

Human Rights to Live in a Healthy Environment from the Perspectives of International Human Rights Standards to National Convention and Laws: A Case of Seawater Pollution in Vietnam

Phan Thanh Thanh

Abstract

This article discusses on human rights to live in a healthy environment in International human rights standards and National laws with a focus on the Law on Water Resources and the Law on Environmental Protection. In the broader discussion, it is on the relationship between human rights to live in a healthy environment and the rights to water. The purpose of this article is to stand out the environmental protection legal aspect in fulfillment of the rights to live in healthy environment with focus on water as well as preconditions to realization of the rights. Moreover, the issue of seawater pollution in Vietnam is also brought into discussion as a case study because it has had negative effects and seriousness to people's health and lives in a massive scale. The year 2016 can be called a year of marine life disaster in Vietnam because of massive dead fishes in Ha Tinh, Quang Binh, Quang Tri, Thua Thien Hue as a result of discharged toxic waste into the ocean by Formosa Ha Tinh Steel-a Taiwanese corporation. This loss led to a great deal of protests who asked for clean, healthy environment and transparent

Researcher at Institute of Human Studies, Vietnam Academy of Social Sciences

Ph.D Candidate at Institute of Human Rights and Peace Studies, Mahidol University, Thailand

Email: phanthanhcmu@gmail.com

investigation of the case in different cities of Vietnam in May 2016. The research methodology is based on desk-research to find out secondary sources, particularly legal documents at international and national level on human rights to live in a healthy environment. The non-legal binding documents and legal binding documents are analyzed but the research focus are legal documents at the international level which is International Covenant on Economic, Social and Cultural Rights (ICESCR) and at the National level is Vietnam Law on Environment Protection, Vietnam's Law on Water Resources. The rights will also be reviewed and analyzed for decision makers to develop and improve their enforcement of those rights in Vietnam in the critical seawater disaster context and the conflict of existing laws at the national level. The results suggest that firstly the State has obligations to respect, protect the rights to a healthy environment according to ICESCR. Thirdly, State also has to prevent any harm caused by third parties and include them in environmental protection activities. Finally, States parties must fulfill economic, social and cultural rights by providing inclusive legislative, judicial, administrative and other measures for full realization of the Covenant provisions by maximizing their available resources.

Keywords: Human Rights, Healthy Environment, International Law, Environmental Protection, National Law, Seawater Pollution.

Introduction

After Vietnam War in 1975 and economic renovation (Doi Moi) in 1986, Vietnam has been quickly transformed from a poverty-stricken country to a world trading partner as one of the world's top emerging economies. However, the sustainability and quality of the economy is questionable due

to high levels of environmental degradation and natural resources exploitation. The problem lies in the fact that its laws lacks real environmental legal tools in fostering sanctions of environment destruction caused by industrialization even over time, policies and laws related to environmental protection with ideologically well-intentioned have been pursued and promulgated such as the Law on Water Resources, the Law for Environmental Protection.

Together with economic achievements, environment, especially surface water has severely damaged due to industrial and domestic waste pollution. It can be explained by weak, inconsistent, contradicted, overlapped and unenforced National water protection laws together with conflicts with corresponding legislation in Vietnam (Loan, 2013). My argument is that pollution occurs because government compromise environmental legal protections to attract foreign investment in the name of economic development and weak laws lead to corruption. Those shortcomings reflect in the Law on Water Resources (LWR), and the Law on Environmental Protection (LEP). The question is that how these laws can be implemented and enforced in reality. To answer this question, this paper applied desk-research to review legally binding documents related to human rights to live in a healthy environment at international level which is International Covenant on Economic, Social and Cultural Rights (ICESCR) and at national level namely Vietnam Law on Environment Protection, Vietnam's Law on Water Resources. Although International Convention on Civil and Political Rights (ICCPR) is also part of human rights to live in a healthy environment, it is not within the scope of the research. The non-legal binding documents at the international level also are analyzed. This paper will be formed into 3 parts. Part one of this paper will provide an **International discourse of human rights to live in a healthy environment**. It sets forth for the discourse

