmental protection in 2005 stipulates the standard system of national environment including: surrounding environment standards (regarding land, surface and underground water, seawater, urban air, rural areas, sound, and light and radiation in residential areas and public places) and waste standards (regarding industrial and service sewage, wastewater from cattle-breeding and aquaculture, living wastewater, industrial exhaust and exhaust from equipment used for handling, disposal of living, industrial, medical waste and other forms of waste treatment, exhaust from means of transport, machinery, and specialized equipments, hazardous waste, noise and vibration from means of transport, manufacture, business and services facilities, and construction activities).

Articles 11, 12 of the Law on environmental protection stipulates standard requirements of quality for surrounding environment and standards of waste. Apart from regulations of the Law on environment protection, the Ministry of Science and Technology have already issued a series of Vietnam standards relating to air quality, such as QCVN 08:2008: National technical standard regulations on quality of water surface, QCVN 10:2008: National technical standard regulations on quality of coastal water, QCVN 05:2009: National technical standard regulations on quality of ambient air, QCVN 06:2009: National technical standard regulations on air quality - permitted maximum concentrations of some hazardous substances in ambient air, QCVN 24:2009: National technical standard regulations on industrial wastewater, TCVN 5939-2005: Quality of air - industrial exhaust standards for dust and

inorganic substances - permitted maximum concentrations of certain hazardous substances in ambient air, TCVN 5939:2005: Air quality - industrial exhaust standards for dust and inorganic substances, and TCVN 5940:2005: Air quality - Industrial exhaust standards for some organic substances.

*b) The right to the highest standard on environmental health*

As well as ensuring the right to live in a healthy environment, there are currently no law regulations on ensuring the right to the highest standard on environmental health. However, the right to be entitled to health care is recognised by the constitution and the laws of Vietnam.

Article 61 of the 1992 Constitution stipulates that: citizens are entitled to health care. The State determines provisions on hospital fees as well as exemption from or reduction of hospital fees. Citizens have the obligation to comply with regulations on disease prevention and public hygiene.

In 1989, the National Assembly promulgated the Law on the people's health protection and care. Accordingly, health protection and care is both the right and the obligation of citizens. Article 1 stipulates that:

(1) Citizens have the right to health protection, rest, recreation, and physical exercise, are guaranteed labor hygiene, nutritious hygiene, and living environmental sanitation, and are served with professional medical knowledge

(2) Health protection is the cause of the entire population. All citizens are obliged to strictly implement the regulations of the law on the health protection of the people to keep their own good health, as well as everyone else's.

Chapter 2 regulates living and labor hygiene, public hygiene, disease prevention, and control. Articles 6 to 18 specify the regulations on: hygiene education food hygiene, drinks and wine; water sanitation and water sources used in the daily life of people; sanitation in production, storage, transport, and use of chemicals; waste sanitation in industry and in daily life; hygiene in raising livestock and poultry; hygiene in construction; sanitation in schools and kindergartens; labor hygiene; sanitation in public places; sanitation in works of lying in state, mummifying, burying, and moving corpses or remains of the dead; prevention and control against infectious diseases, epidemics; epidemics control.

Relating to hygienic measures for disease prevention, Article 62 of the Law on health examination and treatment in 2009 also stipulates the responsibilities of health care facilities to take measures to control infection within the health care facility; handling of medical waste in accordance with the provisions of the law on the environment (Article 63).

To protect and improve human health, the Law on prevention and control of infectious diseases in 2007 also stipulates hygiene measures to prevent infectious diseases at the national educational institutions; sanitation in supplying clean water and sanitation in living water sources; sanitation in raising, transport, slaughter, and destruction of livestock, poultry, and other animals; sanitation in foodstuff safety; sanitation in construction; sanitation **in works of lying in state, mummifying, burying, and moving corpses or remains of the dead**. Other relevant regulations to prevent infectious diseases include border medical epidemic control, anti-epidemic, and conditions to ensure prevention and control of human infectious diseases.

*c) Rights to safe foodstuff*

Safe foodstuff is food unharmed to human health and life. This is one of the most important rights, closely related to the right to life and the right to the highest standards on environmental health. Ensuring the right to foodstuff safety, the National Assembly promulgated the Law on foodstuff safety in 2010. The law stipulates on the right and obligations of organisations and individuals in ensuring foodstuff safety.

For foodstuff consumers, Article 9 stipulates as follows:

*Foodstuff consumers have the following rights:*

(a) To be provided with truthful information about foodstuff safety, user guide, transportation, storage, preservation, selection, and use of suitable foodstuff, and to be provided with information on unsafe risks, and precaution after receiving information on foodstuff warning.

(b) To request organisations and individuals producing and trading in foodstuff to protect their rights under provisions by law.

(c) To request organisations of protection of consumer interests to protect their legitimate rights and interests in accordance with the law on the protection of consumer interests.

(d) To complain, denounce and initiate lawsuits in accordance with the law.

(d) To receive compensation in accordance with the law in cases of incidents with unsafe foodstuff.

*Foodstuff consumers have the following obligations:*

(a) Fully comply with regulations and guidance on foodstuff safety in transportation, storage, preservation, and use of the foodstuff of organisations and individuals that produce and trade foodstuff.

(b) Timely provide information when detecting risk of unsafe foodstuff, report food poisoning and foodstuff-borne diseases to the nearest people's committee, medical facilities, competent state agencies, and organisations and individuals that produce and trade foodstuff.

(c) Comply with the law on environmental protection in the process of using foodstuff.

Together with assurance by the law for foodstuff safety, the State has also established a series of national technical standard regulations relating to foodstuff safety in relevant areas<sup>30</sup>. In 2006 the National Assembly also promulgated the Law on standards and technical standard regulations, including assessment on activity of commodity products and services, the Law on quality of commodity products in 2007, etc.

#### *d) The right to water*

Water is an especially important resource, an essential component of life and the environment, also the determinant for the existence and sustainable

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<sup>30</sup> National technical standard regulations on safety conditions in foodstuff hygiene in fishery production; National technical standard regulations on foodstuff for raising; National technical standard regulations on safety conditions in foodstuff hygiene; National technical standard regulations on protection and epidemic control of foodstuff; National technical standard regulations for dairy products; National technical standard regulations on veterinary medicine;

- Circular no. 30/2010/TT-BYT dated on 2 June 2010 of Ministry of Health promulgates national technical standard regulations for liquid milk products; Circular no. 31/2010/TT-BYT dated on 2 June 2010 of Ministry of Health promulgates national technical standard regulations for powdered milk products; Circular no. 2-6-2010 32/2010/TT-BYT dated on 2 June 2010 of Ministry of Health promulgates national technical standard regulations on cheese products; Circular no. 33/2010/TT-BYT dated on 2 June 2010 of Ministry of Health promulgates national technical standard regulations for fat products; Circular no. 14 to Circular no. 28/2010/TT-BYT dated on 20 May 2010 promulgates national technical standard regulations for foodstuff additives, substances used to supplement Zinc (QCVN 3-1: 2010/BYT), Folic acid (QCVN 3-2: 2010/BYT) Iron (QCVN 3-3:2010/MOH), Calcium (QCVN 3-4:2010/MOH), Flavour enhancer (QCVN 4-1:2010/MOH), Foodstuff additive moisturizing substance (4-2 QCVN: 2010/BYT), Chemical leavening (QCVN 4-3: 2010/BYT), Anti financing (QCVN 4-4:2010/MOH), Color retention agents (QCVN 4-5:2010/MOH), antioxidants (4-6:2010/MOH, antifoaming agent (QCVN 4-7:2010/MOH), synthetic sweetener (QCVN 4-8:2010/MOH), solid substance (QCVN 4-9:2010/MOH), coloring (QCVN 4-10:2010/MOH), acid level regulator (QCVN 4-11:2010/BYT) ... Circular no. 13/2010/TT-BYT dated on 25 May 2010 guidance on management of rapid foodstuff test set; Circular no. 29/2010/TT-BNNPTNT dated on 6 May 2010 on target category and allowed limit level on safety condition in foodstuff hygiene for products originated from imported animals, domestic production and circulation; Circular no. 25/2010/TT-BNNPTNT dated on 8 April 2010 guidance on the inspection of foodstuff safety and hygiene for goods originated from imported animals.

- Decision no. 734/QD-TTG dated on 25 May 2010 of Prime Minister on promoting the implementation of policies and legislation on quality control, foodstuff hygiene and safety .... Decision no. 3089/QD-BCT dated on 14 June 2010 for the implementation of Resolution no. 34/2009/QH12 dated on 19 June 2009 of National Assembly session XII on promoting the implementation of policies and legislation on quality control, foodstuff hygiene and safety.

development of the country; conversely water can also cause disasters affecting humans and the environment. In 1999, the Law on water resources was approved by the National Assembly for the first time. The law confirms that water is national property, belonging to the ownership of the entire people under State's unified management; organisations and individuals are entitled to exploit and use water resources for living and production, simultaneously they have the duty to protect water resources, and prevent, resist, and deal with the problem of damaging consequences caused by water in accordance with the law. The State protects the legitimate interests of organisations and individuals in the exploitation and use of water resources.

Subsequently, the Government has issued a series of decrees specifying the provisions of the Law on water resources. These documents include: Decree no. 149/2004/ND-CP dated on 27 July 2004 of the Government, stipulating licensing in exploration, exploitation, and use of water resources, and discharge of wastewater into water sources; Decree no. 34/2005/ND-CP dated on 17 March 2005 of the Government, stipulating sanctioning administrative violation in the area of water resources; Decree no. 67/2003/ND-CP dated on 13 June 2003 of the Government, on protection fee of wastewater environment; Decree no. 04/2007/ND-CP dated on 08 January 2007 of the Government, on amending and supplementing some articles of Decree no. 67/2003/ND-CP on protection fee of wastewater environment.

In 2000, the Prime Minister issued Decision no. 104/2000/QĐ-TTg dated 25 August 2000, approving the national strategy on rural clean water supply and sanitation until 2020. Some of its specific goals are as follows:

- *Till 2020*: all of rural population will use clean water to the national standard with the minimum volume of 60 liters per person per day, use sanitary latrines, carry out personal hygiene well, and keep the village environment clean.

- *Till 2010*: 85% of rural population will use hygienic water with the volume of 60 liters per person per day, 70% of families and rural population use sanitary latrines and carry out personal hygiene well.

*d) Right to have a working environment with health security and safety*

The Labour Code has a separate chapter on labor safety and labor hygiene. Clause 1, Article 95 stipulates that: employers are responsible for equipping means of labor protection fully, ensuring labor safety, labor hygiene, and improving working conditions for employees. The employees must observe the regulations on labor safety, labor hygiene, and labor rules of enterprises. All organisations and individuals relating to labor production must comply with the law on labor safety, labor hygiene, and environmental protection.

Article 97 stipulates that: the employers must ensure that the working place meet the standards of space, ventilation, light, and permitted standards on dust, steam, toxic gas, radiation, electromagnetic field , heat, humidity, noise, vibration, and other harmful factors. The factors must be periodically checked and measured.

## ***2.2 Procedural rights***

*a) Right of access to information relating to environment (see more in topic 5)*

Article 69 stipulates that: citizens are entitled to freedom of speech and freedom of the press; they have the right to receive information and the right of assembly, association, and demonstration in accordance with the law.

The Law on Environmental protection in 2005 specifically stipulates the responsibility of the announcement of environmental information. According to Article 103, Law on Environmental protection 2005, organisations and individuals managing concentrated production, business, and service zones, and owners of production, business, and service establishments subject to elaboration of environmental impact assessment reports shall have to report environmental information under their management to provincial-level specialized environmental protection agencies. Production, business, and service establishments other than those mentioned in Clause 1 of this Article shall have to supply environmental information relating to their activities to district-level specialized environmental protection agencies or commune-level environmental protection officials of the places where they operate, and make public environmental information among local communities. Specialised environmental protection agencies at all levels (organised under Article 123 of the Law on Environmental protection 2005) shall have to report environmental information of their localities to their immediate superior agencies and publish essential environmental information on a periodical basis or upon request.

*b) Right to receive education about human rights and environment*

Constitution 1992, Law on Education and many other legal documents also regulate that citizens have the right to education and study. Although having no specific regulations about education of environment and human rights, in practice, environmental education to raise awareness of environmental protection has been developed and included in general education. Similarly, human rights education is also integrated into citizenship education and included in the general education programme.

*c) The right to participate positively, freely, and meaningfully in planning and promulgating decisions affecting environment and development (see more in topic 5).*

This right includes the right to impact assessments of environment, development and impact consequences of human rights for proposed actions, in advance.

Article 53, Constitution 1992, stipulates that: citizens have the right to take part in managing the State and society, in debating on general issues of the whole country or of the locality, and make petitions or recommendation to the State offices and vote at any referendum held by the State.

In the field of environmental impact assessment, if the Law on Environmental protection 1993 has not fully enough referred to participation (compulsary) of the community, it can be noted that the law on Environmental Protection in 2005 and Decree No. 80/2006/ND-CP of Government have made very clear and tight provisions. The Ministry of Science, Technology and Environment, and then the Ministry of Natural Resources and Environment, continuously signed joint resolutions with the Vietnam Fatherland Front, Vietnam Farmers Association, Vietnam Confederation of Science and Technique Associations, Vietnam Youth Union, and many other non-governmental organisations on contents relating to community's participation in environmental protection.

Implementation of movement in the direction of democracy from grassroots, government of all levels, and mass organisations have constantly integrated the contents of environmental protection into the contents of democracy from grassroot such as emulation standards, standards of cultural villages, communes, quarters, standards of innovative units, and localities. This is not only the commitment of the State but it has been converted into the commitment of the people and the community to participate jointly in environmental protection. Issues of socialisation of environmental protection and implementing the principle "people know, people do, people discuss, people check" in environmental protection activities is the cause of many successful models of community participation in environmental protection in Vietnam.

*d) Right to take part in meetings freely and peacefully with others for the purpose of environmental protection*

Article 69 stipulates: citizens are entitled to freedom of speech and freedom of the press; they have the right to receive information and the right of assembly, association, and demonstration in accordance with the law.

*đ) Right to lodge complaints and denunciations, and compensation for damage in an effective way relating to the environment (see more in topic 5).*

Article 74, stipulates that: citizens have the right to lodge with any competent State authority a complaint or denunciation regarding transgressions of the law by any State body, economic or social organisation, people's armed



forces unit, or any individual.

Complaints and denunciations must be examined and dealt with within a period of time stipulated by law.

In addition, the right to lodge a complaint, denunciation, or receive compensation for environmental damage is also specified in many other legal documents, such as the Law on Water Resources, Law on Environmental Protection, etc.

For example: Article 128 of Law on Environmental Protection clearly stipulates on complaints, denunciations and lawsuits about the environment:

1. Organisations and individuals shall be entitled to lodge complaints with competent State agencies or initiate lawsuits at the court against violations of environmental protection which infringe upon their rights and legitimate interests.

2. Citizens shall be entitled to denounce to competent agencies or persons the following acts of violation of the environmental protection law:

a/ Causing environmental pollution, degradation or incidents

b/ Infringing upon the rights and interests of the State, population communities, organisations, families, or individuals.

3. Competent State agencies or persons receiving complaints or denunciations shall have to consider and settle such written complaints or denunciations in accordance with the provisions of the law on complaints and denunciations and this law (2005).

### **3. Issues to be Addressed Regarding Improving the Laws on Human Rights Relating to Environment Protection in Vietnam Today**

In the process of policy-opening and integration, the Vietnamese State has specially paid attention to environment protection; it has been positive and proactive in perfecting the law, building national programmes and goals in conformity to create sustainable development, which highly emphasised the objectives of environment protection. Vietnam has been also received effective assistance from many countries, international organisations, and individuals in ensuring human rights and environment. The human rights-based approach towards protecting environment - an international experience seen as an advanced tool in environment protection - is increasingly and widely used in Vietnam. The aforementioned international assistance of resources and international experience have raised the society's awareness, the capacity of all levels; and in fact they have successfully resolved many issues on environment

and development, environment and the right to health of all Vietnamese citizens.

There still exist, however, many shortcomings in this regard, both in laws and in law implementation.

*- First, a system of legal normative documents which adjust the social relations in protection of environment and human rights has been provided. There, however, appeared many difficulties and disadvantages in the implementation of these documents, namely the overlappings, vague statement and incomprehensiveness, causing troubles right from the environment management organizational structure to the exercise of management and protection of environment in reality. The legal framework has not yet met the requirements from reality and requirements of the international integration.*

*- Second, implementation effect of environment management tools is not high.* The assessment of strategic environment, environmental impacts and environment protection commitments has not yet caught the rapid changes of the economic social development process. Many planning projects did not carry out the assessment of strategic environment and environmental impacts; and even if such assessments were conducted, they did not bring about the expected effects as the environment protection requirements raised in the assessment conclusions were not implemented in reality.

The inspection, examination and punishment of violations of environment protection laws have really become indispensable tools in environment management. However, these works have met many difficulties, as lack of a team of inspectors specialized on environment. At present time, there is little number of environment inspectors – one environment inspector in charge of 1,400 enterprises<sup>11</sup>.

The provision, publicity, update and announcement of information on environment have not been properly and regularly paid attention to. Enterprises and state management agencies have not fulfilled their duty to publicize information to ensure the citizens' right to be noticed of the environment matters.

