

Analysis of the right to live in a clean and healthy environment under Vietnamese law and suggestions on how it could be improved

Analiza prawa do życia w czystym i zdrowym środowisku w prawie wietnamskim oraz propozycje zmian

Анализ права на жизнь в чистой и здоровой окружающей среде в законодательстве Вьетнама и предложения изменений

Аналіз права на життя в чистому і здоровому довкіллі у в'єтнамському законодавстві та пропозиції щодо змін

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Summary: In October 2021, in line with previous international treaty obligations, in particular the 1972 Stockholm Declaration, the United Nations Human Rights Council's Resolution 48/13, granted all people the right to live in a clean and healthy environment. Article 43 of the Vietnam Constitution affirms that a clean, healthy, and sustainable environment is a human right for all, not just a privilege for some. Nevertheless, environmental pollution and its devastating impact on local communities throughout Vietnam still generally continue unabated due to the failure of national and local authorities to adequately monitor polluters, enforce environmental protections, and prosecute offenders. The purpose of this article is to outline some of the reasons why problems exist in the implementation of current Vietnamese environmental law and provide some suggestions on how many of these challenges could be overcome.

Key words: human right, healthy environment, environmental protection

Streszczenie: Zgodnie ze zobowiązaniami wynikającymi z traktatów międzynarodowych, począwszy od Deklaracji Sztokholmskiej z 1972 r., aż po rezolucję 48/13 Rady Praw Człowieka przyjętą dnia 8 października 2021 r., prawo do życia w czystym i zdrowym środowisku podlega istotnej ochronie na mocy prawa wietnamskiego. W szczególności art. 43 konstytucji Wietnamu stwierdza, że czyste, zdrowe i zrównoważone środowisko jest prawem człowieka przysługującym wszystkim, a nie tylko przywilejem niektórych. Niemniej zanieczyszczenie środowiska oraz jego niszczycielski wpływ na społeczności lokalne w całym Wietnamie zasadniczo nie ulegają osłabieniu z powodu zaniedbań władz krajowych i lokalnych w zakresie odpowiedniego monitorowania sprawców zanieczyszczeń, egzekwowania ochrony środowiska i ścigania przestępców. W niniejszym opracowaniu przedstawiono problemy występujące przy wdrażaniu prawa ochrony środowiska oraz wysunięto propozycje, które pozwoliłyby na poprawę stosowania tych regulacji w wietnamskim systemie prawnym.

Słowa kluczowe: prawa człowieka, zdrowe środowisko, ochrona środowiska

Резюме: В соответствии с международными договорными обязательствами, начиная со Стокгольмской декларации 1972 года и заканчивая резолюцией 48/13 Совета по правам человека, принятой 8 октября 2021 года, право на жизнь в чистой и здоровой окружающей среде в значительной степени защищено вьетнамским законодательством. В частности, в статье 43 Конституции Вьетнама утверждается, что чистая, здоровая и экологически устойчивая окружающая среда – это право человека, которым пользуются все, а не только привилегия некоторых. Однако загрязнение окружающей среды и его разрушительное

воздействие на местные сообщества по всему Вьетнаму в целом не ослабевает из-за неспособности национальных и местных властей адекватно контролировать загрязнителей, обеспечивать охрану окружающей среды и преследовать нарушителей. В данной статье излагаются проблемы, возникающие при внедрении законодательства по охране окружающей среды, а также вносятся предложения по улучшению применения этих норм в правовой системе Вьетнама.

Ключевые слова: права человека, здоровая окружающая среда, охрана окружающей среды

Резюме: Відповідно до міжнародних договірних зобов'язань, починаючи від Стокгольмської декларації 1972 року і закінчуючи Резолюцією 48/13 Ради з прав людини, прийнятою 8 жовтня 2021 року, право на життя в чистому і здоровому довкіллі є значною мірою захищене в'єтнамським законодавством. Зокрема, стаття 43 Конституції В'єтнаму стверджує, що чисте, здорове та стале довкілля є правом людини, яким користуються всі, а не лише привілеєм для деяких. Однак забруднення довкілля та його руйнівний вплив на місцеві громади по всьому В'єтнаму, як правило, не зменшується через нездатність національних та місцевих органів влади здійснювати належний моніторинг забруднювачів, забезпечувати охорону довкілля та переслідувати порушників. У цій статті окреслено проблеми, що виникають у процесі імплементації природоохоронного законодавства, та висловлено пропозиції щодо покращення застосування цих норм у в'єтнамській правовій системі.