of whether or not rights to live in a healthy environment are human rights. Moreover, it plays an important role to emphasize the human rights based approach on environmental protection. It also provides international legal mechanisms which are supposed to protect the rights to live in a healthy environment. Lastly, it discusses on the relationship between the rights to live in a healthy environment and the rights to water to focus on the water pollution issues and to confirm that rights to water is the precondition for realization of the rights to live in a healthy environment. Part two of the paper will discuss on **National standards of human rights to live in a healthy environment**. This part will focus on National Institution and National Law related to the rights to live in a healthy environment namely Law on Water Resources, Law on Environmental Protection. Lastly, part three of this paper will deal with **the Limitations of Enforcement of National standards of human rights to live in a healthy environment to prevent seawater pollution in Vietnam**. This final part discusses how limitations in the existing mechanisms together with problems in the existing conflict of law are coming up with solutions to make the enforcement tools become more effective. From this point of view, the rights to live in a healthy environment from polluted seawater situation in Vietnam have been assessed. It also provides suggestions toward sound and sustainable policy on water quality.

1. International discourse of human rights to live in a healthy environment

Human rights to live in a healthy environment and environmental protection have a close relationship. The rights to live in a healthy environment was introduced due to the increasing of serious environmental

pollution, having negative impact on life, health, livelihood and others; Environmental pollution is happened largely due to the lack of conscious activity of people, especially from industrial activities for the sake of economic growth. Solving environmental problems is to solve human rights to live in a healthy environment and other human rights issues. Implementing regulations on environmental protection is a prerequisite for the protection of human rights to live in a healthy environment.

1.1 The international discourse on whether or not the rights to live in a healthy environment are human rights

Scholars have proposed at least three different approaches of the rights to live in a healthy environment which is (1) rights to live in a healthy environment are separate human rights, (2) rights to live in a healthy environment are the rights of the environment in itself; and (3) rights to live in a healthy environment are encompassed within previously established human rights.

The first approach is based on the assumption that current international human rights law is of the relatively productive platforms which also targets the issues of environmental protection. For that reason, the rights to live in a healthy environment become possible through human rights law such as the UN Covenants which guarantee and implement the rights to live in a healthy environment by giving individuals and social groups rights to access to information in environment, judicial remedies, rights to participate in decision making process in environmental protection as well as obligation of governments to fulfill the rights through the National laws (Boyle, 2011). This view is based on the ground of anthropocentrism which was originated and adopted heavily in Western societies that situates human beings in the center of the universe and all values (Leib, 2011, p. 26). In environmentalist point of view, however, this approach is viewed as

problematic because it values human higher than nature; thus leading to the consequences of environmental crisis when human interest is the main incentive but not the nature one (Leib, 2011, p. 12).

Therefore, the second approach is considering that the rights belong to the environmental right itself. This approach is based on “eco-centric” point of view that values rights to healthy environment as human rights only in the sense that they require humans to enforce them. Moreover, this approach heavily criticizes the first approach, arguing that humans were born much after the nature but human history is the history of using nature for the use of human beings to an extend that now destroying the nature because we place ourselves higher than anything else (Curry, 2006, p. 90). Moreover, human rights based approach is often criticized that it only provides mechanism to protect environment when it is becoming damaged and degraded severely and seriously rather than to prevent it from violation because it has to be proved that there is a causal connection between environmental damages and human rights violations (Boyle, 2011, p. 89).

In responding to this argument, the authors who are in favor of the first approach claim that firstly that it is important to have an absolute mechanism which characterize bureaucratic decision-making to prevent individuals from greed and short-term thinking which harm the environment (Boyle, A.E. and Anderson, 1996, p. 21) and secondly at the same time it provides a same legal framework for both national and international issues for judgment because environmental damage is normally distributed unequally at national and international level (Boyle, A.E. and Anderson, 1996, p. 22). However, in the addition part, human rights dimension is still mentioned in these treaties as complementary for enforcement of nature protection. Therefore, it is still impossible to separate the benefit of nature and the benefit of the environment in the rights to live in a healthy environment (Boyle, A.E. and Anderson, 1996, p. 22).

Lastly, coming up with the third approach which is to balance the two approaches above, Boyle argues that human rights should not be separated from broader environmental concerns (Boyle, A.E. and Anderson, 1996). The human rights and environmental rights are thus integrated with healthy environment through decision-making process, balancing the interests of the present generation to those in the future, human development to the nature protection/preservation via international cooperation and supervisory institutions (Boyle, A.E. and Anderson, 1996).