The effectiveness of the applied economic tools is not high; revenue from environment protection fee for waste water is not much and the fee collection gets many difficulties. The collection of environment protection fee for solid wastes has not been done yet. Particularly, regulations on punishments and on compensations for damages caused by acts of violation of laws on environment protection are not strict enough and contain many loopholes.

*- Third, role of community to ensure people's right to participate in the monitoring and protection of environment has not been fully utilized.*

According to the approach of the right to access to information on environment, it is necessary to involve the community in the monitoring and protection of environment. In reality, however, environment protection guidelines have not really been in close touch with the environment protection practices, especially for the different residential areas. Community's environment protection actions are too few and modelistic, and often underestimated. Results of survey conducted by the General Bureau on Environment in October 2010 show that over 90% of interviewed citizens said that they had too little information on environment and that was the responsibility of the state management agencies at both central and local levels<sup>12</sup>.

To solve the above problems, together with various existing programmes and measures, it is necessary to strengthen the following measures for the best usage of the right based approach in environment protection:

*- Improvement of laws and policies on environment protection with the human right based approach.*

Review and assess the efficiency and effectiveness of the existing laws and policies on environment protection, therefrom propose the amendments and supplementations to improve these documents. In the short term, the Law on Environment Protection 2005 should be revised toward broadened adjustment scale, supplemented provisions and clearer provisions on publicization and announcement of information on environment, mobilization of community and citizens' involvement in monitoring the environment protection and in making environment related laws and policies.

Improve the guiding documents for implementing the Law on Environment Protection and the Civil Code as regards to civil responsibilities in environment. Consider the revision and supplementation of provisions on DMC, DTM; issue government decree on DMC, DTM, commitment to environment protection and environment planning.

Review, supplement and improve the system of national technical criteria and standards on environment. Develop and adopt technical standards for some particular manufacturing areas and manufacturing trade village.

Soon revise the Law on Water Resource with particular attention to the confirmation that access to water is a fundamental human right. Regulate specifically responsibility of organizations, individuals, enterprises and community in protecting, exploiting and using properly water resource. Strictly punish any acts of polluting water resource.

*- Strengthen and enhance the efficiency and effectiveness of the implementation of laws and policies on environment protection.*

+ Strengthen capacity of officers in charge of DMC and DTM appraisal, especially the local level officers, through training courses and experience accumulation.

+ Strengthen management agencies' coercion power in implementing the requirements stated in the approval decision of DMC DTM report and environment protection commitment.

+ Strengthen the control of environment pollution and the regular inspections and examinations of the environment protection law implementation of organizations, enterprises and individuals;

+ Strengthen the information provision, publicize information and reports on environment;

+ Improve legal frameworks and enhance law implementation effectiveness, adopt the economic tools in environment management;

+ Invest more funds and create resources that strong enough for environment protection; and

+ Raise awareness of community and accelerating the socialization of environment protection.

### **C. GROUP DISCUSSION**

#### **Nearly 60,000 People Worry About Water Shortage in Ha Nam**

Due to the salinization, certain underground water cannot be exploited, and thus nearly 60,000 people of Phu Ly town, Ha Nam province, rely only on a unique water source from two factories (no. 1 and no. 2) that exploit water from Nhue – Day river. However, in the dry season, these two rivers are seriously polluted, so the factories must cease operation.

According to Ha Nam Water Supply Company, due to the pollution of Day river, Phu Ly town has experienced a shortage of water since 2001, and the situation is worsening. Water factory no. 1, located at Phu Van commune (far from confluence of Nhue-Day river about 400 m upstream) with a capacity of 10,000 m<sup>3</sup>/day, and water factory no. 2 is located in Thanh Son commune (far from the factory no. 1 about 4km) with a capacity of 15,000 m<sup>3</sup>/day, have had to stop working in the phases of serious pollution.

**Source: Report on national environment in 2006, Ministry of Agriculture and Rural Development.**

Group 1. Pursuant to the provisions of the law of Vietnam, and the international standards on right of access to water, please analyse and present the obligation levels of the State of Vietnam to ensure the right of access to clean water of the people. From the above mentioned situation of water access, please determine the relevant responsibilities of State agencies and recommend solutions to enhance the law to ensure the right of access to water in the country today.

## **Supervision report on implementation of laws and policies**

### **on quality management of foodstuff safety and hygiene (FSH)**

The supervision report shows that every year Vietnam is producing 11.5 million tonnes of vegetables of all kinds, but the qualified area for planting safe vegetables achieves only 8.5% of national vegetable area, while the area for planting safe fruit trees is around 20%. In some big cities like Ho Chi Minh City, only 20 - 30% of demand of vegetable of the city has been controlled.

Test results of pesticide residue on vegetables and fruits in wholesale markets, supermarkets, other production areas in Hanoi city, Ho Chi Minh City, and some neighboring provinces in 2008 found that, among 412 of vegetable samples of all kinds tested, 48 samples detected pesticide residue exceeding the maximum permitted limit (accounting for 11.65%), 1 sample with a residue of banned pesticide Endosulfan (representing 0.2%), and among 99 samples tested, 15 fruit samples had pesticide residue exceeding the maximum permitted limit (accounting for 15.15%). According to reports from 22 provinces and cities, with 11,716 samples tested, the chemical residue in fruits and vegetables in 2008 accounted for 7.08%, and this is the highest level in the past four years.

According to the Report of Ministry of Agriculture and Rural Development, only 58.1% of slaughtered cattle and poultry was controlled. The qualified number of slaughter facilities meeting requirements in the period of 2004 to 2006 accounted for 61.8% of slaughter facilities, but in the period 2007 to 2008, the number of qualified facilities decreased to 51.8%. The supervision report also said that a number of growth hormones, such as Salbutamol and Clenbuterol, are the banned substances due to their bad affect on human health, yet were found in the meat. In 2008, the number of samples of meat and fresh meat products with chemical residue accounted for 11.08%, the highest level in the past five years.

Concerning the management of importing food through small trading methods; detection and prevention of smuggling have not been strictly controlled. Through field surveys in a number of bordergates, supervisory delegation said that the overall condition is that there was outdated equipment or a lack of equipment altogether for inspection and the lack of mobile checking vehicles (quick testing equipment). The

inspection is mainly based on common sense.

Source: Thanhnien Newspaper

### **Thanh Hoa: Collective food poisoning, hundreds of workers hospitalized**

(CAO) On the afternoon on March 12, after lunch, many workers in the Hong Fu Shoe Company, headquartered in Hoang Long urban industrial zone, Hoang Hoa district (Thanh Hoa province) had to be hospitalized with symptoms of vomiting and diarrhoea to dehydration.

In the same afternoon, the cause of hospitalized workers was identified as due to food poisoning. As the large number of patients were hospitalized at the same time, Hop Luc General Hospital had to use the first floor lobby of the building (in the finishing process of construction) to be a treatment place. Others had to be transported to General Hospital of Thanh Hoa province.

A few workers who showed mild symptoms, could be released after examination and allocation of drug. The exact number of victims has not been counted, but it is estimated that more than 200 people were hospitalized with symptoms of convulsions, nausea, abdominal pain, chest tightness. The workers being treated at the hospital said after a meal served by the company they had such symptoms.

Reportedly, Hong Fu Shoe Company has no canteens in the company but hired a restaurant (address of Tao Xuyen townlet - Hoang Hoa) for cooking everyday then transported by truck in distribution to workers.

Source: Ho Chi Minh City public security dated on 13 March 2011

<http://www.congan.com.vn/?mod=detnews&catid=681&p=&id=248779>

**Group 2.** Pursuant to the law of Vietnam on ensuring the right to safe foodstuff and the international standards on the right to foodstuff, will you analyze the obligation levels of the State of Vietnam for ensuring the right of access to safe foodstuff? From the above mentioned situation of the food poisoning, will you determine the responsibilities of relevant stakeholders and recommend solutions to complete the law to ensure the right of access to safe foodstuff.

## ***D. IN -DEPTH DISCUSSION (Class Discussion)***

What are the deficiencies in the policies and laws of Vietnam that ensure human rights regarding the environment? Causes and solutions to deal with this problem?

## REFERENCE DOCUMENTS

1. The Ministry of Natural Resources and Environment, National Report on Environment 2005
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## **Module 4**

### **THE ROLE OF SOCIAL ORGANISATIONS IN THE MONITORING AND PROTECTION OF ENVIRONMENT**

#### **OBJECTIVES**

- + To help learners understand the role and functions of Social Organisations (SOs) in the Monitoring and Protection of Environment (MPE) in Vietnam today.**
- + To provide students with some experiences and the best practices on the role and effectiveness of SOs in MPE in Vietnam today.**

#### **KEY MESSAGES**

- 1. SOs play a significant role in MPE through activities in policy advice, communication and education to raise the awareness of MPE.**
- 2. The participation of the SOs in activities of environmental protection and monitoring is their right and duty, as prescribed by law; the State is obliged to meet and provide favorable conditions for the participation of SOs in MPE.**
- 3. SOs are a means for people to widely participate in MPE.**
- 4. SOs' activities are significantly practical and effective, actively impacting MPE.**

## **MAJOR CONTENTS**

### **I. Overview of SOs and the SOs in Vietnam**

#### **1.1. Overview of SOs**

*1.1.1. Concept*

*1.1.2. Characteristics*

*1.1.3. Functions*

#### **1.2. Formation and Evolution of SOs in Vietnam**

*1.2.1 . Historical development of SOs in Vietnam*

*1.2.2. SOs and the Forms of SOs in Vietnam*

*1.2.3. Legal Status of SOs*

*1.2.4. Role of SOs*

### **II. Role of SOs in MPE**

*1. Role of detection and denunciation*

*2. Role of social criticism (on laws, policies, projects and programs related to environment)*

*3. Role of policy advice and consultancy*

*4. Role of the enhancement of the communities' participation in MPE*

*5. Role of education, dissemination and communication*

### **III. Enhancing the participation of SOs in MPE**

*1. Realities*

*2. Opportunities and Challenges in MPE*

*3. Challenges and Limitations of the SOs in MPE*

*4. Enhancing the SOs' participation in MPE*

## **A. WARM UP**

Why has the situation of environmental degradation and pollution not been solved effectively? Why are state agencies and local governments unable to thoroughly solve the problems of MPE?

## **B. CONTENTS OF THE LECTURE**

### **I. OVERVIEW OF SOs AND THE SOs VIET NAM**

#### **1.1 Overview of SOs**

##### *1.1.1 The Concept of Social Organisations*

The social organization<sup>31</sup> (SOs or CSO) is, in its broad sense, used for demonstrating any organization in society or a minor societal system in any society, in its narrow sense.

The social organization is the people in a society considered as a system organized by a characteristic pattern of relationships [social]<sup>32 33</sup>.

Social organizations in Vietnam are widely recognized in various forms and names, including the mass' organizations, the people's unions, the people's organization and the community's organizations, associations and particularly-characterised associations<sup>34</sup>, etc.

However, the core sign of SO is an organization gathered by the individuals and social groups on the ground of voluntary, self-management, independence and non-profit<sup>35</sup>.

The concept that is widely recognised by the international community is that social organization (or civil society-CS) is an arena of social life, thereby it contains features of independence (from economic-political institutions) and non-profit, and is a unity of entirely voluntary citizens. Social organizations are, indeed, an 'arena of voluntarily collective action surrounding common values, objectives and interests [...]

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<sup>31</sup> This term of 'social organisation' is widely used in Vietnam, which is equivalent to the term of civil society used in international community and many countries. The term of 'social organization' that is used those belong to the third generation is close to western concepts of CSOs and private voluntary organizations (PVOs). As a result, the use of the term 'SOs' or 'CSOs' embraces the same meaning and similar implications in this context.

<sup>32</sup> Cambridge University: *Cambridge English Dictionary*, <http://www.cam.ac.uk>

<sup>33</sup> <http://www.thefreedictionary.com/social+organization>

<sup>34</sup> See Decree 45/2010/NĐ-CP and Decision 68/2010/QĐ-TTg, <http://www.vietlaw.gov.vn>

<sup>35</sup> Although the Vietnamese laws do not have any provision stating the civil society, so do other Party's and the State's official documents, its implications and characteristics identified are mainly consistent with the term of 'the mass' organisation', the people's union or social organizations in general. Thus, the terms 'social organisations' and 'civil social organisations' are used replaceably and they bear the same meaning.

Civil society often contains a diversity of space, factors and forms of various institutions in terms of the levels of formality, autonomy and power. Civil society often forms organisations such as charities, associations, unions, mutual support groups, social movements, business associations, coalitions, and advisory and lobby groups<sup>36</sup>. CS is also understood as ‘the field that is outside the family, state and market, where people are associated with activities to achieve the common good’<sup>37</sup>.

CS is interpreted as a form of social organisation that is a collection of private citizens or public relations people outside the State sector and the market. It is a set of organisations that is the link between citizens as individuals and certain groups, including community-based organisations, social organisations, citizens' voluntary organisations and interest groups or movements organised by the willingness of citizens and non-governmental organisations (NGOs), non-profit organisations, etc. These organisations are today called the “third sector” or the “third arena” within society in relation to the State (the first arena) and the market (second arena). In the structure of modern society, between the State and the market, lies the indispensable third arena, which is certainly a form of social organisation (SO) that is neither a political institution (the State) or institutions based on economic interests and profits (the market). It is an intermediate form of the State and citizens that provides assistance and dialogue to citizens, to ensure the citizen’s rights and legitimate interests in the event of conflict between market forces and representatives of the citizen’s political affiliation (the State).

When the mature market economy of a modern society emerges, it inevitably leads to demands from the citizens for association under non-political and non-profit communities. Along with the specific natures of the State and the market as the most important factor in maintaining and promoting social development, the emergence of the "third area" (SOs) supplements and fills an array of linkages and social functions that neither the 'first area' or 'second area' can replace.

### *1.1.2. Characteristics*

Based on the implications analysed above, the social organizations (SOs) that are widely recognized by international community<sup>38</sup>, have the following major characteristics:

(a) Independent of financial and non-political entities, not representing any political entity or viewpoints of any State.

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<sup>36</sup> London School of Economics, *What is civil society?*  
[http://www.lse.ac.uk/collections/CCS/what\\_is\\_civil\\_society.htm](http://www.lse.ac.uk/collections/CCS/what_is_civil_society.htm) (accessed 12.03.10)

<sup>37</sup> See Civicus , [www.civicus.org](http://www.civicus.org)

<sup>38</sup> This means the concept of civil society or civil society organizations (or CSOs)

(b) Non-profitable (non-economic benefits), whereas pursuant to the objectives of community benefits and social services.

(c) Organised and operated based on the principle of self-governance (including self-managed, self-financed, independent from the State budget or any political entities, etc.).

(d) A social association created by the entirely voluntary membership of citizens.

However, some scholars, for example Lester Salamon (1990)<sup>39</sup>, have identified five basic characteristics of SOs as follows:

- (1) Beyond the state and the market.
- (2) Established based on a voluntary principle.
- (3) Self-managed.
- (4) Autonomic and financially independent.
- (5) Non-profit.

However, the actual formation and development process of SOs in Vietnam has shown that the organisations belonging to the first and second generations often have difficulty achieving these full five criteria. Even third generation that can meet the five elements still struggle with the fourth element of financial independence.

The difference in the identification and interpretation of SOs in each country sometimes depends on the standing of the aforementioned characteristics. For example, in developed and long-standing democratic countries such as Nordic, Western European and North American countries, the characteristic of independence is well-respected, guaranteed and implemented effectively. However, in many developing countries in the world today, this feature is still relatively limited.

### *1.1.3. Functions*

As a partial structure of the societal system, which is developed in terms of the levels, SOs have the following functions:

- To be a bridge between citizens/individuals and the State.
- To balance the interests between individuals and enterprises and the State.
- To participate in the planning and coordination with the State to implement guidelines and policies of the State.

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<sup>39</sup> “Civil Society” in *Comparative Perspective* by Lester M. Salamon, Helmut K. Anheier, and Associates. See Shang Ye, *China’s Emerging Civil Society*

- To consult and advise on guidelines, policies and the monitoring of the implementation of laws and policies.
- To enhance dynamic and active initiatives of the community and all individuals in every field of public life, including providing public services such as education, health, culture, science, environmental protection, poverty reduction, etc.

## **1.2. EMERGENCE AND DEVELOPMENT OF SOs IN VIETNAM**

Although the concept of CS once existed in Vietnam's traditional societies, the formation and development of SOs in Vietnam are associated with the renovation process (*doimoi*) and international integration.

### *1.2.1. Emergence and Development of SOs in Vietnam*

Recent studies show that SOs in Vietnam have been formed and developed through three generations:

- The first generation of SOs in Vietnam originated from East-Asian traditional social structure including Vietnam. That was called 'traditional civil society', once existing in villages in rural and ethnic minority areas in Vietnam<sup>40</sup>. This form of traditional SOs is still present in rural areas. These are, for example, the surname-based association, profession-based (associations of ceramics, carpenter, traditional music, Quan Ho, etc), class-mate association, year of birth-mate association, pigeon-raisers' association, etc.

- The second form, or generation, of SOs is cohesively connected with socio-political organisations. They are, in nature, inseparable parts of the political system. They are often members of organisations such as Vietnam Women's Union, Youth's Union, Union of Farmers' Associations, Union of Veterans Associations, the Writers' Association, the Journalists' Association, the Vietnam Lawyers' Association, etc. (prior to the 90s).