Ключові слова: права людини, здорове довкілля, охорона середовища

Introduction

On the night of 28 August 2019, a massive fire broke out at the Rang Dong lighting and vacuum flask manufacturing factory in Hanoi, causing extensive damage. Thousands of square meters of the warehouse were destroyed, at the cost of USD 750,000 (VND 150 billion). Although there was no loss of life, afterwards the local population was increasingly concerned about the risk of large-scale mercury poisoning resulting from fire.¹ In the case of the Rang Dong fire, it was reported that 27.2 kg of mercury residue had been released into the environment impacting the air quality and water sources in Thanh Xuan district, Hanoi.²

According to the Vietnam Civil Code 2015, specifically Article 602 regarding compensation for damage caused by environmental pollution, “A party responsible for polluting the environment and causing losses and damages shall compensate in accordance with the law, even in cases where the party is not at fault.”

Following protracted and difficult negotiations, only some of the households located near the Rang Dong factory that lodged a claim for the damage they suffered

¹ Kha Minh, *Có cách nào để đào thải thủy ngân khỏi cơ thể nhanh nhất không?* [Is There a Quick Method for Eliminating Mercury from the Body?], VTC News, 6.09.2019, <https://vtc.vn/co-cach-nao-de-dao-thai-thuy-ngan-khoi-co-the-nhanh-nhat-khong-ar496845.html> [access: 10.03.2023].

² H.D. Mai, *Air Pollution, Vietnames Legal Finalization for Environmental Protection*, VNU Journal of Science: Legal Studies 2020, vol. 36, no. 1.

did actually receive compensation and it was generally considered to be much less than the amount to which they were entitled. Moreover, those residents who were unaware of their rights and/or unable to submit a written claim because they were poor, uneducated or itinerant workers were not compensated for all the damage the factory caused to them mainly because neither local authorities nor the Rang Dong company provided any support or service to make use of their entitlement to make a compensation claim.³ This lack of public information and advocacy services related to this disaster made many victims' prospects of receiving fair compensation almost negligible. Indeed, the company's inadequate investment in fire prevention measures, coupled with the delayed response from local government authorities during the fire and their subsequent handling of its consequences, has had a substantial impact on the local population. As a result, the affected individuals have been deprived of their basic human right to live in a clean and healthy environment. This infringement on their rights also constitutes a violation of their entitlement to fair compensation for the damages incurred, as outlined in Article 43 of Vietnam's Constitution of 2013.⁴ Unfortunately, this incident is not an isolated case in Vietnam because a great number of similar cases have occurred in the past and have continued until the present time.⁵

From the author's perspective, the damage resulting from the Rang Dong factory fire can be categorised into two fundamental elements: individual harm to specific victims and collective harm to communities, including both groups of individuals and the environment in a broad sense. In this context, the focus of this paper will be directed towards the human aspects and the collective damage inflicted upon the community due to pollution. In general, the awareness of the Vietnamese people of these particular human rights is still very limited and many still tend to accept their misfortune in accordance with the traditional and widespread notion of "fate."⁶ This article will firstly define "the human right to live in a clean and healthy environment,"

³ Doan Thanh, *Xác định mức bồi thường của Công ty Rạng Đông đối với người dân bị ảnh hưởng* [What Is the Compensation Level That Rang Dong Company Is Offering to Those Affected?], 16.10.2019, <https://kinhtedothi.vn/xac-dinh-muc-boi-thuong-cua-cong-ty-rang-dong-doi-voi-nguoi-dan-bi-anh-huong.html> [access: 10.03.2023].

⁴ Vietnamese Constitution 2013, https://constitutionnet.org/sites/default/files/tranlation_of_vietnams_new_constitution_enuk_2.pdf [access: 10.03.2023].

⁵ Nhat Minh, *Người dân quanh Công ty Rạng Đông tiếp tục đòi bồi thường sau vụ cháy* [Residents Near Rang Dong Company Are Still Demanding Reparations for the Damage Caused by the Fire], *Baovaphapluat.Vn*, 8.11.2019, <https://baovaphapluat.vn/van-hoa-xa-hoi/doi-song-xa-hoi/nguoi-dan-quanh-cong-ty-rang-dong-tiep-tuc-doi-boi-thuong-sau-vu-chay-78296.html> [access: 15.03.2023].

⁶ N. ThiHoa, N.T. Hang, N.T. Giang, D.T.N. Huy, *Human Resource for Schools of Politics and for International Relation during Globalization and EVFTA*, *Elementary Education Online* 2021, vol. 20, no. 4, pp. 2448–2452.

then analyse the evolution of current legal provisions on these rights that the international community has developed over the past fifty years or so, the extent to which these have been adopted by Vietnam and how effectively these provisions have actually been implemented to positively impact the quality of life of the Vietnamese people.

Finally, the author will make a number of suggestions to ensure that Vietnamese citizens can better access – in practice, not just in theory – these rights that are guaranteed to them under national and international law.