1.2 The relationship between the natural environment and human rights

As having been discussed earlier, whether or not the rights to live in a healthy environment are human rights remain a debatable topic. However, it is still a human right with the following reasons:

Firstly, environment is a matter of human rights when Stockholm Declaration in 1972 was identified as the first milestone for the cohesion of two issues environment and human rights - two separate areas of public policy, but closely related to each other. Principle 1 of Declaration has set the foundation for the relationship between environmental protection and human rights: “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... “(The United Nations Conference on the Human Environment, 1972). Next, the 1972 World Heritage Convention was created with aim of preserving natural and cultural sites for the generations to come. After that, The 1985 Vienna Convention was established to tackle the problem of ozone depletion. In 1987, Montreal Protocol on Substances that Deplete the Ozone Layer was established to eliminate the man-made ozone emissions. In 1989, Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and Their Disposal was created to reduce to a minimum

the trans-boundary movements of hazardous wastes. The Framework Convention on Climate Change in 1992 aims at protecting the climate system. In 1992 The Convention on Biological Diversity aims at conserving biological diversity. Lastly, Rio Declaration on Environment and Development in 1992 formulated the link between human rights and environmental protection, such as in principle 10 “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...” (United Nations, 1992). The link between the environment and human rights is most obvious in ensuring the implementation of human rights including the rights to life; the physical integrity of every individual; the rights to health, prosperity and development of the individual, the rights of social groups and communities... They all depend on the habitat, the natural environment around people. This is an important basis for the life of every individual, every social community. Currently, human health is affected by growing and increasingly severe consequences due to the serious deterioration of the environment and ecosystems. The main damage caused degradation; environmental pollution has a direct impact on the enjoyment of human rights of everyone. Therefore, demanding for the improvement of the quality of life is to ensure the rights to live in a healthy environment. In other words, environment is a matter of human rights.

Secondly, environmental protection is a prerequisite for the realization of human rights. It is the fact that human rights will not be achieved if the environment is not guaranteed. Environment directly relates and impacts to the enjoyment of the rights of each individual and the community.

Therefore, protecting and enhancing environmental quality are necessities to protect human life, are preconditions to protect human dignity, promoting welfare of each individual and community as a whole. However, human activities have been seriously damaged the environment at a global scale due to global economy and globalization (Baruchello & Johnstone, 2011). Particularly, the rights to life and the rights to live in a healthy environment are directly affected by pollution and environmental degradation. Environmental protection is not for the sake of the nature itself but for the sake of human beings and generations to come. Therefore, Vietnamese Government has the responsibility to ensure human rights to all people as well as responsibility to respect, protect and fulfill human rights on environment. To do so, Vietnamese Government needs to strengthen its legislative system and mechanism and apply all possible tools to protect the environment from violators.

Thirdly, protection and fulfillment of human rights are the essential conditions to have good environmental policies. To have good policies on environmental protection, human rights must be implemented in practice. Good environmental policy can only be secured through the exercise of the rights to access to information and the rights to public participation in issuing decisions concerning the environment and rights to access to justice in environmental matters. This is called procedural rights. It is the fact that in the field of environment, procedural rights have a huge impact on the realization of the environmental rights. It makes people more active in participation in decision making processes and policies of the State relating to the environment; democratization for the decisions and policies on the environment through the inclusion of individuals, citizens, business sector and disadvantaged people who frequently suffer from the effects of environmental pollution in the planning processes and policies related to

the environment. This involvement will limit the “bureaucracy” of the policy issued to ensure a balance between the interests of Environmental Protection - Sustainable Development and economic growth. Thereby, the implementation of procedural rights is very important to get good environmental policy that will ensure a healthy environment, protect the interests of majority, community’s benefits and vulnerable people.

1.3 Institutional factors in ensuring the legal mechanisms of human rights to live in healthy environment

In essence, human rights to live in a healthy environment belongs to the third rights generation, the content is the combination of both International Covenant on Civil and political Rights (ICCPR) which namely are rights to public participation and access to information and International Covenant on Economic, Social and Cultural Rights (ICESCR) which namely are rights to water, and rights to health but they are placed in the new context and in the framework of group rights. Regarding legality, except for the rights to national self-determination, most of the remaining third-generation rights are not codified in international treaties, mostly mentioned in the claims and have no value legally binding among countries. Legality and realism of the rights of third rights generation are still debatable subjects (Ruppel, 2008). Human rights to live in a healthy environment is not an exception, but international, regional human rights treaties and a number of national constitutions provide guarantees for the protection of environment, and the rights to live in a healthy environment confirmed that everyone are equal rights holders as well as holders of responsibility, equally accessing to the environment as a resource for development, and also equally being responsible of the environmental protection (Boyd, 2012).