- The third generation of SOs is formed by the voluntary people sharing the same goals and ideals of action; they are not entirely associated with socio-political institutions (established in recent years, mainly from 1990s onwards). The third generation of SOs in Vietnam shares many similarities with the prominent trend of development of VPOs (voluntary private organizations), or Civil Society Organisations (CSOs), increasingly developed in many countries nowadays. The forces who participate in these SOs can also vary in ages, expertise and professionalism. PanNature, CODE, ENV, mentioned in the studied boxes below, are among those demonstrating good examples for the

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<sup>40</sup> In China this is called 'folk society'

development of the third generation by significantly and actively contributing to the MPE in Vietnam today.

The strengths<sup>41</sup> of the SOs in the third generation include:

1. Being established purely on a voluntary basis by members.
2. A higher level of independence, autonomy and management.
3. Being keen on communication (newsletters, magazines, websites, etc. are effective tools in their activities).
4. Having high professionalism and maturity.
5. Participating actively in policy advocacy, consultancy, education and communication on environment.

The third generation-based SOs in Vietnam are often referred to by many different names, but the names most commonly used are community-based organizations, the people's unions, the people's organisations or social organisations. In its essence and implications, various forms of SOs were established quite early in Vietnam. Since the country was strongly influenced by East-Asian culture and the 'Asian Production Mode', in which the agricultural production of rice linked members of the society together in a cohesive community to achieve a common goal, some forms of SOs had already appeared before the feudal State was established. Forms of SOs in the Vietnamese community, based on family connections, co-villagers, school-mates, co-makers and co-traders (who together produced and exchanged a certain kind of goods and handicrafts), people with the same hobbies, etc., acted on a voluntary, self-management and non-profit basis that appeared to become common features of traditional Vietnamese society. These organisations are initial forms of the social organizations, or CSOs, in a modern sense. This concept was established well before the prevalence of the concept that appeared during the European sixteenth and seventeenth century. These organisations have grown and developed human behaviors and actions regarding natural and societal environment, playing a major role in helping the centralized feudal State in implementing policy and domestic laws and in governing and managing the society.

Vietnam's history also reveals that the existence and development of the non-political alliance between citizens or the society's members, which has been supporting and supplementing the official alliance—the state, or political institutions; it has been an important, indispensable part of social institutions in general (the State is the centre of that political institution). Many of these traditional organisations have continuously paralleled the development of society, concerning for example: associations of production and exchange of goods (the associations of bronze goods, silver goods, gold goods, silk goods,

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<sup>41</sup> Strengths and opportunities, as well as the weaknesses and challenges of CSOs, are analyzed in details in section IV.

association of bird players, etc.), association of classmates (learning in the same school and/or with the same teacher), association of fellow-villagers, sisters and brothers (Quan Ho Folk-Singing) association, etc. Along with the strong development of areas of social life, the number of social organisations has been increasingly established and continuously expanding. However, the term ‘society/association’ or ‘social organisation’ as a legal term, a holder of legal status, being legally recognized and operating within the Constitution and laws, only if it is gathered, structured into an organization equipped with rules of procedures, visions and goals, and registered and recognized by public authority. So far, tens of thousands of SOs or alliances established are regarded as the components of CS in Vietnam, including many working in the field of MPE.

The formation and development of CS or SOs is derived from the inherent nature of society’s mode to organise people and from the nature of the State that cannot manage, as well as exercise, on behalf of its citizens, all aspects of societal life. For example, in the field of health care for vulnerable groups (such as children, women, people living with disability, people living with HIV/AIDS, etc.), there is no single State that has enough resources to thoroughly and effectively solve the problems that such groups face. Instead, there must be joint involvement with other institutional forms of society that have been noted as an inseparable part of such a social system. These include associations and organisations of child protection, smile surgery for children, learning promotion, and disabled people, peer groups, etc.

SOs in Vietnam have been established in two organisational forms. These are member-based and non-member based organisations. The member-based organisations include masses, associations, inter-associations, unions, professional associations and community-based organisations/groups. Non-member based organisations include institutions in the fields of research and science, development, consultancy, training, hunger eradication and poverty elimination, social funds, charity funds, development funds, non-profitable companies, religious organisations, non-registered groups, and foreign NGOs<sup>42</sup>.

## **1.2.2. SOs and Forms of CS in Vietnam**

### *1.2.2.1. Forms of SOs in Vietnam*

As analysed above, social organizations (SOs), in its broad sense, consists of all organizations constituting a society and within a society. In that sense, SO in Vietnam consists of, 1) first and foremost, political organizations;

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<sup>42</sup> Nguyễn Thị Bích Diệp, Overview on legal framework for civil society organizations, PPWG Seminar, Hà Nội, 5-2007.



2) socio-political organizations; 3) professional, socio-political organizations; 4) economic organizations and 5) social organisations<sup>43</sup>.

In a broad sense, SO is part of the structure and system of modern Vietnam society, which includes the following forms: (1) Political organisations (the Party, the State); (2) Social-political organisations (the Fatherland's Front, the Vietnam Federation of Trade Unions, the Farmer's Association, the Vietnam Veterans' Association, Vietnam Women's Union, the Youth Union); (3) Professional, socio-political organisations (the Vietnam lawyers' Association, the Journalists' Association, the Writers' Association, etc.); (4) Professional and social organizations (the Architects' Association, the Painters' Association, etc.); (5) Economic organizations (Vietnam Union of Cooperatives, etc.); (6) Social Organisations (or the people's unions, the community's organizations), which include a variety of organisations registered under the names of private, self-managed and self-financed associations or academic institutes or scientific centres or foundations, ect and belonged to the Vietnam Union of Science and Technology Associations (VUSTA), etc.

In its narrow sense, SO is used for measuring a form of associating between individuals and social groups regardless any ground of political linkage, but civil linkages that are voluntary, self-managed and self-financed organizations, as well as the people's unions. These are the community's organizations and the people's organizations.

#### *1.2.2.2. Concept and characteristics of social organizations in Vietnam*

According to the widely-recognised understanding of the international community, social organisation<sup>44</sup> is an arena of voluntarily collective actions surrounding shared values, goals and interests; an arena beyond family, the State, the market, where the people gather together and exercise activities to achieve a shared benefit.

Thus, the society organizations (SOs), in a narrow sense, are simply non-State organisations, including professional organisations and various forms of people's self-governing associations.

Thus, social organisation, in that narrow sense, is the collection of non-State and non-political forms, including NGOs, CS, self-governing organisations, communities, professional and charity associations.

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<sup>43</sup> Decision No. 68/2010/QĐ-TTg, dated 1 Nov, 2010 of the Prime Minister on the regulation of particularity-characterised associations/society, <http://www.vietlaw.gov.vn>

<sup>44</sup> The international community is widely-recognised the term of 'civil society' or 'civil society organisations', which is equivalent to the term of 'social organisations' widely used in Vietnam. See more about the CSOs at the Civisus, <http://www.civisus.org>

According to the provisions of Decree 45/2010/ND-CP (replacing Decree 88/2003/ND-CP), came into effect as of July 1<sup>st</sup>, 2010, CS is defined as the various forms of associations, unions, clubs or other forms of voluntary organisations, self-governance or self-management of communities that do not officially belong to socio-political organisations, such as Vietnam Fatherland's Front, Vietnam's General Confederation of Labour Unions, Ho Chi Minh Communist Youth's Union, Vietnam Farmers' Association, Vietnam Veterans' Association, Vietnam Women's Union and Religious Organisations.

The Decree 45 states, *'Society/association is a voluntary organisation of citizens, a Vietnamese organisation sharing the same profession, hobbies, interests, gender, common goals, solidarity of members, regular or non-profitable activities, in order to protect the rights and legitimate interests of its association, members and community, that supports each other in working together effectively, contributing to the country's socio-economic development, organised and operating under this Decree and other relevant legal documents'*(Article 2 (1)). This provision indicates that the association/society mentioned here is a form of non-political and non-state entity, or specifically a form of SOs.

Thus, the major characteristics of SOs in Vietnam are 1) the citizens' voluntary organization; 2) action for a common goal; 3) non-profitable; 4) mutual assistance and contribution to the country's socio-economic development; 5) organized and operated in accordance with Vietnamese laws.

In pursuant to the Decision No. 68/2010/QĐ-TTg, dated 1<sup>st</sup> November, 2010 (came into effect 20<sup>th</sup> December, 2010) of the Prime Minister regarding the particular-characterised associations, the social organizations are interpreted as the fifth form of the the particular-characterised associations (including 1) socio-political organizations; 2) professional, socio-political organizations; 3) professional and social organizations); 4) economic organization and 5) social organizations).

This 68 Decision added to the fundamental characteristics of SOs while mentioning about the particular-characterised associations. These are a) an organization acts for humanitarian and social goals; b) a society/association of the people in difficulty, disadvantages and vulnerability who needs to be cared and supported by the society and the state for their activities.

Thus, form the characteristics mentioned in the Decree 45 and Decision 68, the following characteristics of the SOs in transitional Vietnamese society can be overviewed at present:

- (1) The people's unions (such as the Elderly's Association, the Countryfellow's Association, Chess Players' Association, Poem Lovers' Association, etc.).
- (2) Organisations of medical care, especially SOs related to the health of people living with HIV/AIDS.
- (3) Charitable organisations, especially organisations of protection and care for children, disabled children, orphans, poor children, etc. In Vietnam there are organisations such as Save the Children, Vietnam' Association of Protection for Children's Rights, etc.
- (4) Organisations operating in the fields of hunger eradication and poverty elimination and community development, preservation and enhancement of cultural identity (including organisations promoting the participation of ethnic minority groups, etc.), etc.
- (5) Organisations on the promotion and protection of women, women's rights, gender equality, prevention of domestic violence, etc.
- (6) Organisations of legal aid, policy consultancy and advocacy (to extend the dialogue bridges among citizens and between citizens with the state and enterprises).
- (7) Organisations working in the MPE and sustainable development. These include associations, unions, academic institutes, voluntary and charity organisations, etc., specializing on natural conservation, wild life, forestry, water, minerals, lakes and rivers, etc.

#### *1.2.2.3. Legal Status of SOs*

Although there is no specific law on associations and organisations, the legal status of SOs is inherited from the legal status of citizens, established by constitutional principles and legal provisions. Indeed, since Vietnam's first Constitution of 1946, the right to freedom of association was recognised and guaranteed. The Ordinance No. 102/SL-L004 of May 20<sup>th</sup>, 1957 of the President of the Democratic Republic of Vietnam provided the citizen's right to freedom of association. Article 69 of the Constitution of 1992 stipulated, 'all citizens have the right to freedom of speech, right to freedom of the press, right to information, right to peaceful assembly and association, right to demonstration as prescribed by law'. Thus, the right to freedom of association is a fundamental right of citizens. The Civil Code of 2005 also has provisions relating to the form and operating mechanism of associations. The Decree 88/2003/ND-CP of July 30<sup>th</sup>, 2003, of the Government has detailed the regulations on the organisation, operation and management of associations; thereby it regulates the functions, role and competence of associations. This Decree was amended, supplemented to, and replaced by the Decree 45/2010/ND-CP of 7<sup>th</sup> January, 2010; it now identifies the right to participation

in programmes, projects, research programmes and social assessments, provision of public services on issues in the field of associations. The Decision No. 68/2010/QĐ-TTg of the Prime Minister regarding the particular-characterised associations continued to enhance the legal status of social organizations through the provisions on functions and characteristics of the particular-characterised associations as a form of general SOs.

So, the legal status of SOs is derived from the legal status of citizenship, which is provided by constitutional principles and laws. In particular, this principle concretizes the formula '*people know, people discuss, people do, people check/supervise*' of the Party and State. The people often fulfill their right to inspection and supervision over all activities of the State powers and the political system through indirect mechanisms that entrust the fullness of their power to representatives who are of the State apparatus; and through direct mechanisms by which people organise themselves into self-governing, autonomous and voluntary institutions. Hence the emergence of CS is essential and indispensable as an inevitable information channel—a legitimate requirement of the people in realising their power, which cannot and will never be fully entrusted to the public authorities representing them. The establishment of SOs is inevitable as such; it is an especially indispensable process in all aspects of social life. It is more inevitable and necessary than MPE—one of the most important elements of sustainable development<sup>45</sup>. Democratic regulations at grassroots levels, particularly the Resolution 97/2007-CP on exercising democracy at the grassroots levels, emphasize the need for people's participation in any process of planning, programming, implementing and monitoring socio-economic issues in localities. This includes activities of EP that were initially considered a political task in the apparatus of local governments. In the spirit of these democratic regulations, Article 105 of the Law on Environmental Protection (LEP) specifically addresses principles of exercising democratic mechanisms in the protection of environment. These mechanisms indicate the involvement of people in the process of environmental protection.

The LEP (QH 52/2005/QH11) of 29/11/2005, promulgated by the National Assembly of Socialist Republic of Vietnam, contains detailed provisions on the rights and obligations of organisations, individuals and households in EP (Article 1). In particular, Article 54 of this law established the right of association in the field of protection and monitoring of environment. These associations are mainly self-governing institutions on EP (or in other words, SOs in the field of EP). Article 54 (1) provides, 'The State shall encourage communities and peoples in establishing self-governing organisations in the field of EP at which they live to fulfill the following tasks: [...] develop and organise to implement the village's rules on EP, advocating

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<sup>45</sup> Sustainable development consists of the following: economic growth, social justice, cultural development, human development and environmental protection.

and mobilising people to eliminate bad practices, unhygienic and harmful habits to the environment.<sup>46</sup> The law also stipulates that all forms of self-management of EP are established and operating on principles of voluntary, responsible community and that public authorities must be obliged to respect the rights of self-governing organisations and to provide all favorable conditions for them in implementing effectively activities of EP (Article 1 (2,3) of the LEP).

The LEP particularly emphasizes the implementation of grassroots democracy on EP (Article 105), whereby people have the right to access all information related to situations of violating EP at local levels. This regulation is the legal basis for people and local communities effectively performing checking and monitoring activities in the field of EP. The law also created a legal corridor for organisations and individuals to establish funds for environmental protection (Article 115).

The term '*self-governed organisations of environmental protection*' in this law has been used to describe implications of SOs, as listed in the section above, including the self-governing communities of local residents or other individuals or groups who have a common goal of EP and gathered themselves into organisations based on voluntary principles operating within legal frameworks. The legal status of SOs in the MPE is also provided in Article 124 of the LEP; therefore individuals, organisations and communities have the right to establish organisations working in the field of MPE.

#### *1.2.2.4. Role of SOs*

The Party and State of Vietnam have always been aware of the important position and role of socio-political organisations, social unions, mass organisations and associations (SOs) in building and developing the country. Since 1990, the Party's Resolution No. 8B-NQ/HNTW (Session VI) affirmed 'In the new period, it is necessary to establish associations meeting the people's legitimate needs in professions and lives operating for the benefit of the country and families, in the spirit of humanism and compassion; mass organisations and social unions established in the principle of voluntary, self-management and self-finance within legal frameworks'. The 9<sup>th</sup> Party National Congress' Resolution continued to re-affirm the concept with 'to extend and diversitise forms of gathering the people in participating in mass organisations and unions, social organisations, professional associations, cultural, friendship and charity associations, etc.'<sup>47</sup>.

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<sup>46</sup> Law on Environmental Protection (QH52/2005/QH11), <http://www.vietlaw.gov.vn/>

<sup>47</sup> Communist Party of Vietnam. *The Party's 9<sup>th</sup> National Congress' Documents*, National Political Publishing House, Hà Nội, 2001, tr.130 – 131.

The Party's appropriate guidelines have been incorporated into laws and policies of the State. Throughout a decade, the rapid development of SOs has significantly increased in both quantity and quality<sup>48</sup>.

Beside the NGOs, which were established in pursuant to legal provisions and carry a legal status, there are also mass organisations and community-based organisations established by tradition or people themselves without a legal status (in other words, unofficial or informal associations). These are, for example, self-managed units or groups, countryfellow and villagefellow associations and various clubs.

SOs consist of voluntary organisations (or community-based organisations)—a form of association between individuals and communities based on their entirely voluntary nature and operation for the community's shared benefits and goals. This form of organisation has been dominant in Vietnam, from being rooted in traditional Vietnamese values and village communities. According to incomplete surveyed figures, in Vietnam today there are over 140,000 community-based organisations, 3,000 cooperative organisations, 2000 of which are charity organizations and 1,000 are registered local NGOs<sup>49</sup>.

## **II. ROLE OF SOs IN MPE**

### ***1. Role of Detection and Denunciation***

The role of SOs in detecting and denouncing in EP is also identified and provided in the national legal system. As self-governing communities in localities of which all their members are local people, SOs play an important role in MPE. The SOs have the role of detecting violations of the work of law enforcement in EP. They are entirely entitled to the right to denunciation of any violations of environmental protection caused by entities of production and business. Along with the SOs' role of detection and denunciation is the role of collective action to improving the situation, such as lodging a collective lawsuit on behalf of a social group (i.e.: women, children, the elderly) or a community of residents, to local governments or to courts about serious violations of EP. Local communities and organisations have been fulfilling this role well, for example through typical cases of Tung-Kuang and Ve-dan. The SOs such as ENV (see below) have played an active role in detecting and denouncing the violations of EP.

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<sup>48</sup> Estimated till June 2005, there were 320 associations in action nation-wide, over 2,150 associations operating at provincial and central cities, and dozen thousands of self-managed associations, community-based organizations, conciliation units that have activities in communes, wards, towns and villages, etc. At the same time, there are about 600 international NGOs having relations with Vietnam, of which nearly 350 have had programmes, projects and partnership with Vietnam.