The right to live in a clean and healthy environment can be understood as simply the human right to live in an environment of acceptable quality, to be guaranteed life in conditions of environmental hygiene, to be in harmony with nature, and to meet environmental regulations and standards under the regulation of law. A healthy environment can be understood as a physical environment whose quality allows life to be safe and in harmony with nature.⁷ From a legal perspective, a clean and healthy environment is the quality of the surrounding environment that meets acceptable standards.⁸

The right to live in a clean and healthy environment is one aspect of the right to life.⁹ The statement means that having the right to live in a clean and healthy environment is a crucial component of the right to life. It recognises that individuals cannot fully enjoy their right to life if they are exposed to harmful environmental conditions. A clean and healthy environment is essential for maintaining good physical and mental health. It is also closely connected to other basic rights such as access to clean water, adequate housing, and nutritious food. Governments and other entities have a responsibility to protect the environment, enforce environmental laws, and ensure that everyone has equal access to a clean environment. Humans cannot live in an environment where successive environmental disasters threaten their existence. Standards of health and well-being will not be sustainable in an environment where natural resources have been exhausted and environmental factors severely damaged.¹⁰ Not stopping there, it is even believed that the right

⁷ M. Moran, J. Van Cauwenberg, R. Hercky-Linnewiel, E. Cerin, B. Deforche, P. Plaut, *Understanding the Relationships between the Physical Environment and Physical Activity in Older Adults: A Systematic Review of Qualitative Studies*, International Journal of Behavioral Nutrition and Physical Activity 2014, no. 11, pp. 1–12.

⁸ W. Li, V. Achal, *Environmental and Health Impacts Due to e-Waste Disposal in China – A Review*, Science of The Total Environment 2020, vol. 737, 139745.

⁹ B.J. Preston, *The Right to a Clean, Healthy and Sustainable Environment: How to Make It Operational and Effective*, Journal of Energy & Natural Resources Law 2023, vol. 42, no. 1, pp. 1–23.

¹⁰ S. Díaz, J. Fargione, F.S. Chapin III, D. Tilman, *Biodiversity Loss Threatens Human Well-Being*, PLoS Biology 2006, vol. 4, no. 8, e277.

to a healthy environment has been affected negatively, resulting in eroding moral, cultural, emotional, and even civilisational values. The right to live in clean and healthy environment is fundamental and inalienable. No one shall be deprived of this right for any reason. This right is everyone's right, the right to own their own life and the aspiration to improve the quality of life.¹¹ Currently, more than 120 countries have adopted official measures to recognise and enshrine the right to a healthy environment as a legally recognised entitlement. This recognition means that these nations have established comprehensive legal frameworks and mechanisms to safeguard the well-being of their citizens within an ecologically balanced environment. By granting legal status to the right to a healthy environment, these countries underscore the significance of protecting environmental quality and fostering sustainable development practices within their respective jurisdictions.¹²

The discourse surrounding the right to a healthy environment has evolved, leading to a shift in focus towards the UN Resolution on the Recognition of the Human Right to a Clean, Healthy, and Sustainable Environment (RCHSE). This resolution has garnered significant attention and consideration from legislators and the international community. It is widely acknowledged that the right to live in a clean and healthy environment constitutes a fundamental human right, representing a new generation of rights that encompasses both individual and collective dimensions.

In a noteworthy development, the United Nations officially recognised the significance of a clean, healthy, and sustainable environment by welcoming its classification as a human right in July 2022. This recognition builds upon the endorsement of the right by the UN Human Rights Council through Resolution 48/13 in October 2021. These milestones highlight the growing recognition and commitment to protect and uphold the right to a healthy environment at the international level, signifying its crucial role in fostering a sustainable future for all to allow “a dignified and happy life” (Declaration of Stockholm) and provide “an environment adequate for their health and well-being”¹³ (Aarhus Convention), all the way to respecting the multiple dimensions of human existence (Malé Declaration of 2007 on the human dimension of climate change).

¹¹ S. Giorgetta, *The Right to a Healthy Environment, Human Rights and Sustainable Development*, International Environmental Agreements 2002, vol. 2, pp. 171–192.

¹² J.P. Eaton, *The Nigerian Tragedy, Environmental Regulation of Transnational Corporations, and the Human Right to a Healthy Environment*, in: *International Crimes*, ed. N. Passas, London 2003, pp. 407–453.

¹³ N. Hartley, C. Wood, *Public Participation in Environmental Impact Assessment – Implementing the Aarhus Convention*, Environmental Impact Assessment Review 2005, vol. 25, no. 4, pp. 319–340.