<sup>49</sup> Gita Sabharwal & Than Thi Thien Huong (2005), *Civil Society in Vietnam*, CIVICUS, 7/2005.

### **Case Study 1. Centre for Education of Nature of Vietnam**

The Centre for Education of Nature of Vietnam (ENV) is a CS specializing on education of environment and wildlife protection, established in 2002 with total of 30 staff members; there are three offices, respectively located in Da Nang, Hanoi, Ho Chi Minh City. ENV has three functional departments, namely education and communication, protection of wild life, and policy advocacy and consultancy. It operates in two major working areas, namely education and awareness raising of environment and protection of wild life.

ENV's goals are:

1. To enhance the community's awareness of utilizing wildlife.
2. To assist functional bodies in strengthening the protection of wildlife (activities conducted under the department of wildlife protection), which is a channel providing information for functional bodies and the community, providing materials (reports) on violations of wildlife, advocating and recommending to aid.
3. To consult with policy makers regarding wildlife in order to strengthen the effectiveness of activities in MPE.

Major activities:

1. Monitoring the establishment of volunteer networks (over 2000 volunteers throughout the whole country, covering 30 provinces and cities). Most of them were trained and provided with monitoring skills; they participated in centralized monitoring programmes. They are the people checking and monitoring information provided by local people (through the network of volunteers).
2. Investigating, reporting and providing information to functional bodies with full confidentiality and organising inter-sectoral seminars.
3. Strengthening the community involvement through a network of volunteers, to encourage communities to participate in environmental protection activities (under the protection of wildlife), raising public awareness, and advancing their own participation in EP activities. The participation of the community has resulted positively for EP. For example, thanks to the community, seven captive monkeys were handed over to public authorities in Hue, five of which were discovered by volunteers. ENV also classifies the levels of volunteers (on a scale of 1 to 5 stars), organises annual ceremonies for outstanding volunteers with small rewards such as cameras, etc.

4. Establishing communication strategy; targeting messages to the community, for example ‘the protection of wildlife’ message (30 seconds per day on radio).

The ENV’s Outstanding Performances in Detecting and Denouncing Violations of Environmental Law:

1. A hotline was established in 2005 as an easy mechanism to help people provide information. From this hotline, ENV has discovered more than 3,300 incidents of violation, with about 20-30% of the information provided by the people; most were rewarded after the authorities received the information.

2. Similarly to legal enforcement agencies, ENV sends letters of ranked warnings (1,2,3 and up) to forest wardens’ units, provincial people’s committees, etc.

3. Concerning the Operation of Dong Xuan Market (in 2005-6), where wildlife such as birds, fish, turtles, monkeys were publicly traded; ENV first communicated with and educated the sellers, then monitored the trading, working closely with the market’s manager through persuasive communication and taking advantage of the commitments between traders and the market’s owner. ENV also provided surveillance (initially from one to three times per week and currently about one time per 2-3 months).

4. Contributed to the halt of public bear keeping, illegal trading, and the practice of injecting bear bile in Quang Ninh (such incidents have been called "Tourism in Quang Ninh Bear Camp"). This program was carried out over approximately 4 years by the ENV, in coordination with other agencies (the local forest wardens’ units, environmental police, National Assembly Deputy Nguyen Dinh Xuan--the NA’s Committee of Science, Technology and Environment--and Department of Environmental Police). The bears have been implanted with electronic chips since 2005; 27 cubs have been protected and managed under this programme. The desired outcome of the programme is to attract the public’s interest in monitoring. As a result of ENV’s contribution through its active advocacy in the case of Quang Ninh Bear Farms, the Vietnam Tourism Agency eventually issued an official document and sent it to all travel agencies operating in Vietnam, demanding them to avoid taking tourists to the bear farms as a measure of preventing violations of the law on wildlife protection.

5. Concerning the auction of 2.77 kg of tiger bones in Thanh Hoa: the Provincial People’s Committee planned to auction this amount from a confiscated dead tiger’s extracted bones. However ENV intervened, causing many authorities to step in and the auction was eventually cancelled.

6. Raising public awareness is one of the ENV’s important activities. Programmes, such as a drawing contest on bear protection (which gathered up to 96,000 paintings of mainly secondary school students) significantly



improved the community's awareness on both protecting bears in particular and nature in general.

## *2.2. Role of Social Criticism*

SOs, in terms of public management, are an integral part of the Vietnam Fatherland's Front system. Although they are not characterized as political organisations (such as the members of the Fatherland's Front, including Women's Union, Youth's Union, Veterans' Association and Farmers' Association, etc.), the SOs have the ability to engage in social criticism concerning law projects, policy-making, plans and programmes related to socio-economic development in general and EP in particular.

The LEP has defined all individuals and organisations as entitled to participate in the process of inspection, monitoring, detection, denunciation and lodging lawsuits for any acts of violation of the LEP causing serious consequences for people's health and well-being. Simultaneously, organisations and individuals have the right to dialogue with public authorities about EP (Article 105 (2)). This right refers to debates concerning issues related to EP. In recent years, many projects related to building new golf courses, luxury villas, and high-buildings in the parks in Hanoi and Ho Chi Minh City were forcibly stopped by the strong criticism of local residents' and SOs. SOs have actively contributed to the projects and programmes of socio-economic development in general and to environment in particular. For example, CODE and PanNature, along with many others such as the Association of the Protection of Nature and Environment of Vietnam (ACNEV), are regarded to be the pioneers taking part in policy advocacy and consultancy.

### **Case Study 2. Association for Conservation of Nature and Environment in Vietnam & Tam Dao II Project**

ACNEV is a professional SO of those who are interested in, dedicated to, or working in the field of the protection of nature and environment, established under Decision No. 299 /CT dated 23/11/1988 of the Chairman of the Council of Ministers (now Prime Minister) for the purpose of gathering and mobilizing individuals and SOs in Vietnam to participate in activities promoting the rational use and protection of natural resources, protection and improvement of the environment, contribution to the sustainable development of the country through industrialization and modernization, and EP in the world.

One of the focus operations of the association is to conduct public debates on environment, particularly for pressing environmental problems. The association has taken part in reviewing the project idea "Tam Dao II", which

exemplifies the great significance of domestic and international opinion. "Tam Dao II" concerns the plan to build an eco-tourism area in 300 ha of total area of 500 to 600 ha area, belonging to the Tam Dao National Park in Tam Dao II, by the company and Vietnam Partner LLC Belt Collins Hawaii Ltd. The proposal included a series of projects such as building/erecting villas, hotels, motels, casinos, horse stables, new roads, cable cars, etc.

After recognising that the project "Tam Dao II" would definitely cause adverse impact on the entire remaining area of the park, to species-specific genetic resources and ecosystems, including the ecology system of the unique high mountain wetlands in Vietnam, the association voiced the prevention of implementation of this project.

On November 23<sup>rd</sup>, 2006, the association sent the official letter No. 241/HMTg to the Vinh Phuc province, Ministry of Agriculture & Rural Development (MARD), Ministry of Natural Resources and Environment (MONRE), and Ministry of Construction. The association also organised a delegation of 15 experts to work with Vinh Phuc on December 10<sup>th</sup>, 2006, to review the results of two studies assessing the environmental impact of the projects conducted by the University of Natural Sciences (National University of Hanoi) under a contract with the Provincial People's Committee of Vinh Phuc. At the same time, it was recommended that the province not rely on the results of these two studies because they are insubstantial in terms of scientific foundations, demonstrated in incorrect arguments, inadequate observation time and wrongfully chosen areas.

On April 25<sup>th</sup>, 2007, the Office of the Government responded to Document No. 2213/VPCP – NN, which regards the examination of preventing impacts that would change the natural conditions of the strictly protected national park of Tam Dao, communicating the direct ideas of the Deputy Prime Minister Nguyen Sinh Hung, including 'The Ministry of Agriculture and Rural Development shall work with the Ministry of Natural Resources and Environment to inspect the incident, and prepare and implement the Project of the Area of Ecotourism, 'Tam Dao 2', in the National Park of Tam Dao'. The report proposed methods of handling to the Prime Minister prior to May 20<sup>th</sup>, 2007.

On May 17<sup>th</sup>, 2007, the association sent its second letter to the Government's Office, MARD, MONRE, Ministry of Defense, in addition to the provinces of Vinh Phuc, Tuyen Quang and Thai Nguyen, with the main purpose of objecting to the Project 'Tam Dao II'.

On September 25<sup>th</sup>, 2007, the association held a seminar on environmental issues related to the project idea "Tam Dao II" in Hanoi, with financial support from the Agency for International Development Cooperation of Sweden (Sida), attracting 85 guests. The seminar was held to discuss the overview report of the Tam Dao National Park, to express views on

environmental issues relating to the Tam Dao II Project, and to contemplate immediate and long-term effects on biodiversity, environment, cultural issues, history, beliefs, and violations of existing legal provisions.

The association's work on public debate (or criticism) has received enthusiastic support from mass media. According to incomplete statistics of the association, 24 media organisations have published news and commentary articles on "Tam Dao II". These include, the Vietnam News Agency, Vietnam Television, Voice of Vietnam and Hanoi Television, Nhan Dan Newspaper, Labor Newspaper, Pioneer Newspaper, Thanh Nien Newspaper, Life and Sciences Newspaper, websites of the Government's Inspectorate, Vietnam Net, MONRE, etc.

On February 10<sup>th</sup>, 2007, the association sent Document No. 203/HMTg to Prime Minister Nguyen Tan Dung to ask that the Prime Minister direct sectors, departments and localities concerned to not pursue the idea of Tam Dao II. To date, the Project "Tam Dao II" has not been implemented<sup>50</sup>.

### **Case Study 3. Institute for Environment and Sustainable Development to Draft Tourism Law**

The Institute for Environment and Sustainable Development was established in 1995 as an institution of science and technology under ACNEV with three tasks:

1. To carry out activities of education, training, research and development.
2. To provide advice on scientific and technological issues in environment and sustainable development.
3. To review development programmes and projects of the State and enterprises.

With the agreement of the General Department of Tourism, from October 2004 to August 2005, the Institute conducted a project of social criticism/public review, entitled "Raising the Awareness and Strengthening the Participation of Community in the Process of Drafting the Law on Tourism of Vietnam." The activities of the project are all closely involved with the Legal Department, General Department of Tourism and Department of Trade and Tourism of the localities where the Institute conducted consultative meetings.

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<sup>50</sup> Asia Foundation (2008), Survey of training needs of CSOs: The development of organization and mobilization of the Vietnamese CSOs' participation, p.25)

On December 18<sup>th</sup>, 2004, the Institute held a seminar on "Contributing to Comment on Drafting Tourism Law" based on the draft No.VI, to which more than 50 participants attended, gathering many specific suggestions on preparing the Law on Tourism, focusing on the issues of protecting natural resources, tourism environment and ensuring sustainable development.

Between January 2005 and May 2005, the Institute organised four provincial and city-levelled seminars (in Ninh Binh, Quang Binh, Ho Chi Minh City and Tien Giang) and conducted surveys and direct interviews in five communes that are localities of tourist activities in these provinces. These activities were held in compliance with the draft No. VII/5, which mainly considers aspects of natural resources; tourism environment and sustainable development. Target groups attended the workshops, surveys and interviews, including managers of central and local levels, scientists involved in natural resource and environmental tourism, businesses, residential communities directly benefitting from tourism activities as well as indirectly-involved communities.

After each workshop and survey, the Institute's experts gathered comments and sent a written document to the Legal Department (under the Drafting Committee). A summary report on the entire input was finally sent to the General Department of Tourism, the National Assembly's Office, the N.A.'s Economic and Budget Committee, Center for Information and Scientific Research in the Office of the National Assembly and the National Assembly delegations of Quang Binh and Ninh Binh. Some of those comments were well-received, and on November 6<sup>th</sup>, 2005, at the National Assembly session, the Tourism Law was enacted<sup>51</sup>.

## *2. Role of Policy Advocacy and Consultancy*

The SOs' role of advocacy and consultancy is provided in Articles of 19, 116 (d) of the LEP, under which organisations and individuals are encouraged to promote the services of EP via functions of consultancy, training, providing information on environment<sup>52</sup>.

As an important information channel of democratic mechanism in EP, the SOs do not only reflect violations of the LEP, but also provide recommendations and suggestions on handling and resolving those issues. Through SOs people can directly express their opinions to contribute in making political decisions, policies programmes and plans on EP at local and national

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<sup>51</sup> Asia Foundation (2008), Survey of training needs of CSOs: The development of organization and mobilization of community participation in U.S. civil society, tr.26-27.

<sup>52</sup> Law on Environmental Protection (QH52/2005/QH11), <http://www.vietlaw.gov.vn/>

levels. The SOs, like CODE and PanNature (mentioned below), demonstrate their roles and effectiveness in policy advocacy and consultancy related to MPE.

#### **Case Study 4. Institute for Consultancy and Development**

The Institute for Consultancy and Development (CODE) is a scientific and technological institution working in the fields of development consultancy, policy analysis and advocacy in the context of the opened economy and international integration of Vietnam and the Mekong Basin countries. CODE is a pioneering professional organisation in the field of policy advocacy in Vietnam. CODE's principles concern providing a bridge that links people and communities with different levels of government, business and the market related to the process of planning and implementing policies and laws in general and the protection and monitoring of environment in particular. CODE's objective is to study activities of NGOs in managing and protecting environment, research, consultancy and assessment of sustainable development. CODE has actively contributed to the process of planning, implementing and monitoring State policies to harmonize and balance environmental, social and economic elements, as well as the interests of the State, enterprises and citizens.

CODE's recent activities include:

##### **1. The High Central Bauxite Programme**

In activities of policy advocacy, CODE has actively participated in the High Central Bauxite Project, from its beginning period till present.

From November 7<sup>th</sup> to 11<sup>th</sup>, 2007, CODE was involved in conducting research to provide an immediate assessment of social problems in the Central Highlands Bauxite Programme. CODE coordinated and worked closely with law and policy makers, as well as various public authorities at central and local levels. In October 2007, CODE collaborated with the Dak Nong Province (the locality at which the project would be carried out) to hold a scientific conference with the participation of leaders, managers, policy makers and executors at central and local levels, along with scientists and CSOs related to MPE. In October 2008, CODE conducted a 2<sup>nd</sup> consultative and scientific workshop, with the participation and co-organisation of the Dak Nong province and Coal and Mineral Industries Group (under MONRE and Institute). This workshop attracted more than 160 participants, including National Assembly members, local leaders and local managers, scientists and members of the CSOs. The workshop created a bridge connecting scientists and SOs with governments at various levels, policy makers and executors related to the issue of Central Highlands bauxite in particular and the MPE in general. After the Party's Political Bureau issued the Resolution of the Central Highlands Bauxite

(dated April 24<sup>th</sup>, 2009), CODE continued to participate actively in the review of policies on this issue. CODE provided the scientific basis and made proposals and recommendations; thereby it recommended that the Government should conduct a strategic environmental assessment and a pilot implementation in one to two plants before proceeding in a series of projects, in order to assess the full impacts on people's livelihoods and environment, to better adjust plans and the concept of requiring the lands to be completely returned after mining, etc.

CODE's philosophy of operation is to conduct activities of professional policy advocacy. This means that, the activities of CODE must always advise the Party and the State to create more appropriate policy decisions (those are, for example, the resolutions and directives of the Politburo, the Prime Minister's Decisions, etc.). CODE's activities of organising fieldwork studies, surveys, monitoring, advocacy and consultancy for strategic policy making on environment have made a significant contribution. The monographic book of '*Bauxite Mining and Sustainable Development in the Central Highlands*', conducted by CODE, provides a multi-dimensional perspective on the Central Highlands, further providing scientific grounds for decision makers and policy executors at national and local levels. CODE was the first organisation consulting and advocating on the matter of Central Highlands bauxite, as well as one of the SOs playing an essential role in activities of monitoring, reviewing, advocating and consulting effectively on the policies related to EP recently.

## 2. Consultancy on Drafting the Law on Minerals

CODE has actively participated in drafting the Law on Minerals through providing scientific and practical foundations on concerned matters resulting from mineral mining that impacts people's livelihoods, minerals governance, transparency and sustainable development. Through the activities of seminars, workshops, conferences, submitting reports, and making recommendations to relevant public authorities, CODE has significantly contributed to providing an important channel of information for lawmakers in drafting this law.

CODE conducted selective research in three main research areas (namely, coal mining in Quang Ninh, titanium mining in the Central Coast, and bauxite mining in the Central Highlands), in May 2010, co-organised, with the Vietnam Union of Science and Technology Associations (VUSTA), the national consultative workshop entitled '*Mineral Resources and Sustainable Development in Vietnam*' to make recommendations to the National Assembly to discuss the law draft on minerals. CODE also contributed to the process of law drafting with its experiences and ideas. CODE carried out fundamental research for the implementation of the Extractive Industry Transparency Initiative (EITI) in Vietnam, and then co-organised, with the Chamber of Commerce and Industry of Vietnam (VCCI), a consultative workshop for

publicising this study. At the same time, CODE coordinated to hold workshops on public choices in the mineral policy with PanNature. Their findings have been included in the process of formulating related policies and laws of the National Assembly, for example, law drafts of the Law on Minerals and the Law on Water Resources, etc.

### 3. In the Implementation of Transparency in the Industry of Minerals and Dialogues on Anti-Corruption

CODE actively participated in EITI, a forum for transparency and governance of global minerals supported by 35 countries. CODE's activities are aimed to help Vietnam participate in this initiative.

In order to enhance public authorities' transparency and accountability at central and local levels in EP, CODE held a dialogue on anti-corruption in Vietnam in 2011, on the topic of mineral mining, between the Government (coordinated by the Government's Inspectorate) and donors (coordinated by the Swedish Embassy). CODE presents on realities of the mining sector and Vietnam's ability to join EITI.

CODE's principle is to uphold sustainable development. CODE's studies on minerals have positively contributed to detecting, monitoring and protecting environment. Through its activities, CODE addressed the lack of uniformity in regional development, the comprehensive assessment on related sectors. For example, there is ineffective coordination between provinces and localities on the matters of strategic planning for regional development, water resource management, agricultural land, minerals mining, etc. So, together VUSTA, CODE and the Vietnam Academy of Social Sciences have co-carried out the Development Programme for the Central Highlands (the State-levelled fundamental scientific programme, called 'The Central Highlands 3' managed by the Academy of Science and Technology, with the participation of VUSTA and VASS).

### **Case Study 5: The Center for People and Nature**

The Center for People and Nature (PanNature) is a non-profit organisation, formally founded in 2006. Its activities aim at protecting environment, conserving abundancies of diversity of nature, and improving the quality of life of local communities through seeking, advertising and implementing sustainable and environment-friendly solutions. PanNature began to form at the end of 2004, when several people with the same viewpoints on natural

conservation wanted to form a local NGO managed by the Vietnamese people themselves.

PanNature belongs to the third generation of SOs, which has visions of contributing to shaping Vietnam into a sustainable and environment-friendly society, in which all people should have a prosperous life and be in harmony with nature, and natural resources should be used rationally to ensure the country's goals of sustainable development for today and tomorrow.

PanNature's mission is to protect the environment; to conserve the diversity and richness of nature; to improve the quality of life of local communities through searching, promoting and implementing sustainable and environment-friendly solutions. PanNature's strategies of operation in 2011-2015 were established to enhance good governance and transparency in natural resources in Vietnam with the following specific objectives:

1. To strengthen good governance in natural resources.
2. To enhance the public awareness of environment.
3. To improve the participation and transparency of the process of making and implementing public policies on natural resources and environment.
4. To cooperate and develop a network in Mekong region and the Association of Southeast Asian Nations (ASEAN).
5. To build organisational capacity. With each of these objectives, PanNature has already established strategic groups carrying out priorities of specialized programmes on
  - i. Governance of natural resources through field projects.
  - ii. Training, education and consultancy on environment.
  - iii. Communication and publication.
  - iv. Research and policy advocacy on environment.

Some of PanNature's programmes carried out are:

### **1. Building Models of Governance of Natural Resources at Fields**

Since 2008, PanNature has carried out pilot projects of building a community-based model as an institution of local CS for assisting effective management of natural conservation areas. This includes establishing communal-levelled community development boards for the project 'Approach to the Market of Forest and Agricultural Products for Communities in Boundary Areas in the



Natural Conservation Region of Hang Kia-Pà Cò (Hoa Binh)'; or piloting to establish community-based organisations in villages to assist and collaborate with the conservation region's management board and local governments participating in the management and protection of especially-used forests in the conservation regions of Ngoc Son-Ngo Luong (Hoa Binh), Mu Cang Chai (Yen Bai) and Khau Ca (Ha Giang). This is a new initiative, piloted for the first time in Vietnam, which is consistent with the orientation of policy development for co-management of Vietnam's especially-used forests in the period of 2011-2015.

## **2. Capacity Building for Local Partners**

This programme enhances capacity building support for local officers and organisations. PanNature's training programmes for capacity building include training courses for media personnel and trainers, conservation and forestry extension staff; developing skills; training through work; providing opportunities for practice and exchange of work; providing scholarships for students; supporting organisational development for SOs.

## **3. Network of Partners**

This programme supports the development of CS in the field of MPE and nature conservation in Vietnam. PanNature has strengthened the links and shared networks between Vietnamese people who have the same interests in EP and natural conservation, with particular focus on the youth and SOs; supporting materials for conservation groups in the country by establishing a small-grant funded mechanism that supports local groups and SOs in developing their organisations, and implementing intervention projects and initiatives in EP.

PanNature is currently encouraging community groups to participate in the protection of especially-used forests at village and communal levels (indeed, this is to build community-based NGOs). Its activities concern the conservation areas of Hoa Binh, Mu Cang Chai (Ha Giang province), Yen Bai, etc. PanNature is a typical case study on capacity building and connecting SOs in the field of MPE. PanNature has actively participated in the activities of MPE and capacity strengthening of local NGOs in building networks and connections to effectively protect conservation areas in Vietnam.

## **4. Policy Consultancy**

This programme contributes to changing mechanisms and policies for better nature conservation.

Through the results of research programmes and projects, PanNature can propose referencing models and make suggestions for planning and managing sustainable development to policy makers at all levels of government.

In the work of policy consultancy and advocacy, PanNature creates space and opportunities for politicians, law and policy makers, and scientists, with the intent of having them work together to enhance their participation in policy advocacy.

PanNature focuses on environmental impact assessments, such as the impact of dam projects on the Mekong's main streamline, water sources, fisheries, electricity power, etc. PanNature's studies also indicate an inadequate and incomplete legal system of environmental management. For example, the existing provisions in the Penal Code are not binding to organisations, but rather to individuals in cases of environmental violations. Thus, if there is a business or manufacturing entity breaching the law on environmental protection and violating the residents' rights and legitimate interests, it is really difficult to suit the individuals who run that entity. While the law exists that provides responsibilities and legal obligations on protecting environment, pollution treatment, and information transparency and accountability of enterprises and the competent authorities, the MPE will remain ineffective if there is no participation from SOs. So, PanNature actively serves as a channel of dialogue between enterprises, the Government and the people. PanNature pays attention to pollution problems in particular, MPE in general, as well as to mass media and the press. It also conducts interviews with experts, provides training for journalists and environmental experts on the Law on EP, etc. PanNature is working with experts on environmental law at the Vietnam National University of Hanoi and studying the assessment of people's rights to complain in cases of violation of environmental law, then publishing reports and press releases.

On the matter of enhancing management capacity of natural resources, PanNature has contributed to strengthening the State's governance capacity, as well as helping the people and community to participate effectively in the process of MPE. PanNature's strategic studies and assessments, along with its reports, recommendations, policy consultancy and advocacy, are all sent to the National Assembly and made available on public websites to policy makers, the community and the parties concerned. Additionally, PanNature has collaborated closely with other SOs, for instance with CODE, in putting EITI in Vietnam's governance system of natural resources and promoting Vietnam to join the World's Resources Revenue Watch.

## **5. Research and Education**

This programme promotes the understanding of environmental issues. This includes activities, such as programmes of applied research and education of environmental experience.

In the field of research, PanNature is interested in how mineral mining impacts poverty, environment, etc., in Vietnam; research and evaluations on mineral mining and poverty reduction in the Yen Bai province, Central Highlands (Gia Lai), studies on the environmental impact assessment and strategic environment, etc. These studies indicate that mineral mining neither reduces poverty nor does it have a connection with poverty reduction whatsoever in those areas. At the same time, those studies also identify the shortcomings and difficulties of the resource management and the process of building and implementing projects related to minerals. For example, investors and the Government have adequately assessed the impacts of coal and mineral mining on hunger eradication and poverty elimination. This is because its environmental impact is so large while the environmental costs are not covered by the profits from the mining, etc.

#### **6. Communication - Publication**

This programme raises the public's awareness of natural conservation issues.

PanNature has developed and published various forms of publications, such as reference books, pocket books, leaflets, posters, advertisements, and guiding materials on nature, environment, wildlife, education and communication on environment, environmental policy advocacy, sustainable management and use of natural resources.

PanNature conducts education and propagation of knowledge on environment, sharing information and promoting environmental justice through online multi-media and communication products, particularly the Internet, with its website 'www.ThienNhien.Net online' which has been accessed 800.000 times.

PanNature works closely with news agencies and central and local television firms, aiming at raising public awareness on environmental issues and sustainable development through scientific and educational films.

### *3.Role of Enhancing the Community's Participation in the Process of Monitoring and Protecting Environment*

The activity of monitoring and protecting environment is one of SOs' important missions. Vietnamese law provides the rights and duties of individuals and organisations, especially local SOs, in inspecting and monitoring EP. Like other general SOs, the SOs working in the field of

environment as a community's force play the role of inspecting and monitoring activities related to EP carried out by central and local governments, enterprises, various organisations and the entire society.

The LEP provides responsibility in executing and inspecting the implementation of the substances mentioned in the report on assessment of the project owner's environmental impact (Art. 23 (1)); thereby it is required to have all relevant information at project sites publicised and available for the public, including types of pollutants, technology of treatment, standard facts of pollutants, and solutions regarding EP, so that residential communities can know, check and monitor<sup>53</sup>. Thus, residential communities' role in checking and monitoring is so essential that their participation is needed from the beginning stage of reviewing a project on impacting environment, rather than in the process of the projects' implementation or completion.

SOs, for example the Centre for Environment and Community Research (CECR), Nature Education Centre of Vietnam (ENV), PanNature, etc., have indicated that SOs have demonstrated their effectiveness and active involvement in the process of strengthening the participation of communities and other stakeholders (such as governments and enterprises) in MPE.

#### **Case Study 6. Institute of Ecological Economics**

The Institute of Ecological Economics (ECO-ECO), established in 1990 and became an affiliate of the VUSTA in 1993, is a research organisation of a group of scientists, VUSTA in 1993. The institute has 19 founding members, 12 acting members, 10 collaborators and 10 international honourable scientists.

ECO-ECO gained membership to various international organisations, including IUCN (1995), the International Federation of Organic Agriculture Movements (IFOAM) (1996), and the Christian Charity for Development and Anti-Poverty (CCFD) (1996). Since 1995, it has launched the Periodical Journal of Ecological Economics, which is widely published nationwide (to date there have been 33 volumes published). The institute has the following functions:

1. Scientific research.
2. Raising the community's awareness through training, education and communication.
3. Policy advocacy related to MPE.
4. Development and implementation of sustainable development and MPE models, with community participation.

<sup>53</sup> Law on Environmental Protection (QH52/2005/QH11), <http://www.vietlaw.gov.vn/>

ECO-ECO's working areas include:

### *1. Studying and Implementing Models of Eco-Village*

ECO-ECO has built 16 eco-villages in three sensitive eco-systems (the bald hills, sand dunes, and water-flooded areas), which belong to 14 Northern and Central provinces, with the direct participation of thousands of households in MPE. For example, an eco-village in the sandy deserted area of the Le Thuy District, Quang Binh Province, was constructed with the participation of 200 households from three villages (funded by SIDA, IUCN and the Government's Border Authority). This model was highly successful and therefore multiplied.

### *2. Building the Models of Conservation*

Five models were created, regarding traditional medicines, un-wooded forest products and rare timber trees, in various fields; namely the conservation model of traditional medicines in the Binh Duong Commune (Vinh Tuong District of Vinh Phuc Province), the conservation model and development of un-wooded forest products in the Khang Ninh Commune (Ba Be District of Bac Kan Province) and Tuan Dao and Bong Am Communes, (Son Dong District of Bac Giang Province), the conservation model of genetically-rare timber trees in the National Park of Ba Vi (Hanoi) and the reconstruction of 30 ha of tropical forest on the landscape of the Giong Temple (Soc Son District of Hanoi).

### *3. Training, Raising Awareness, and Skills*

Conducts training courses for facilitators and project implementers on knowledge and skills, including combined forest and agricultural techniques, skills of making micro plans, communication, writing reports, hunger eradication and poverty elimination, tackling climate change and desertization, etc.

### *4. Providing Education and Advisory Services*

ECO-ECO collaborates with universities and research institutes in providing master and doctorate programmes on agriculture, forestry and environment, etc. (by training and educating the cadres at all levels methodologies, regional and human resource management in communities), in sitting on the review council of the State's major projects and socio-economic programmes, and in providing consultancy for international projects, developing the law on bio-diversity, EP, etc.

### *5. Research*

For example in carrying out a State-levelled programme of theoretical research and practical application (building eco-villages in sandy areas of Trieu Van,

Trieu Phong district of Quang Tri Province) and a number of research programmes funded by VUSTA and various departments of sciences and technology, etc.

#### *6. Communication*

Through information channels such as the Journal of Ecological Economics, websites, publications, seminars and conferences, etc.

ECO-ECO's building of eco-villages shows that an important role of the SOs exists in encouraging communities and the whole of society to participate in the work of MPE. The wide participation of governments at all levels, mass organisations (such as Women's Unions, Youth's Unions, Farmers' Association and the Elderly's Association) and local communities are very significant and effective in building eco-villages and models of conservation. For example, ECO-ECO has been carrying out the operation of 'building a model for potential evaluation of a CSO for EP and sustainable development', within the project of 'Improving Agricultural Environment in Bac Kan and Lao Cai Provinces', in collaboration with the Elderly's Association.

#### **Case Study 7. Center for Environment and Community Research**

The Center for Environment and Community Research (CECR) was established in 2009 and is a voluntary, non-profit, and community-based organisation, focused on the main functions and tasks of doing research, consultancy, education, and propaganda on EP. CECR specializes in EP activities of raising the awareness of communities, building environmental management capacity and connecting the participation of SOs with the public concerning MPE and sustainable development in Vietnam.

CECR joined in the building of basic information of ponds and lakes in six urban Districts of Hanoi, which was published to commemorate the Millennium Anniversary of Thang Long-Hanoi. This activity was funded by the EU through the Embassy of the Czech Republic. CECR has also been compiling a training manual of 16 modules, an overview of environment, the Vietnamese legislation on environment, the environmental impact of building houses, residential and urban areas, etc., that will be used by contracting companies, company managers and project owners.

These activities have been carried out by CECR:

1. In 2010, developing background information on ponds and lakes in six urban districts in Hanoi, with the wide participation of governments at all levels, socio-political organisations and communities in Hanoi. This pilot project will

be widely multiplied as the model for managing ponds and lakes and MPE on a national scale.

2. In 2010, launching background information on ponds and lakes in Hanoi to an audience of over 400 delegates (including representatives of governments), SOs, communities, four television stations and 40 newspapers.

3. Building the project 'Enhancing Participation of Women in the Protection of Ponds and Lakes in Hanoi'.

4. Developing community networks on the management of ponds and lakes and EP in Hanoi and the rest of the country.

5. Building a website providing and sharing background information about ponds, lakes and MPE.

6. Selectively studying in 10 wards (including the lakes of Huu Tiep and Den Lu) to implement environmental initiatives for preserving lakes, making wards' cultural houses a common space for the community to participate in courses on environmental law (the Ordinance on Grass-Rooted Democracy), and helping wards to establish plans of environmental management.

7. Building monitoring mechanisms, for example in helping local pupils and women actively participate in managing local environment; building a network of agencies, organisations, communities and individuals involved in EP (including a network and website).

8. Raising awareness and skill level in MPE for local officials and communities through education, training, seminars, conferences, etc.

9. Strengthening monitoring through the coordination and implementation of community-based supervision.

CERC's activities have indicated the important role of SOs in encouraging and enhancing the participation of the people and community in MPE, as well as the positive effects of those activities. The activity of establishing community-based networks and transparency of information in the management of Hanoian lakes and rivers has significantly resulted in immediate impacts of strengthening the people's and SOs' participation in MPE.

### *3.1.5. Role of Education, Dissemination and Propagation*

SOs have an important role in education, dissemination and propaganda of the LEP. The LEP provides a legal framework for organisations and individuals involved in activities of EP in general and activities in education, dissemination and propaganda of EP in particular (Article 5 (2)). The Law also stipulated the State should prioritise the training of human resources for EP,

while encouraging all organisations and individuals to become involved in that training (Article 107 (3)). Formal education in the public system conducted by the State is very important and indispensable. However, the role of SOs in providing long-term dissemination, propaganda, and education to everyone in the society in general and organisations of production (business and services) in particular, is inevitably necessary.

The role and tasks of the SOs in EP has been reaffirmed in their charters of association. For example, Article 4 of the Charter of the Association for Nature and Environment of Vietnam (a CS affiliated to Vietnam Union of Science and Technology and Vietnam Fatherland's Front) confirmed that this association has a mission of 'propaganda, education, awareness raising and dissemination of knowledge on the protection of nature and environment for the people', 'contributing to putting the issue of environment into teaching curriculum in schools', 'carrying out the activities of consultation, social criticism and assessment for State agencies and business organisations', and 'protecting the rights and legitimate interests of the association and its members'<sup>54</sup>. This is one of SOs' fundamental tasks working in the field of EP. For example, the EVN<sup>55</sup> has demonstrated the positive role of SOs by contributing significantly to detecting and denouncing violations of environmental law in particular, and to the work of education, dissemination, communication, awareness raising, behaviour change of EP in general (see case study 1).