1. The main points of the principle of the right to live in a clean and healthy environment in Vietnam

1.1. Access to environmental information

Although Vietnam is not a signatory, it has used the Aarhus Convention as a model to enact its environmental laws. This has included ensuring that people have access to information about the environment, the right to participate in decision-making processes and the right to access justice in environmental matters. Vietnam has also committed to promoting public awareness and understanding of environmental issues and providing opportunities for the public to participate in environmental protection activities.

The right to access information (also known as the right to freedom of information or the right of access to information) is recognised as one of the basic human rights and is classified by international legal documents in the group of civil rights.¹⁴ From a legal perspective, the term “right to information” is used to denote a very basic right to which people in all countries are entitled, whether directly or indirectly. Otherwise, it is the right to information of the state required to meet the needs of individual citizens as well as to protect and exercise other rights recognized by law. The right of access to information is given to public authorities and all bodies that perform public functions. In some cases, this right may be suspended such as when public security or national defence is at stake.

Furthermore, authorities must be aware of the importance of keeping the fees associated with requests for documents reasonable so that citizens can exercise their right to access information without incurring excessive expenses.

1.2. Participation in environmental decision-making

Environmental information encompasses data and information regarding environmental components, environmental impacts, environmental protection policies and laws, and environmental protection activities.¹⁵ It can be presented in the form

¹⁴ M. Riegner, *Access to Information as a Human Right and Constitutional Guarantee. A Comparative Perspective*, *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 2017, vol. 50, no. 4, pp. 332–366.

¹⁵ W. Zhang, G. Li, *Environmental Decentralization, Environmental Protection Investment, and Green Technology Innovation*, *Environmental Science and Pollution Research* 2022, vol. 24, pp. 1–16.

of symbols, numbers, images, sounds, or other representations. The legal framework governing access to environmental information in Vietnam includes the Law on Environmental Protection (2014), Decree 19/2015/ND-CP (2015) of the Government, the Law on Access to Information (2016), and most recently, the Law on Environmental Protection (2020), which took effect from 1 January 2022.

Capacity-building efforts should focus on providing education, training, and support to individuals and communities, enabling them to effectively engage in environmental decision-making. This includes promoting an understanding of the issues at hand, the decision-making processes involved, and the potential impacts of environmental policies. By enhancing the capacity of individuals to analyse complex environmental problems, policymakers can empower them to contribute meaningfully to discussions and decision-making processes. The impact of public participation on environmental decision-making should not be underestimated. By embracing a participatory approach, policymakers can take advantage of the diversity of perspectives, foster transparency, and build trust among stakeholders. This can lead to better-informed and more legitimate decisions, as well as improved implementation and acceptance of environmental policies.¹⁶

Information is critical, especially when attempts are made to influence a decision relating to the environment in which people live. “Gaining access to decision-making processes is essential, and the Aarhus Convention provides this through the Public Participation Directive (Directive 2003/35/EC). Unleash the power of public participation with the Aarhus Convention.”¹⁷ “In Vietnam, the government is committed to giving the public a voice in environmental decision-making by providing them with multiple avenues for meaningful participation, such as public meetings, citizen assemblies, and other consulting processes. Beyond voting, these formal and conventional approaches promote public participation and ensure that everyone’s opinion is heard.”¹⁸

Vietnam is one of the few countries in the world that continues to be a socialist state governed by a ruling Communist Party. One of the consequences of this is that in many cases, people’s access to information on environmental as well as other rights-related issues in Vietnam is often restricted.

¹⁶ M.H. Koski, L.F. Galloway, *Geographic Variation in Floral Color and Reflectance Correlates with Temperature and Colonization History*, *Frontiers in Plant Science* 2020, vol. 11, p. 991.

¹⁷ S. Akerboom, R.K. Craig, *How Law Structures Public Participation in Environmental Decision Making: A Comparative Law Approach*, *Environmental Policy and Governance* 2022, vol. 32, no. 3, pp. 232–246.

¹⁸ L. Beckwith et al., *Youth Participation in Environmental Action in Vietnam: Learning Citizenship in Liminal Spaces*, *The Geographical Journal* 2022, vol. 189, no. 2, pp. 329–341.

Arguably, it is time to consider a process of reviewing a range of Vietnamese laws, and where appropriate, introduce amendments to ensure that, consistently with international Conventions and Agreements to which Vietnam is currently a signatory, the rights of its citizens are being adequately protected.

Although the Vietnamese government has already introduced a number of regulations to address problems and improve human rights, it is generally recognised that the implementation process has encountered many difficulties in law enforcement due to the limited ability and expertise of legislators as well as law enforcers. There is little doubt that overcoming these limitations would improve the access of Vietnamese citizens to universal human rights and, as a consequence, alter the perspective of many – particularly in the Western international community – who view the restrictions on the right to freedom of speech, peaceful assembly, movement and religion as government action to ensure the Communist Party's continued monopoly of power in Vietnam.

There are a number of ways in which the public can participate in environmental decision-making processes in Vietnam. For example, the government must provide information about environmental issues to the potentially impacted public in a timely and transparent manner and must allow the public to participate in environmental impact assessments (EIAs) for major development projects. In addition to these formal channels for participation, the public can also participate in environmental decision-making in Vietnam through non-governmental organisations (NGOs) and community groups, which often work on environmental issues and advocate for the protection of the environment.¹⁹

The 2013 Constitution of Vietnam has increased people's constitutional rights and has been more successful in increasing the public and people's involvement in the EIA process for socio-economic development projects. These rights include the right to environmental assets, the right of access to information, and the right to express one's views on critical issues concerning one's life and development and one's community,²⁰ the Constitution also increases the participation of the people in the overall policy process and, specifically, in achieving environmental rights. For instance, through the new regulations on the right to life (Article 19) and the right to live in a healthy environment (Article 43), the Constitution requires that these

¹⁹ Huong Thien, *Vietnam's Environmental NGOs Face Uncertain Status, Shrinking Civic Space*, 13.02.2023, <https://news.mongabay.com/2023/02/vietnams-environmental-ngos-face-uncertain-status-shrinking-civic-space/> [access: 15.12.2023].

²⁰ G.C. Vu, K. Tran, *Constitutional Debate and Development on Human Rights in Vietnam*, *Asian Journal of Comparative Law* 2016, vol. 11, no. 2, pp. 235–262.

regulations be legally institutionalised to ensure the protection of human rights in general and environmental rights in particular.

To guarantee environmental rights, people need to take part in policymaking regarding the environment, including being consulted, having access to sufficient information to offer suggestions, and having the right to directly engage in the Environmental Impact Assessment (EIA). The 1993 Law on Environmental Protection has very few provisions with regard to governance and people's involvement in the enforcement of environmental protection laws. The said law does not contain any clauses on public transparency and access to information. The only form of participation that is encouraged under that law is in the form of education and training, science and technology, dissemination of knowledge and legislation on environmental protection; there are no regulations on the mechanism for implementing the participation of the people and the accountability of state management agencies.

The 2005 Law on Environmental Protection clearly demonstrates the importance of people's involvement in the governance and supervision of law enforcement. People's meetings, the submission of documents, and dialogues at the request of the public, particularly when assessing EIA reports, are all ways in which individuals can take part in the management and oversight of environmental protection. State management agencies are held accountable for responding to opinions expressed during dialogues with the public, as well as EIA reports. However, the Law on Environmental Protection of 2014 still lacks adequate regulatory elements that are necessary to ensure strong environmental protection. While the law outlines general regulations and encourages organisations, households and individuals to participate in environmental protection activities, there are hardly any detailed regulations concerning the participation of the people in environmental planning, EIA or Strategic Environmental Assessment (SEA) reports, or even the mechanism for people's indirect participation in monitoring through the Fatherland Front and member socio-political organisations. The law mainly focuses on promoting the participation responsibility of socio-political and socio-professional organisations.

Consequently, the Law on Environmental Protection of 2020 has introduced improvements as it clearly outlines the project owner's responsibility to consult with the local community from the time of making the EIA report. This outlines their responsibilities for consultation, the consultation topics, the main consultation content and forms of consultation during EIA implementation. The results of this consultation with the local community, relevant agencies and organisations are vital information for the project owner to research and invent solutions to minimise the project's impact on the environment and ultimately complete the project's EIA report. This has highlighted the increasingly important role of the local

community in environmental protection, particularly through the formation of effective models of community participation in protecting the environment. This includes the participation of the community in providing information on environmental protection, participating in the assessment of the enterprise's environmental protection results etc. The State administrative management system, albeit necessary, is not enough to effectively combat environmental pollution. This is due to the lack of resources to enforce and monitor the implementation of regulations, as well as a general lack of belief in their effectiveness. Public Participation in Environmental Management has changed its role from time to time. The future of our planet is in our hands, and we need everyone's help to ensure it is safeguarded. National laws allow for natural persons and legal entities, as well as associations of groups of natural persons and legal entities, to participate in environmental management.

1.3. Access to justice

Access to justice in environmental law is an important concept, as it enables citizens to take action against environmental issues that are affecting their lives or their environment.²¹ This concept is based on the idea that individuals should be able to seek legal redress when they feel that their health, safety or well-being has been negatively impacted by environmental issues. In order to ensure that individuals have access to justice, several legal remedies have been developed.

With the right to environmental justice, NGOs and individuals can stand up for their planet in court. Even the most well-crafted environmental laws can be rendered powerless without this access to the courts. For example, environmental justice is essential in the EU for enforcing and implementing EU laws to ensure a healthy and safe environment for all.