### **III. ENHANCING THE ROLE AND PARTICIPATION OF SOs IN MPE**

#### **1. Realities of SOs in MPE**

Since the late 80s and early 90s of the twentieth century, many SOs have been established and are operating in the field of EP in Vietnam. They have significantly contributed to a joint effort with the State (public sector) in MPE. However, because there is no uniformed legal framework or a sanction mechanism for effective implementation, the SOs' participation and their role in the work of EP is relatively limited. Therefore, SOs in Vietnam working in the field of EP have not actually constituted considerable strengths and forces in significant contributions to playing a supportive role in the management, protection and monitoring of environment. Specifically they have not achieved enormously effective impacts from policy advocacy, consultancy and social criticism, etc., considering policies on socio-economic development at central and local levels that have an effect on environment. Meanwhile, there have

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<sup>54</sup> Association of Conservation of Nature and Environment of Viêt Nam, the Constitution, <http://www.vacne.org.vn/default.aspx?menuid=22> (accessed 12.04.2010)

<sup>55</sup> EVN, <http://www.thiennhien.org/index.php?page=introduction>



been obvious breaches of laws on EP occurring daily and regularly, on very serious levels<sup>56</sup>.

One of the SOs' current challenges in MPE is gaining the awareness of the Party committees, governments and departments at all levels, and even the entire society, of the position, role, and missions of SOs. In addition, there has been a lack of a tight linkage and closely interactive relationships among SOs in the same field of EP; lack of coordination, cooperation and collaboration. As a result, SOs' effectiveness in EP is still limited. At the local level, such as in Ho Chi Minh City, there are dozens of SOs working in the field of MPE, but they have never collaborated in the effort to make a joint report of recommendations to submit to the Government or relevant authorities about environmental pollution and other environmental law enforcement violations made by individuals or organisations of business, production or local services<sup>57</sup>. Although the SOs are large in number, their quality, capacity and skills of policy advocacy and review of projects, plans and programmes of socio-economic development relating to environmental impact is relatively limited.

## **2. Opportunities and Strengths of SOs in MPE**

Studying the SOs in the field of MPE (such as ENV, CODE, PanNature, CECR, ECO-ECO, etc.) has revealed their strengths, weaknesses, opportunities and challenges in the work of MPE.

### *2.1. Opportunities*

The SOs working in the field of MPE have the advantage of environment and sustainable development being a hot topic, an urgent and special attention of the community. It gains great support from leaders to people of all statuses. In terms of organisation, SOs are generally independent, autonomous (regarding financial and human resources), and highly self-managed (therefore, they have an independent voice from the Government and businesses); their organisational structure is compact and reasonable. In terms of their operational model, SOs have close links with people, communities, partners and donors; they are a bridge of reconciliation and coordination between the Government, market forces and the people.

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<sup>56</sup>Lao Dong Newspaper, *The National Assembly gets hot due to Ba Bo canal*, <http://www.laodong.com.vn/Home/Nghi-truong-nong-bong-vi-kenh-Ba-Bo/20087/97592.laodong> (accessed 12.04.2010)

<sup>57</sup> See Sài Gòn Giải Phóng Newspaper, *Lack of coordination, Dong Nai River shall 'die'*, <http://www.sggp.org.vn/phattrienbenvung/2009/9/203743/>; or Lao Dong Newspaper, *There is no river or canal escaping from pollution*, <http://www.laodong.com.vn/Home/Chang-dong-song-kenh-rach-nao-thoat-o-nhiem/200910/159560.laodong> (accessed 12.04.2010)

The Party and State of Vietnam have especially expressed their concern for, good will towards, and highly political commitments to sustainable development, EP and ensuring of human rights.

The need to share information and express urgent concerns about MPE among people and communities is inevitable and necessary. Sometimes when people complain about their forest areas or being illegally deprived of land, they often go to forest warden units or other authorities for help, but this is not always effective. So the people do need SOs, which offer alternative approaches and solutions, such as hotlines and other information channels, to connect and work closely with law enforcement officers in performing their MPE roles effectively.

## *2.2. Strengths*

In general, SOs have the following strengths/abilities:

1. To approach at the grassroots level, creating close ties with people and communities (via networks of collaborators across the country such as ENV).
2. To conduct independent research, public debate, policy advocacy and consultancy<sup>58</sup>.
3. To inform, communicate and educate on the knowledge of environment<sup>59</sup>.
4. To establish a network.

Through networking, SOs provide technical assistance, education and training on awareness enhancement and information sharing, etc. The network becomes a unified forum that coordinates all activities of the SOs. The network of SOs involved in MPE has been newly established and rapidly expanding. For example there are currently 25 NGOs working in the field of forest management in forest areas, out of the 87 NGOs working in the field of environment. Additionally, the Association of Forestry Sciences has its branches in all provinces and cities nationwide. This Forestry Association has effectively contributed to the management of forests and forest resources. For example, in the context of policies and projects, the association is contributing in the review of a recent project regarding the construction on a North-South

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<sup>58</sup> CODE, PanNature, ENV, CERC, ECO-ECO, etc. Their activities include providing the projected impacts and effects of mining projects, socio-economic development, etc., for the people's livelihoods, environment and sustainable development; forecast the policies that the State is doing currently and will do in the next five years, thus there should be a need for background information. For example, minerals, hydropower encroachment on protected areas exist, so need to know before the State has amended the law, how to policy advocacy, counseling effectiveness.

<sup>59</sup> For example, ENV has 50 journalists as their collaborators, most of the CSOs in this area have websites, newsletters, magazines or webpages as a useful tool for activities of education and propaganda.

highway that would result in a bridge running across the Cuc Phuong National Park.

Mechanisms for sharing and exchanging information between State agencies and governmental bodies from central to local levels have been less than effective, (or relatively weak and inadequate), both un-transparent and irrelevant to actual situations. By contrast, the strength of SOs lies in having a mechanism for sharing and exchanging information amongst themselves that is considerably impressive.

In developed countries, the core members of SOs include not only the local communities, voluntary organisations or CS in general, but also the intellectuals; independent scientific experts and academics. Their participation and contribution to consultative processes and reviews of policy that enrich the quality of participation and assert the status of SOs in a societal system, especially in the work of MPE, are inevitably necessary. Present-day independent research institutes, of which there are many specializing in environment that actively participate in reviews, consultancy and advocacy related to environment, are an indispensable part of a CSO. CODE, the Institute for Environment and Sustainable Development, etc., are examples of very effective SOs (as indicated in the boxes above).

### **3. Challenges and Weaknesses of SOs in MPE**

#### *3.1. Challenges*

SOs, particularly at the local level and in some sensitive issues (such as projects related to national security) are often faced with challenges from institutional barriers, policy framework and the unwillingness of leaders. For example, due to the lack of a law on the access to information, SOs face much difficulty in accessing information necessary for the operation of MPE. Moreover, SOs also face the potential risk of failing to comply with local regulations of local governments. Many SOs are confronted with the threat of being ‘whistle blown’ if they go beyond permitted boundaries. At the same time, they continuously face the potential risk of encountering organised crimes, corruption and attitudes of unwillingness and refusal to cooperate from local cadres and public officers. In the environmental governance, there existed abetting and cover-up acts made by some local governmental officials in the projects affecting environment and breaching the law on environmental protection.

Furthermore, SOs must face the ‘brain drain’, as they must compete with the dynamic labor market, which employs qualified and passionate experts, considered the 3rd generation of SOs. Additionally, CSO’s staff members are, in general, not effectively completing the work of policy advocacy and consultancy, particularly regarding sensitive, complicated and extensive topics.

Simultaneously, there is no connection or close unification of all SOs in general and the SOs in MPE in particular.

### *3.2. Weaknesses*

The biggest existing weakness of SOs is in their qualified capacity for performance of activities and programmes. Due to the lack and instability of finance and human resource, many SOs are ineffective in implementing programmes, projects and activities.

In general, the voice of SOs is not heavily weighted and their influence is still limited. Sometimes, due to the absence of self-funding or human resources, SOs are limited to activities of specialization and professionalization. Therefore, their voice and influence on policy processes and their effectiveness in MPE have been inadequate. They have not possessed the ability to engage in the issues and big projects related to environment. Along with the lack of a unified association or alliance linking all SOs, including those in the field of MPE, is the lack of union between NGOs. So SOs have not been able to create a consensus and unified voice that can affect the big issues related to environment and sustainable development.

Legal and policy frameworks have not been synchronized and adequate in terms of the organisation and operation of SOs in general, as well as related to SOs in MPE in particular. This has affected the strengths of SOs; for example, the lack of law on access to information, law on associations, etc. Regarding policy framework, there is no tax exemption policy for NGOs, etc. Also, there are inadequate management institutions, for example, in the area of lake management. Thus many different institutions are in charge of managing the lakes, which should be managed by local governments.<sup>60</sup>

The SOs have not been widely involved in the whole process of planning and implementing policies, nor involved in the monitoring of it. Their participation in the policy process has not become a bound and clear mechanism; this has not been a sanction-based and highly effective nature. Transparency and accountability are the important premise of the rule of law, of good governance and guarantee of fundamental rights and freedoms and democracy of the people. This is extremely important in the process of planning and policy implementation. Only by being involved actively in that process, people and communities in general (including SOs) could contribute effectively to MPE. SOs' mechanism for participation in the policy process is not complete and also inadequate. For example, the participation of SOs in sensitive projects (such as the bauxite project in Central Highlands) is very limited, while for other projects (such as dam projects on Mekong's main

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<sup>60</sup> For example, in the case of managing Hanoian lakes, there are different entities and usually not by local public authorities. This has negatively affected the monitoring and protection of lakes.

streamline) the participation of SOs has been very efficient (eg: the case of Vietnam Rivers Network (VNR), WARECOD, etc.).

SOs have acknowledged the significance of investment for independent research on big projects, programmes affecting environment, in order to establish a solid scientific basis for policy, law advice and consultancy.

Vietnamese SOs have not had a supporting basis or foundation for sustainable activities, such as participation and contributions from members or donors<sup>61</sup>.

The expertise and professionalism of SOs is still relatively weak. Most NGOs are semi-independent (quasi-independent) or an incomplete entity of a CSO. This is due to many reasons, including barriers in legal and policy framework as well as conditions and resources (such as limited finance and human resources, etc.).

There lacks quantity and quality of local SOs operating at the grassroots level in the field of MPE.

#### ***4. Some Measures for Enhancing the SOs' Role in MPE***

In order to enhance the role and effective participation of SOs in MPE, the following several measures need to be further improved and strengthened:

- *Firstly*, the policy and legal framework on establishment of association needs to be improved in order to enhance the State management on the organisation and operation of SOs, on the one hand; and to provide the rights and responsibility and working areas, on the other hand, so that SOs can enhance their effectiveness in the operations of providing social services and charity missions, community development, and strengthening the role of community monitoring for operations of law enforcement and policy execution conducted by various levels of the local Government, as well as local economic entities, especially in the field of MPE.

- *Secondly*, SOs should focus on professionalism and specialization of their priorities and interested areas (for example: in the field of minerals (CODE), nature (PanNature), water (WARECOD), rivers (VNR), lakes (CECR), wildlife (Wildlife, ENV), etc.). This is the foundation needed to create their position and role in MPE; they need to promote other activities forms of MPE via conducting seminars, consultation conferences, investigation, detection, denunciation, information sharing and exchange, submitting reports

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<sup>61</sup> In Vietnam today, there are very few associations with sustainable financial sources from their members. Whereas, this is very common in developed countries. For example, the UK's Birdlife, which has one million members. Its members' financial contribution has significantly brought them advantages, a great voice and an absolute independence.

and recommendations to public authorities concerned, etc. This is an effective measure to strengthen the role of SOs in MPE.

- *Thirdly*, SOs only operate effectively in the field of policy advocacy and consultancy if a trustful relationship (mutual understanding) is established. So it is necessary for SOs to build trust and close cooperation with the entities planning and executing policies, including organisations and individuals representing the State. SOs need to develop activities and programmes associated with policy-making processes at all levels of governments and localities. Also, SOs need to examine methods of project implementation, focusing on priorities and key issues.

- *Fourthly*, all levels of local governments, as well as central functional bodies and managing agencies, should encourage, support and create favorable conditions for the establishment and operation of SOs at the grassroots level, particularly in the field of EP, poverty alleviation and community development, etc. The State should increase the participation of SOs in the process of policy making and implementation in general, and in MPE in particular. Many NGOs are implementing transparency programmes in the mining industry; for example CODE, PanNature, etc.

- *Fifthly*, The role of scientists is very important in gathering compelling evidence for SOs to contribute effectively to activities of MPE. Thus, SOs need to further strengthen their research programmes to provide a persuasive and solid scientific basis for the purpose of policy advocacy and consultancy related to environment. At the same time, the State should be an encouraging mechanism for improving the participation of scientists in SOs and independent research institutes<sup>62</sup>.

- *Sixthly*, SOs operating in the field of MPE should gather together, link and unite under a joint operating organisation to increase efficiency and power. At the same time, there should be close cooperation and extensive information sharing regarding activities of MPE.

- *Seventhly*, SOs must enhance education and communication concerning the EP law, which explains a person's rights in regard to environment, for politicians, leaders, law and policy makers and executors, SOs, social unions and mass organisations, as well as communities and individual citizens. It is necessary to develop a curriculum, intergrating environment, law on environment and human rights, to use for the education and training of awareness raising and policy making and executing. Further strengthening

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<sup>62</sup> For example, the case of Na Hang dam in Tuyen Quang province there was the participation of local CSOs and international organizations, particularly research institutes and universities, etc. As a result, studies and arguments have brought in the change of the Tuyen Quang government's decision to move the Dam up to 2 kilometers, similar to the cases of CODE, PanNature, WARECOD, ECO-ECO, ....

training courses, training of trainers (TOTs) for part-time propagators and collaborators who have a better understanding of environment and the right to environment, should be provided. This is very important for improving awareness and action in MPE for the whole society.

## C. GROUP DISCUSSION

Thi Vai River, a branch of Dong Nai River, which goes past Ho Chi Minh City, is a main source of fresh water for consumption and agricultural production for a million local people living in its middle and down-streams. Over the past several years, Vedan Company has discarded untreated waste water into the river<sup>63</sup>. As a result, the river has been severely polluted and became a 'dead' river. The high-alert level of pollution has severely damaged people's health, fish farming and agricultural cultivation. Estimate there are hundreds of thousands of local residents affected. Incomplete figures published by professional bodies proved that the river's high level of toxic contamination has been a direct cause of severe diseases such as digestive and respiratory problems and long-term consequences leading to cancer due to consuming this water. The incident was only brought before the public and intervened by the State's functional bodies after tireless and consistent collective complaints were made by the local people living alongside the river, including the residents of Dong Nai, Ho Chi Minh city, Ba Ria Vung Tau, who had been directly affected by this pollution. This incident showed that the neglect of local governments and disrespectful attitude towards the law on environment are the major reasons behind this severe pollution. At the same time, it also indicates that there lacks an effective monitoring and protection mechanism, as well as effective law enforcement on EP in all sectors, including departments from central down to local levels. As the incident was addressed with such a late response, the public posed the question of why didn't the local governments intervene earlier and solve the problem thoroughly? Was there an inadequate sanction and monitoring mechanism or was the people's and SOs' pressure limited? Inevitably, the lesson learnt from the Thi Vai River indicates that the protection and monitoring of environment does not only belong to the State's management bodies, but also, more importantly, requires the greater and more effective participation of SOs and the people.

### Discussion:

1. **Group 1:** Analyse and clarify self-managed community-based organisations; which have the role of representing people's interests in participating in MPE?
2. **Group 2:** In this case, why could local governments not effectively and thoroughly enforce the work of MPE?
3. **Group 3:** What role did local SOs and the residents' communities play in this case?

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<sup>63</sup>According to scientists, Vedan discarded 5.000m<sup>3</sup> of untreated waste water into the river every day, see <http://www.vnn.vn/khoahoc/2008/09/803589/> (accessed 12.03.2010)



**D. IN -DEPTH DISCUSSION (*Class Discussion*)**

1. From your point of view, how are local SOs involved in the work of MPE in Vietnam today?
2. In your opinion, should the State amend and improve the existing legal provisions relating to SOs in order to enhance their role and competence in MPE?

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## Module 5

### ENSURING RIGHTS TO ACCESS INFORMATION, TO PARTICIPATE, AND TO HAVE JUDICIAL ACCESS IN ENVIRONMENTAL AREA IN VIETNAM

#### OBJECTIVES OF THE LESSION

*After the completion of this lesson, the participants should be able to:*

+ Understand the legal frameworks as well as the importance of the rights to access information, to participate, and to have judicial access in environment area of our country.

+ Understand the initial analysis on the strengths, weaknesses, and shortcomings of the ensuring of these rights in our country in the past years.

+ On that basis, propose methods to perfect the policies and laws, enhance the responsibilities of the State agencies, social-political bodies, and economic organisations in ensuring the said rights, and promote sustainable development in Vietnam.

#### MAIN MESSAGES

1. Strengthening the education of human rights and environment will strongly promote enviromental protection work in the reality of life.

2. The effectiveness of environment protection work always depends on the right to information, participation of people, and access to justice in the field of environment

3. Surmounting environmental pollution and degradation at present are the common works of various branches and organisations, but it is firstly a responsibility of Government.