The experience of the power of justice, and access to justice in environmental matters in Vietnam provides citizens with the guarantees they need to challenge the legality of decisions, acts, or omissions of public authorities of the provinces before a national judge. They should discover the legal provisions available to protect their rights and ensure that their voice is heard.

For example, the Law on Protection Environment of 2020 contains provisions on the right to bring legal action in cases of environmental harm (Article 159 and

²¹ J. Kronenberg et al., *Environmental Justice in the Context of Urban Green Space Availability, Accessibility, and Attractiveness in Postsocialist Cities*, Cities 2020, vol. 106, 102862.

Article 162).²² The Aarhus Convention also provides for the right to access justice in environmental matters, including the right to challenge decisions, acts, or omissions of public authorities that may have a negative impact on the environment.

Many studies by Vietnamese authors lack access to documents that analyse the impact of different perspectives on the interaction between economic development and environmental protection in the course of environmental conflicts in Vietnam. Without this, it is hard for policymakers and practitioners to gain a comprehensive understanding of the views and reactions of the parties involved in environmental conflicts, how environmental conflicts arise, what factors drive environmental conflicts, what effects they have on people, and what are the appropriate solutions. This study, which applies the “society integration” approach to comprehend the perspectives and perceptions of stakeholders in environmental conflict, helps to fill this gap in current knowledge of environmental conflict in Vietnam.²³

In practice, however, access to justice in environmental matters can be a challenge in Vietnam, due in part to a lack of legal awareness and understanding of environmental rights, as well as limited access to legal representation and other resources. The government has taken steps to improve access to justice in environmental matters, including by providing funding for legal aid programmes and establishing specialised environmental courts in some provinces. However, more needs to be done to ensure that all people in Vietnam have effective access to justice in environmental matters. Access to justice in this area provides a range of guarantees that grants citizens and NGOs the ability to control public authorities with regard to their legal requirements.

2. Suggestions

Based on his research, the author would like to suggest ways to improve the legal system regarding the right to live in a clean and healthy environment in Vietnam.

²² M.-F. Fan, C.-M. Chiu, L. Mabon, *Environmental Justice and the Politics of Pollution: The Case of the Formosa Ha Tinh Steel Pollution Incident in Vietnam*, *Environment and Planning E: Nature and Space* 2022, vol. 5, no. 1, pp. 189–206.

²³ V.T. Nguyen et al., *What Are the Environmental Conflict, Social Impact and Justice Implications for Vietnam: A Case Study and Analysis of Policies?*, January 2018.

2.1. Enhancing the right to access environmental information

To ensure people's right to access environmental information, legal provisions must be perfected, such as regulations on the procedures and order for requesting environmental information, time limits, fees for providing information, and procedures for complaints and dispute resolution. Furthermore, sanctions for failing to provide environmental information, providing incorrect information to state management agencies and other production, business and service establishments must be clearly defined. In the process of exercising the right to access environmental information, if a state agency or public servant fails to provide information or performs improperly, thereby damaging the legitimate rights and interests of individuals and organisations, regulations must be put in place to address such cases. Moreover, individuals should have the right to complain if they are refused information when such a refusal is not in accordance with the grounds specified in the regulations on establishments for refusing to provide information, or if the information provided is not the information requested by them.²⁴

Second, to improve the effectiveness of publicity and dissemination of knowledge surrounding the right to access environmental information, both to the public and specifically to production and business establishments, regarding their responsibility to provide environmental information and comply with regulations, the following should be done: (a) ensuring that production and business establishments are aware of their responsibilities and how to comply with the law, to create a foundation for implementation (b) strengthening the capacity of state agencies in guaranteeing the right to access environmental information. This should be done by providing state agencies with adequate funds, facilities, and human resources to fulfil the responsibility of providing environmental information, as well as to coordinate with other state agencies in dealing with requests. (c) meeting people's demand for access to environmental information in the most effective way possible.

Third, the use of information technology to provide and access environmental information should be encouraged. A specialised database of natural resources and the environment should be developed quickly, and information sources which are not in digital form should be digitised to enable their provision, management, research and integration into a shared database. Additionally, access to environmental information should be enabled online, allowing people to access it quickly and

²⁴ Bui Van Dung, *The Right to Access Environmental Information in Vietnam*, Journal of Human Studies 2010, vol. 2, no. 47, pp. 15–20.

easily.²⁵ A unified electronic form should also be established for accessing environmental information.

2.2. Supporting people in improving participation in environmental decision-making processes

The trend in most developing countries is towards reforming their management systems to include governance institutions with public participation. International development organisations have been instrumental in providing research and promoting good governance systems. For instance, Switzerland and Germany are carrying out the “Land Governance of the Mekong River” project in Cambodia, Laos, Myanmar and Vietnam, where public participation in management and oversight is a central component of a successful governance system.²⁶

Depending on the level of awareness and approach, public participation can take a variety of forms. At the first level, the public is informed and kept up to date. At the second level, the public is consulted, asked for their opinion and suggestions. At the third level, the public can directly engage with the management agencies to voice their desires and needs. At the fourth level, the public can collaborate and converse directly with the regulatory agencies on an equal footing. At the fifth level, the public has the ultimate authority to make the final decision.

The Government of Vietnam has always upheld the spirit of the slogan “people know, people discuss, people do, people check”²⁷ and practiced grassroots democracy, and encouraging results have been achieved. However, there are still many limitations when it comes to promoting people’s interests in environmental decisions. To address this, the following solutions should be implemented. First, given that people’s participation in the enforcement of environmental rights is still limited, especially at the grassroots level, it is necessary to strengthen the practice of democracy at the grassroots and the practice of direct democracy. Additionally, monitoring mechanisms for environmental management should be strengthened,

²⁵ P.T. Huyen, T.T.P. Thao, *Legal Mechanisms and Solutions to Enhance the Right to Access to Information on Administrative Procedures*, TNU Journal of Science and Technology 2021, vol. 226, no. 3, pp. 86–92.

²⁶ L.J. Jansen, P.P. Kalas, *Improving Governance of Tenure in Policy and Practice: Agrarian and Environmental Transition in the Mekong Region and Its Impacts on Sustainability Analyzed through the ‘Tenure-Scape’ Approach*, Sustainability 2023, vol. 15, no. 3, p. 1773.

²⁷ Ngoc Lam Nguyen, *Exploring Challenges to Progress in Community Development in Vietnam Through Capacity Building*, Ho Chi Minh City Open University Journal of Science: Social Sciences 2005, <https://journalofscience.ou.edu.vn/index.php/soci-vi/article/view/1698> [access: 25.11.2023].

including enhancing the supervisory role of elected bodies, socio-political organisations, and social organisations. Along with the participation in supervision and criticism of the people through Vietnamese Fatherland Front and its member organisations, it is also important to encourage direct participation of the people in monitoring and criticism in the Environmental Impact Assessment (EIA) process, especially at the local scale. To do this, legal regulations regarding the organisation, operation, and role of associations related to environmental protection and EIA should be complemented quickly. Furthermore, mechanisms for coordination and cooperation between the state agencies, socio-political organisations, social organisations, and all classes of people in monitoring and protecting the environment, as well as exercising environmental rights should be introduced.

Second, environmental rights are relatively new in Vietnam and not everyone is aware of them. This is due to the limited understanding and awareness among the general public, as well as cadres and civil servants. Therefore, it is essential to increase education, popularise and widely propagate the 2013 Constitution and the Law on Environmental Protection of 2020, specifically the provisions related to environmental management, the obligations of those responsible for respecting, protecting, and implementing environmental protection, and the roles of socio-political organisations and social organisations in monitoring the implementation of environmental management. Priority should be given to educating cadres and civil servants of all levels and branches, disseminating information among them and communicating with them.

Third, it is necessary to promote education and raise awareness among the people, especially students who are the future owners of the country. Citizen participation enables each citizen to exercise control over socio-political life. As C. Pateman states, “only when individuals are given the opportunity to participate in social policies or to choose their representatives in accordance with their will can they control their lives and personal development.”²⁸ Citizen participation is essential for cultivating civic responsibility. It is a key factor in developing citizens’ social awareness, as it involves people in all stages of the decision-making process not only in environmental field and other major issues. It is an educational journey that shapes and reinforces political socialisation. It contributes to the formation of the appropriate attitudes, psychological qualities, as well as knowledge and skills of citizens in democratic activities. According to James Bohman, “the core of the development and revival of civic spirit is to make them [citizens] feel more involved in public

²⁸ M. Dean, *Pateman's Dilemma: Women and Citizenship*, Theory and Society 1992, vol. 21, no. 1, pp. 121–130.

issues at the grassroots level, giving citizens a greater voice in matters related to their lives.”²⁹

People must be made aware of the significance of their involvement in environmental management, such as SEA and EIA reports, environmental protection plans, and investment project decisions. Furthermore, they should be able to take part in monitoring the implementation of environmental solutions, spotting environmental issues, and resolving them. Though the existing legal framework in Vietnam has allowed for such participation, it is not comprehensive enough and has been largely neglected. By increasing people’s role in environmental decisions, potential environmental disputes that arise from environmental contamination can be minimised.