## MAIN CONTENTS

### **I. Ensuring the right to access information on environment in Vietnam**

- 1. Responsibility of State Agencies in Collecting, Analysing, and Storing Information on Environment*
- 2. Practicing the Principle of Openness on Environment*
- 3. Responsibility to Publicise and Provide Information on Environment*
- 4. Support to Enhance the Public's Capacity to Access Information*

### **II. Ensuring the right of the citizens to participate in activities to protect the environment in Vietnam**

- 1. Participation in Form of Being Asked for Opinions on Environment-Related Decisions*
- 2. Participation in the Form of Expertise or Sending Requests and Recommendations on Relevant Decisions on Environment*
- 3. Participation in the Form of Dialogue on Environment*
- 4. Participation in the Form of Examination and Supervision Over Environment Protection Activities*
- 5. Participation in the Form of Self-Management and Development of Environment Protection Services*

### **III. Ensuring the right of judicial access to environment related issues in Vietnam**

- 1. Judicial Access in case the Right of Access to Information on Environment is Refused or Violated*
- 2. Judicial Access in Case the Right of Participation in the Environment Protection Activities is Refused or Violated*
- 3. Judicial Access in Case of Claiming Compensations for Environment Pollution and Degradation Damages*

## A. WARM UP

### Questions:

1. Are there any factories/industrial parks in your area? If yes, do they pollute the environment?
2. Did the factory/industrial park owner publicly inform the environmental impact of the factory/industrial park before its construction? If yes, how did you receive this information?
3. If the factory/industrial park causes pollution, impacting your community health and your own family, what will you do to protect your rights?

## B. CONTENTS OF THE LESSON

### I. ENSURING THE RIGHT TO ACCESS INFORMATION ON ENVIRONMENT IN VIET NAM

As a basic right of human beings, the right to access information bears important meaning in State management, promoting democracy and ensuring other basic rights on politics, civil issues, economy, culture, and society. Therefore in Vietnam, from the doimoi process, the right to access information is stipulated at Article 69 of the Constitutions 1992: the citizen has the freedom of speech and press, has the right to be informed, etc., as pursuant to the laws. Up to now, this right has continuously been specified in many important legal documents such as the Press Law (1989), Law to amend and supplement several articles of the Press Law (1999), Laws on Publication (2004), Law on Audit (2005), Law on Preventing and Combating corruption (2005), etc. For instance, article 32, paragraph 1, of the Law on Preventing and Combating Corruption stipulates that: public officials, public servants, and labors have the right to ask the leaders of their agencies to provide information on the operation of the agencies. Or Article 4 of the Press Law stipulates that all the citizens have right to:

- Be informed through the press all the aspects of the situations of the country and the world.
- Contact with and provide information for the press agencies and journalists; send articles, information, photos, and other works to the press without having to be censored by any individuals or organisations; bear responsibilities before the law for the information provided.

In the environment area, the right to access information is addressed briefly for the first time in Article 10 of the Law on Environment Protection 1993. According to the article, “State agencies within their functions and mandates should conduct investigations, research, and evaluations on the status of environment; report periodically to the National Assembly on the environment situation; define polluted areas and inform the citizen about them”. However, only until the issuance of the Law on Environment Protection 2005 was the right to access information on environment addressed in detailed in many articles and items, and according to them: “Rights of the citizen as stipulated by laws are to be able to receive and use the information kept by authorised agencies”. In chapter X – *Environment Observation and Information*, there are stipulations on: collecting and storing data, environment (article 102), announcing and providing information on environment (article 103), openness of information on environment (article 104), and practicing democracy at local levels on environment protection (article 105). In addition, the information access right is also addressed in several articles related to evaluating strategic environment assessment reports, environment influence assessment reports, and the responsibility to conduct and examine the implementation of the contents of the environment influence assessment report, or article 67, 68, and 71 of the Law on Biological Diversification 2008. The above stipulations have set up legal framework for the right to access information on environment in this country, including:

### ***1. Responsibility of State Agencies in Collecting, Analysing, and Storing Information on Environment***

The direct subject concerning the environment information access right is the information on environment kept by authorised agencies such as the Ministry of Natural Resources and Environment, People’s Committees of all levels, other ministries, ministerial level agencies, and agencies under the Government’s administration. Therefore, the primary requirement is that this information must be collected and analysed on a regular basis and stored with methods suitable for the access of the citizen. The Law on Environment Protection 2005 has specific stipulations on responsibilities of State agencies and economic organisations in developing strategic environment assessment reports and environment influence assessment reports; including the Environment Protection Commitment, environment situation report at provincial level, environment situation report of the branch and areas, and national environment situation report. The contents of these reports contain useful information on the current situation of the environment, and causes and effects on the environment and human health; including the situation of the environment in urban area, highly condensed residency, business area, services, and craft villages, polluted and depressed areas, lists of bodies that generate serious pollution, hot and pressing environmental issues, etc. The Law on Environment Protection 2005 also provides clear stipulations on legal responsibilities in collecting and storing data and information on environment (article 102):



(1) The Ministry of Natural Resources and Environment has the responsibility to collaborate with the authorised State agencies at central level to develop a database on national environment.

(2) Ministries, ministerial levels, and agencies under Government administration have responsibility to collect and store an environment database of the areas and branches under their authority.

(3) People's committees at all levels have the responsibility to collect and store local environment data.

(4) The manager or operator of producers, businesses, services, or concentrated service businesses have the responsibility to gather and store data on their influence on environment, including waste sources and production wastes.

According to some studies by the Union on Environmental Access (TAI), up till now, State management agencies in Vietnam have developed systems to collect information on environment on a comparatively regular and comprehensive basis. Typical studies on ODA investment projects in the area of improving environmental hygiene have shown that the main point of the State agencies is to collect regular and comprehensive information and in a timely manner. This not only provides positive support for the State management practice on environment, but also creates a precondition to ensure the quality of environment information access of citizens.

## ***2. Practicing the Principle of Openness on Environment***

A popular characteristic of human rights requires that a basic standard of information access rights must be opened as soon as possible, under suitable means of language, vision, and materials in accordance with regulations of the laws, in order to meet the citizen's demands on receiving and using the information. Therefore, the laws on information access in other countries always have stipulations on the principle of openness of information. In Vietnam, the Law on Environment Protection 2005 has appropriate initial regulations. For example article 104 – Openness of Environment Data and Information, states clearly that:

(1) The following data and information on environment, except for those belonging to the list of State secrets, must be opened: a) environment influence assessment report; decision to approve this report and plan to implement the requirements by the decision to approve environment influence assessment report; b) registered commitment on environment protection; c) list, information and waste sources, types of wastes that threaten environment and human health; d) areas that are seriously polluted and depressed; areas that are at risks of environmental break down; d) planning, collecting, recycling, and

processing of wastes; e) provincial environment status report; environment influence report by the branch, area, and national environment report.

(2) The method of openness must ensure the convenience for related people who want to access the information.

(3) The agency to publicise environment information bears responsibility before the laws for the exactness, the truth, and objectiveness of the opened information.

In addition, the principle of information openness is also stipulated in articles 7 and 105 of the Law on Environment Protection 2005, article 67 of the Law on Biological Diversification 2008, and articles 36 and 38 of Decree 117/2009/NĐ-CP on handling violence of laws in the area of environment protection 2009. According to TAI's assessment, the laws of Vietnam have provided support and created initial favorable conditions in a wide scope for the access of the public to information on environment in a sufficient and comprehensive way, promoting transparency and openness. The main point is that the information is provided free of charge to the public. Role of the media such as the press, radio, and television is highly appreciated in supporting the access of information on environment. Besides is the role of the authorities of all levels and civil society.

### ***3. Responsibility to Publicise and Provide Information on Environment***

In accordance with the principle of implementing human rights and with the special characteristics of the environment area, the Law on Environment Protection 2005 and several legal documents have provided regulations on the responsibility of administrative management agencies and economic organisations to publicise and provide information on environment. According to article 103 of the Law on Environment Protection 2005, organisations, individuals managing zones of production, businesses, and services, who are on the list of those that have to develop an assessment report on environment impact, have the responsibility to report information on environment within the area they are managing to the authorised agencies at provincial level. The organisations not belonging to the above group have the responsibility to report information on environment to the authorised environment protection agencies at the local communal level so that the public can be informed. For the authorised environment protection agencies of all levels (as stipulated in article 123 of the Law on Environment Protection 2005), they have the responsibility to report information on environment of the locality to the authorised agencies of the direct upper level and to publicise major information on environment on periodical basis or as requested.

### ***4. Support to Enhance the Public's Capacity to Access Information***

In regard to the capacity to access information, the Law on Environment Protection 2005 has stipulations to raise awareness and train human resources for environment protection work: laws on environment must be disseminated and taught widely; environment education is one of the contents of the main lessons of secondary and high schools. The State prioritises the training for human resources on environment protection, encouraging all individuals and organisations to take part in training human resources on environment protection. In addition, there are several regulations to support scientifically, technically, financially, and institutionally the rights to access information, such as: developing science and technology on environment protection; developing environment industry; building forecasting capacity; environment warning; state budget and funds for environment protection; etc.

The above analysis shows that in Vietnam, the right to access information on environment of the people has been legally and clearly stipulated, matching with international legal systems, which has shown positive changes. Various types of information on environment have been periodically publicised by the authorised agencies, and cost is not the obstacle of the information access process. However, there are still some shortcomings on the awareness, laws, and operational mechanisms of the State agencies that affect the implementation of this right. Some regulations of laws are still quite general which makes it difficult to apply and secure responsibility obligations. Subjects of the information access right and the concept of announcing and providing information have not been made clear enough. The regulations on the procedures of and time periods for publicising types of information on environment have not been defined clearly. The methods to access information, information channels, data storing methods, and environment information have not been addressed in depth in compliance with the principle of convenience in information access by the public. Several groups of people in society, especially those living in rural, remote, and ethnic areas have not been taking proper care on guidance, training, and technical supports for the access of information, etc. Therefore, it is necessary to develop more specific and clear regulations to support the right to access information on environment of the people in all areas of the country.

## **II. ENSURING THE RIGHT OF CITIZENS IN THE ACTIVITIES TO PROTECT ENVIRONMENT IN VIET NAM**

The right of the people to take part in activities to protect the environment is generally understood as follows: *it is the right of all the citizens as stipulated by laws to be able to affect the process of decision making, implementing, and supervising environment protection activities*. In Vietnam, the laws, policies, and strategies on protecting environment clearly define the principle that: protecting the environment is the career of the people; the right

and responsibility of State agencies, organisations, households, and individuals. Therefore, there have been many stipulations on this right to ensure the broad and positive participation of citizens in the activities to protect the environment in the country. However, as this is a broad concept, all aspects need to be considered during the implementation of the right of the people to participate in developing and implementing the policies, laws, decision and projects on environment as stipulated by laws.

### ***1. Participation in Form of Being Asked for Opinions on Environment-Related Decisions***

Paragraph 8, Article 20 of the Law on Environment Protection stipulates that opinions of the residents in project implementation areas must be included in the Assessment Report on Environmental Impacts. Any opinions against the environment protection measures or the opinions of disagreement with the implementation of a project in the area must be stated clearly in the Assessment Report on Environmental Impacts. Also, Paragraph 4, Article 1 of the Governmental Decree No. 21/2008/NĐ-CP on Amending and Supplementing some provisions of the Governmental Decree No. 80/2006/NĐ-CP dated August 1<sup>st</sup> 2006 on providing details and guiding the implementation of some provisions of the Law on Environment Protection regulates the asking for opinions of the people's committee of commune, ward, and town, and of the representatives of the residents in the area during the process of making the Assessment Report on Environmental Impacts, as follows:

- (1) The Fatherland Front's Committee of commune, ward, and town and the representatives of the residents in the area give their opinions in the process of making the Assessment Report on Environmental Impacts of the Project in the Area.
- (2) Project owners shall send an official letter informing about the project's major investment items, environment issues, and solutions to protect environment to the People's Committee and Fatherland Front's Committee of commune, ward, or town where the project is implemented and ask them for their opinions.
- (3) Within fifteen working days from the day of receiving the official letter asking for opinions, the People's Committee and the Fatherland Front's Committee of commune or ward shall answer the project owner in written form and publicise the answer for people's notice.

TAI's study of the implementation of several projects, such as the project of constructing a hotel in Vong Canh Hill, Thua Thien-Hue province, or the project of constructing Hochiminh Road's Cuc Phuong National Garden passageway, showed that the Vietnam laws positively assist the participation of people, political-social organisations, provincial management departments or sectors, and scientists in the implementation of projects in giving their

opinions. Thus, under the feedback and pressure from the public, the owner of the Vong Canh Hill hotel construction project had to accept changes in location and architecture to ensure the safety of the area's landscape and environment, and the Ministry of Traffic and Transportation had to apply various measures to minimise the environmental impacts to the Cuc Phuong National Garden.

### ***2. Participation in the Form of Expertise or Sending Requests and Recommendations on Relevant Decisions on Environment***

According to the Law on Environment Protection 2005, the appraisal of Article 17 Appraisal of the assessment report on strategic environment and Article 21 Appraisal of the assessment report on environmental impact, must be carried out by experts whose expertise level is appropriate with the content and character of the project. On the other hand, every organisation and individual has the right to send requests and recommendations on environment protection to the project appraisal agency/organisation/board and to the project approval agency. The board and agency hold the responsibility of considering these requests and recommendations before providing their conclusions and decisions. Some of TAI's typical studies on public participation in drafting the revised Law on Environment Protection and in defining strategy on national environment protection, showed that a number of local and international experts were invited to take part in the drafting and appraising processes. Non-governmental organisations and political-social organisations also contributed considerably to these processes.

### ***3. Participation in the Form of Dialogue on Environment***

Dialogue on environment is a form of direct and equal participation of people in the process of solving disagreements and disputes arisen in environment matters. This form of participation is appropriate with the process of exercising democracy in the work of environment protection in Vietnam at present time. Therefore, Article 205 of the Law on Environment Protection 2005 provides rather specifically on this matter, as follows:

- “1. In the following cases, dialogue on environment must be organised:
  - a. Upon request of the party who has the dialogue demand;
  - b. Upon request of the State management agency on environment protection at all administrative levels;
  - c. Upon complaints or lawsuits lodged by related organisations or individuals.
2. Responsibility and accountability on dialogue on environment is regulated as follows:

- a. The dialogue requesting party shall send the party of interest the matters or issues that need explained and held dialogue.
- b. Within five working days from the day of receiving request, the requested party shall prepare answers and explanations.
- c. In case a State management agency on environment protection requests the holding of dialogue, related parties shall implement regulations of requesting agency.
- d. Results of dialogue must be recorded in written minutes stating parties' opinions, views, and agreements, which will be served as a basis for all related responsible parties to implement or to consider the handling of violations of environment protection laws or the compensation for environmental damages".

It is possible to say that this is an advanced provision of the Vietnam legal system which is appropriate with the characteristics of the process of people's participation in environment protection of the current time.

#### ***4. Participation in the Form of Examination and Supervision Over Environment Protection Activities***

According to Article 124 of the Law on Environment Protection 2005, the Vietnam Fatherland Front and its affiliate member organisations, within their authority, have the responsibility of supervising the implementation of laws on environment protection. In order to promote the right of examination and supervision of the people, Article 128 of the Law provides clearly the lodging of complaints and lawsuits on environment, as follows:

- “1. Organisations and individuals have the right to complain to the authorised State management agency or to initiate a lawsuit at court on the act of violation of laws on environment protection which infringes upon their legitimate rights and interests.
2. Citizens have the right to make denunciations to authorised agencies or individuals on the following acts of violation of laws on environment protection:
  - a. Act of causing environment pollution, decline or problems.
  - b. Act of infringing upon the rights and interests of the State, area residents, organisations, families, and individuals.
  - c. The authorised State agency or individuals, upon receiving the complaints or denunciations, shall be responsible for solving the

case in accordance with the provisions of the laws on complaints and denunciations and the Law on Environment Protection 2005.”

### ***5. Participation in the Form of Self-Management and Development of Environment Protection Services***

The State encourages all organisations and individuals to develop the self-management model in order to make their villages, manufacturing sites, businesses or service facilities friendly to the environment; to develop the lifestyle and customs of keeping environment clean; to abolish unsound customs causing harm to the environment. The State also encourages them to contribute knowledge, efforts, and funds to the protection of environment and to develop the services of environment protection. According to Article 117 of the Law on Environment Protection, the State will apply preferential treatment policies on land, capital borrowing, and tax and fee reduction or exemption to develop such activities as: constructing a focus waste water treatment system, constructing facilities for recycling and processing regular solid wastes and hazardous solid wastes, constructing waste landfill sites, moving the facilities which cause serious environment pollution, importing machines and equipment which directly serve waste processing, clean energy or renewable energy purposes, etc.

Some of the above analysis shows that the Vietnam laws contain the advanced provisions which positively support the people’s right to participate in various forms in the process of making and implementing policies, laws, and project decisions on environment. However in reality, the implementation of these provisions also showed some shortcomings relating to mechanism, necessary time, and efforts spent by State agencies. Usually the time spent on asking for people’s opinions is too short, the procedure for asking people’s opinions is not yet appropriate, there is a lack of focusing on specific issues, and the process is not attracting a great number of people to participate. At the present time, operations of authorised agencies are still lacking transparency and the accountability to receive, explain, and give feedback regarding people’s opinions. State agencies have not made great efforts in enhancing the people’s participation capacity; financial resources, technical resources, and necessary documents for this process have still not yet been paid proper attention to, etc.

## **III. ENSURING THE RIGHT OF JUDICIAL ACCESS TO ENVIRONMENT MATTERS IN VIET NAM**

Judicial access is *the right of every citizen to be able to receive support from laws and institutions when his or her rights and interests are illegally refused or infringed upon*. In the country’s recent development context, where various complicated disagreements and dispute over environment issue occur, the ensuring of the people’s judicial access right has a particularly important meaning in protecting citizens’ legitimate rights and interests, and in implementing transparency and publicity in State management over

environment protection. This, however, is a rather new matter in the environment protection area in Vietnam, and thus it is necessary to conduct further research and studies to propose recommendations therefrom.