In order for large projects, such as hydropower and mining, to have a positive impact on people, it is necessary for the government to actively involve people in the decision-making process. For this reason, it is important to hold consultations with people’s representatives, to listen to their opinions, views and recommendations and to develop an appropriate policy plan that takes into account the interests of all parties. This approach is essential for policy-making and implementation, as it creates an atmosphere of cooperation, promotes social stability and contributes to achieving political and economic equality for disadvantaged groups. Moreover, it limits corruption in environmental issues and ensures that people can have their voices heard and that resources are allocated fairly. Nevertheless, the most important factor is whether the authorities are willing to listen to and act on the opinions of the people and exercise accountability. Unfortunately, environmental corruption is still a major barrier in Vietnam that prevents people from directly, completely and effectively expressing their views and being involved in the management and supervision of governance institutions.

2.3. Access to justice in environmental law

In order to understand the views and perceptions of the parties involved in environmental disputes from a social constructionist approach, mechanisms and policies should be put in place to encourage people’s participation. This could include allowing community organisations and social organisations representing those affected by environmental pollution to file class action lawsuits. Additionally, there

²⁹ A.K. Cohen, J.R. Dawley-Carr, L. Pappas, A. Staudinger, *Civic Studies: Fundamental Questions, Interdisciplinary Methods*, The Good Society 2013, vol. 22, no. 2, pp. 122–136.

is currently a lack of independent and professional mediators in Vietnam while related laws, such as the Law on Mediation or the Law on Environmental Protection, do not stipulate how to address this issue. As such, the Law on Environmental Protection should provide a framework to guide the participation of independent organisations in environmental dispute mediation. Moreover, with the available expertise, environmental institutes, universities and staff, as well as retired environmental police, can also be potential mediators.³⁰

The Vietnamese government needs to strictly implement its environmental laws, starting with the “polluter pays” principle as a central concept because it provides a way for those who have been harmed by environmental degradation to access justice. This principle also constitutes an incentive for businesses and individuals to be more mindful of their environmental impact and to take steps to prevent environmental harm.

Additionally, access to justice in environmental law can also be based on the “precautionary principle.” The precautionary principle provides a useful framework for those seeking access to justice in environmental law, as it allows them to pursue legal action to prevent environmental harm that may occur.³¹

To ensure citizens have a better understanding of the law and legal procedures, it is essential to organise legal seminars. Furthermore, to increase access to legal services, more legal aid clinics and pro bono programmes should be established so that those who cannot afford to hire an attorney are still able to obtain legal assistance. In addition, via local workshops the legal system could be made easier to understand and navigate for those who are unfamiliar with it.³² This could include providing more information and resources online, providing court interpreters, and creating more user-friendly forms.

Finally, the author contends that the following innovations should be introduced: (a) increased funding for legal aid organisations that provide free or low-cost legal services to those in need (b) lower court fees and fines that no longer disproportionately affect low-income individuals.

³⁰ V.T.T. Phan, *Improving Legal Framework to Implement the Right to Access to Justice in Environmental Matters in Vietnam*, VNUHCM Journal of Science and Technology Development 2015, vol. 18, no. 3, pp. 135–146.

³¹ T.C. Thiet, *The Polluter Pays Principle in The European Union Law and in Vietnam – Selected Issues*, Journal of Legal, Ethical and Regulatory Issues 2021, vol. 24, no. 6, pp. 1–12.

³² P.T.L. Huong, N.T. Thuy, *Current Issues and Challenges for Legal Education in a Globalized Context: A Case Study from Hanoi Law University, Vietnam*, Asian Journal of Legal Education 2021, vol. 8, no. 2, pp. 158–174.

Conclusion

In this article, the author has traced the history and development of Vietnamese law in relation to the human right to live in a healthy environment. Although this right has been acknowledged by the Constitution and laws of Vietnam, in everyday practice its implementation still needs to be improved through more effective interaction between the authorities and citizens. While continuing economic growth in Vietnam is both inevitable and desirable for the future material wellbeing of its citizens, it needs to be recognised that this “progress” cannot be made at any price, particularly at the cost of degradation to the environment which supports the viability and health of communities which depend on it for their existence.

As Environmental Law has evolved in Vietnam, it has tried to strike a balance between the imperatives of improving the standard of living of Vietnamese citizens and the needs of those same people to live in an environment that is safe, healthy and sustainable for all. It is the contention of the author that this balance can be best achieved through the constant vigilance of a legal system that is attuned to the environmental implications of industrial development, is determined to act accordingly when the necessity arises as well as through extensive consultation, taking into account the opinions of all stakeholders.

Specifically, the author firmly believes that local citizens who are affected by these developments are major stakeholders in the decision-making processes and have the right to participate, to have access to all relevant information and ultimately to receive the justice to which they are entitled.

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