The most general legal basis for the judicial access right has been stipulated in the Constitution of the Socialist Republic of Vietnam. Article 74 of the Constitution 1992 regulates that any acts of infringement upon the State's interests, the group/agency, and citizens' legitimate rights and interests must be timely and strictly dealt with. The person whose rights have been neglected has the right to be materially compensated and have their honour restored. To specify this provision of the Constitution 1992, the Civil Code 2005, Article 9 acknowledges that:

“1. All civil rights of individuals, legal entity, and other subjects are respected and protected by laws.

2. When a subject's civil right is violated, the subject has the right to self-protect according to provisions of this Civil Code or to request the competent agency/organisation to:

- a. acknowledge his/her civil right;
- b. compel the end of the violation act;
- c. compel the public apology and correction;
- d. compel the implementation of civil obligations;
- e. compel the compensation for damages.

In conformity with these general regulations, Article 128 of the Law on Environment Protection acknowledges that every individual and organisation has the right to lodge complaint or to initiate a lawsuit at court on acts of violation of laws on environment protection or infringement upon his/her legitimate rights and interests. Competent State agencies and individuals are responsible for solving the case. Thus, the right of judicial access in environment matters is the citizens' basic right protected by laws.

### ***1. Judicial Access in case the Right of Access to Information on Environment is Refused or Violated***

The right of access to information on environment is a new right in Vietnam's law system, thus the use of this right by citizens and legal entities is still limited. On the other hand, laws on environment so far provide only general provisions, thus, TAI's studies show that until recently in Vietnam there has been no case of public lodging complaint against the State management agency for refusing the citizens' right to access information on



environment. For the case of residents in Bac Giang province lodging a complaint against the Viet Thang Botany Chemical Packaging Company, the complaint was not concerning the act of refusing or violating the right of access to information, but rather the company's act of causing environment pollution. This case was handled by the province's people's committee, without being brought to court.

According to provisions of the Law on Environment Protection 2005 and some other related legal documents, individuals, and organisations can use their right of judicial access to protect their right of access to information on environment in the case of being refused or violated. For example, on the acts of violation: duty of the business and manufacturing facilities not obliged to make assessment report on environmental impacts to publicise information (paragraph 2, Article 103); duty to publicise major information on environment on periodical basis or upon request from environment specialised agencies (paragraph 3, Article 103); duty to publicise information and data on environment (paragraphs 1,2&3, Article 104). Applying Article 128, every individual or organisation has the right to lodge complaint or initiate a lawsuit at court on the basis that there have been acts of violation of the above provisions of the Law on Environment Protection 2005. Also according to the Law, the Ministry of Natural Resources and Environment and People's Committees at all administrative levels have the authority to handle complaints in accordance with laws on complaints and denunciations and other related legal provisions (Articles 121 & 122). In case the complainant does not agree with the first-time and second-time complaint solving decisions, or in case the regulated time for solving the complaint has expired while the complaint has not yet been solved, the complainant has the right to initiate a lawsuit at court (Article 2, Ordinance on Procedures for Handling Administrative Cases 2006). However, there still exists many legal and institutional difficulties, as well as capacity of competent agencies in ensuring the people's judicial access in this area in reality. The laws have only provided general principle provisions on the right of access to information, and not yet specific provisions on procedures to exercise the right, such as ways for requesting information, which types of refusals to provide information are lawful and which not, at what time to publicise information, etc. On the other hand, organisations and personnels in administrative and judicial agencies are not yet ready for the handling of these types of cases. Therefore, in the coming time, in order to better ensure the people's right of judicial access in the exercise of the right of access to information on environment, the State needs to urgently issue more guiding documents which provide detailed and specialised guidances. At the same time, the State needs to actively train and improve personnels and organisations' capacity so that they can handle well the complaints or lawsuits in case the right of access to information is refused or violated.

## ***2. Judicial Access in Case the Right of Participation in the Environment Protection Activities is Refused or Violated***

As stated above, the right of participation in environment protection activities exists under the forms of asking for opinions, consultations and appraisalment by experts, raising requests or recommendations, holding dialogue, examining and supervising the obedience of laws on environment protection, developing models of self-management, and the development of environment protection services. Although until recently there have not been any complaint cases relating the refusal of the right to participate in environment protection activities, this is not because of the lack of legal basis or administrative and judicial institutions for such complaints. For the acts of violating legal provisions on the duty to ask for opinions of the People's Committees of commune, ward, or town and of the residents in the area during making assessment report on environmental impacts (paragraph 4, Article 1, Government Decree No. 21/2008 ND-CP), the acts of violating legal provisions on organising dialogue on environment (Article 105), the acts of violating legal provisions on complaints and denunciations on environment matters (Article 128), and some other provisions, individuals or organisations absolutely have the right to lodge complaints or initiate lawsuit at court on the basis that one of those acts of violations exists. For example, the Fatherland Front of commune, ward, or town has the right to lodge complaint to the competent State agency when the project owner in the area does not send an official letter asking for opinions in the process of making the assessment report on environmental impact. And every individual or organisation has the right to lodge complaints to the competent State agency when his/her request for holding dialogue is refused, etc. Procedures for this process must comply with laws on complaints and other related legal documents. Laws have also regulated the case in which the right to lodge complaints and denunciations is violated: if the competent person who handles the complaint or denunciation commits one of the following acts, he/she shall, depending on the seriousness of the violation, be imposed with administrative disciplinary sanctions or held criminal responsibility, and compensate damages (if any) in accordance with provisions of laws:

1. Lack of responsibility in handling complaints or denunciations;
2. Causing obstacles, obstructing the exercise of the right of lodging complaints and denunciations;
3. Intentionally delaying the handling of complaints or denunciations;
4. Distorting documents and files during handling the complaints or denunciations;
5. Making decisions on solving complaints, decisions on handling denunciations which are unlawful;

6. Not timely applying necessary measures to end the act of law violation;
7. Threatening, repressing, taking revenge on complainants, or hiding the complainants.

(Article 96 of the Law on Complaints and Denunciations 2006).

However, the use of the right of judicial access in the above violations is limited. Besides the reason of insufficient awareness of citizens, political – social organisations, professional organisations, and State agencies on human rights in general and some human rights in environment protection in particular, there are other reasons: the laws in this area lack specific and detailed provisions, and sanctions are not powerful enough to bind competent agencies to implement effectively the procedures for asking opinions, holding dialogues, handling issues, and answering before the public. On the other hand, similar to the situation of some other human rights, particularly the rather abstract rights which are difficult to measure, administrative and judicial agencies lack necessary efforts; their personnels deeply lacking in being trained on knowledge and skills, to be able to guide the handling of cases relating judicial access in environment protection.

### ***3. Judicial Access in Case of Claiming Compensations for Environment Pollution and Degradation Damages***

In recent years, many disputes relating to claiming compensation for environment pollution and degradation damage have become an urgent social issue. Facts shows that the subjects causing the damage are usually enterprises, businesses, and manufacturing facilities under various economic sectors. The sufferers are the individuals and residential community living in polluted areas. There have been many solutions adopted to solve these matters but most of them are types of mechanisms for agreement and mediation among related parties and do not help solve the cases definitively. A typical case is that of the Vedan Vietnam Limited Company in Dong Nai province, as widely mentioned by the mass media recently. The question is what is the legal basis for organisations and individuals to claim compensation for environment pollution and degradation damages in Vietnam in present time.

In conformity with Article 74 of Constitution 192, the Civil Code 2005, Article 307 stipulates: 1) Responsibility to compensate for damages include responsibility to compensate for material damages and responsibility to compensate for spiritual losses; 2) Responsibility to compensate for material damages is the responsibility to compensate for the material losses in reality caused by the violator, which can be calculated in money, inclusive of assets and property losses, reasonable expenses to constrain, minimize and overcome losses, and lost income or income decrease. In principle, the compensation for damages according to Article 605 of this code and Resolution No.

03/2006/NQ-HĐTP is as follows: damages must be compensated wholly and timely. Parties can discuss and reach agreement on compensation amount and methods provided that the agreement contents do not violate laws or contradict social moral values. The damage causer may receive a reduction in compensation amount. When the compensation amount is no more appropriate with the reality, the damage offerer or the damage causer has the right to request court or competent State agency to change the compensation amount (the person who initiates the lawsuit has the right to re-initiate the lawsuit).

As a legal basis for claiming the right to compensate damages caused by environment pollution and degradation, according to Article 604 of the Civil Code 2005 and the Resolution No. 03/2006/NQ-HĐTP, the responsibility of compensating for damages caused by environment pollution and degradation will be taken under the following conditions:

- *There must be losses/damages in reality.* In environment, there are two types of damages: a) degradation in function and usefulness of environment; and b) damages to human being health and life, to legitimate assets and interests of organisations or individuals as the consequences of the decline in function and usefulness of environment. (Article 130, Law on Environment Protection 2005). Recent disputes on environment issues mainly concern the damages of type (b). The identification of this type of damage has also been regulated in the Civil Code 2005 and the Resolution 03/2006/NQ-HĐTP. *First*, asset damages include lost assets, deteriorated or broken assets, benefits associated with the use and exploration of assets, and reasonable expenses to constrain, minimise, and overcome damages. *Second*, health damages include reasonable expenses for cure, treatment, healthcare, recovery, lost or decreased functions of the sufferer, lost or decreased factual income of sufferer (in case real income of sufferer is not stable, the calculation will be based on the average income level of work-people of the same type), reasonable expenses and lost factual income of the persons taking care of the sufferer during the treatment time; if lost working capability of sufferer or need for regular care results in relying on another person, the damages also include expenses for the person who takes care of the sufferer. *Third*, life damages include reasonable expenses for curing, compensating, and caring for the sufferer before he/she died; expenses for burial; maintenance money for the people that the sufferer had the duty to maintain.

- *Unlawful acts causing damages.* In the environment, these are the acts that contradict legal provisions on environment and committed by subjects that are capable of doing so, causing environment pollution and degradation and damages to health, life, and assets of individuals and organisations. For example, the violations of provisions on waste and hazardous waste management, or violations of provisions on importing machines, equipment, means of transportation, fuels, materials, wasted materials, etc. Article 7 of

Law on Environment Protection provides in details the acts that are strictly prohibited, as follows:

1. Devastating and illegally exploiting forests and other natural resources;

2. Exploiting and catching natural animal resources by using destroying means, tools, or methods or not in the right season and quantity as provided by laws;

3. Exploiting, doing business with, consuming, or using the rare and wild plants and animals listed on the prohibited list provided by competent State agency;

4. Burying toxic or radioactive waste and other hazardous waste in unregulated areas and failing to follow the technical procedure for environment protection;

5. Eliminating the waste that does not meet processing standards for environment protection (toxic, radioactive, and other hazardous waste) into land or water sources.

6. Eliminating smoke, dust, or gas containing toxic substance or smell into the air, or disseminating radiation, radioactive, or over-standardized ionized substances;

7. Causing noises or vibrations that exceed the allowed standard level;

8. Importing machines, equipment, or means of transportation that do not meet environment criteria;

9. Importing and transiting waste under any forms;

10. Importing and transiting animals or plants that have not yet passed quarantine; microorganisms that are excluded from the allowed list;

11. Producing or doing business with the products that harm human beings, natural creatures, and the ecosystem; producing or using raw construction materials and materials containing toxic components that exceed allowed standard level;

12. Damaging natural heritages, natural reserves;

13. Damaging construction works, equipments or means of transportation used for the purpose of environment protection;

14. Illegally operating or living in an area identified by competent State agency as prohibited area due to its particular environmental danger to human being health and life;

15. Hiding acts of destroying the environment, constraining environment protection activities, and distorting information causing harmful consequences to the environment;

16. Other strictly prohibited acts relating to environment protection as provided by laws.

- *There must be a cause and effect linkage between the act of causing damages and the factual damages.* In environment, this linkage is rather complicated, as the act of causing damages does not directly harm the life, assets, and health of citizens. Moreover, damages are difficult to be recognised right away and in this process there might be the involvement of many other factors such as climate change, dangers from nature, etc. This matter requires many efforts in collecting information, observing, and developing advanced science and technologies that can help prove the linkage.

- *There must be faults made by the damage causing subject.* The elements of intentional or careless fault in compensation responsibility are stipulated in Article 308 of the Civil Code 2005 and Resolution No. 03/2006/NQ-HĐTP, accordingly; intentional fault is the case in which a subject, although clearly aware that his/her act will cause damage to others, still commits the act and wants the damage to occur in reality or does not want it but still allows the damage occur. Careless fault is the case in which a subject does not foresee that his/her act might cause damage to others, or although he/she must know in advance that the act might cause damages, believes that the damage will not occur or can be prevented. Particularly in environment sector, Article 624 of the Civil Code 2005 stipulates that individuals, legal entities, and other facilities that cause environment pollution causing damage must compensate according to provisions of laws, even in the case that the damage causer has no fault. Thus, from the particular format of the environment protection works, the responsibility to compensate others for damage is not excluded even in case where the damage causer does not have fault.

According to the Law on Environment Protection 2005, disputes over environment include: a) dispute over the right and responsibility to protect environment in exploiting and using environmental elements; b) dispute over the identification of reasons and causes of environment pollution, degradation or problems; the responsibility to handle and overcome consequences or to compensate for damages caused by environment pollution, degradation, or problems. These disputes are settled according to legal provisions on settling outside-contract civil disputes. Thus, they must be settled under civil procedures and court authority.

Therefore, in an overview, the request for compensations for damages caused by environment pollution and degradation is a basic human right. Citizens have the legal basis to initiate a lawsuit at court against the acts of violations of laws on environment protection in order to request compensations for damages to their legitimate interests. However, the handling of compensation for environmental damage in reality meets many difficulties. According to the scientific research titled *The Right to Initiate Lawsuit for Compensation for Damages Caused by Acts of Environment Law Violation in Vietnam – Legal Basis and Procedures* conducted by the Center for Humang Beings and Nature (2009), the process of handling these cases face the following legal difficulties: 1) provisions on the right to initiate a lawsuit to claim compensation for damages; 2) provisions on prescription for lawsuit initiation; 3) provisions on proving obligation; 4) provisions on methods to handle compensation for damages. For example, based on the analysis of provisions on the right to initiate lawsuit for compensation for environmental damages, the research concludes that due to the lack of specific provisions on the right to initiate a lawsuit to claim compensation for damages to the natural environment, the laws have failed to show the combination between the right to initiate a lawsuit of the State and the organisations representing violated public interests and the right to initiate a lawsuit of the damaged organisations and individuals, leading to the situation of the damaged organisations and individuals going alone in exercising their right to sue for compensation while their legitimate interests can absolutely be protected by laws through the laws' protection of public interests. Or regarding the ways to compensate damages as regulated at Article 133 of the Law on Environment Protection 2005, the handling of compensation for environmental damages is regulated as follows: 1) through self-agreements among parties; 2) through an arbitrator; 3) initiating a lawsuit at court. However, the matter is that if the request for compensation cannot be met through negotiations, then which type of arbitrator shall be requested by the damage sufferer to solve the case - while it is difficult to call on a commercial arbitrator in this case. Difficulties may also arise when defining the court's authority and competence. Regulation that court's authority and competence is defined according to subjects of dispute or territory is remarked as appropriate only with the simple, small-scaled, and low-valued disputes. For the disputes on environment that are more complicated, have considerable value, and relate to many groups of subjects living in many areas, the regulation that the court's competence to solve disputes defined according to territory or location where damages occur proves no more appropriate<sup>64</sup>, etc. It is clear that in the matter of handling compensation for damages caused from environment pollution and degradation, there still exist many difficulties that need to be overcome by State competent agencies – by providing solutions towards transparent regulations and procedures which will actively assist citizens in their process of seeking help from laws and

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<sup>64</sup> See: Website: [www.nature.org.vn](http://www.nature.org.vn).

institutions to protect their legitimate rights and interests in environment protection.



## C. GROUP DISCUSSION

**Group 1.** From the legal provisions and the fact enforcement, please discuss and raise some conveniences and difficulties insure the right of access to information about the environment in Viet Nam? Please give some example?

**Group 2.** From the legal provisions and the fact enforcement, please discuss and raise some conveniences and difficulties insure the right of participate of people in the monitor and protect environment in Viet Nam? Please give some example?

**Group 3.** Discuss and talk the steps in the process of logle a complaint for compensation on environment according to Vietnamese laws?

#### **D. IN -DEPTH DISCUSSION (Class Discussion)**

What are the major difficulties and obstacles in the cases of claiming compensation for environmental damages in many places in the country today? Causes and solutions to deal with this problem?

## LIST OF REFERENCE

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4. Vũ Thu Hạnh, Trần Anh Tuấn: *The right to sue for compensations for damages caused by acts of violation of environment laws in Vietnam – legal basis and procedures*, Center for Human Beings and Nature, Website: [www.nature.org.vn](http://www.nature.org.vn).
5. Judges' Handbook, <http://www.toaan.gov.vn>.
6. Institute for Human Rights: *International legal documents and laws of some countries on access to information*, People's Public Security Publishing House, Ha Noi, 2007.
7. Department for Legislative Matters: *Fundamental matters of the Civil Procedures Law 2004*, Judicial Publishing House, 2004.