At the international level: international community has issued a number of international legal instruments to promote the implementation of human rights to live in healthy environment. Among them, the International Covenant on Economic, Social and Cultural Rights (which has legally binding document) although does not directly address environmental concerns for the sake of environmental protection by itself, it does address the issue of environment from the perspective of anthropocentric which emphasizes that environmental protection will ultimately improves human's opportunities in enjoyment of their economic, social, cultural rights (Baruchello & Johnstone, 2011). In 2012, the Committee on Economic, Social and Cultural Rights (CESCR) issued its statement on green economy to show its concerns on environment protection in relation to poverty eradication and sustainable development in the Rio +20 summit. Here it is confirmed that the realization of economic, social and cultural rights is dependent upon a healthy environment: "without adequate life support system, the human rights upheld by the ICESCR [...] cannot be plausibly attained on a universal scale" (Baruchello & Johnstone, 2013). Therefore, it requires State parties to integrate human rights to live in a healthy environment in relation to the fulfillment of other human rights throughout the treaty monitoring process with purposive tools, aimed at primarily improving the promotion and implementation of human rights norms such as General Comments and interchanges with other States parties (Baruchello & Johnstone, 2013). It also requires governments to take responsibility with non-state actors such as businesses and private corporation to prevent human rights' violations, regulate and monitor those non state actors (Baruchello & Johnstone, 2013).

1.4 Rights to live in a healthy environment and rights to water: the linkages

Rights to water are the precondition for the rights to a healthy environment. In article 12 of ICESCR, the rights to a healthy environment links directly to the rights to health together with a wide range of social-economic factors that promote conditions (safe water and environment) in which people can live healthily (UN Committee on Economic Social and Cultural Rights, 2000). Safe water is mentioned in the General Comment to ensure good public health with main stress on accessibility and quality of safe drinking water and adequate sanitation facilities (UN Committee on Economic Social and Cultural Rights, 2000). Article 12.2 (b) mentions on the improvement of all aspects of environmental hygiene (adequate supply of safe and potable water and basic sanitation) and industrial hygiene (minimization of the causes of health hazards in the working environment) for the fulfillment of the rights to live in a healthy environment (UN Committee on Economic Social and Cultural Rights, 2000).

Concerning the rights to water, the General Comment number 15 clarifies the links of the rights to water to the rights to highest attainable standard of health (UN Committee on Economic Social and Cultural Rights, 2003) as well as the importance of environmental hygiene (UN Committee on Economic Social and Cultural Rights, 2003). To make the rights become realization, State Parties' actions need to be taken to prevent health unsafe and toxic water conditions. Measurement is needed to protect natural water resources from harmful substances and pathogenic microbes (UN Committee on Economic Social and Cultural Rights, 2003). Beside the rights to access water, the standards which is safe, free from microorganisms, chemical substances and radiological hazards for the water of domestic consumption are also regulated by the General Comment (UN Committee on Economic Social and Cultural Rights, 2003).

It is important to note that securing rights to access safe water is to protect present and next generations (UN Committee on Economic Social and Cultural Rights, 2003). What State parties have obligations to reduce depletion of water resources, water wastage, contamination of watersheds (UN Committee on Economic Social and Cultural Rights, 2003)... State parties also need to ensure that their development plans cannot interfere in the way that it is harmful to rights to access to adequate water of local communities such as lakes, rivers, sea and protect it from unlawful pollution (UN Committee on Economic Social and Cultural Rights, 2003).

The significance of the ICESCR and its provisions lie on the fact that States parties are obliged to fulfill the above mentioned obligations. Moreover, they are obliged to prevent non state actors such as individuals, groups, corporations from interfering in any way with the enjoyment of the people's rights to water (UN Committee on Economic Social and Cultural Rights, 2003). However, it lacks adopted effective legislative measures to prevent those non state actors from polluting or inequitably extracting from water resources (UN Committee on Economic Social and Cultural Rights, 2003). In case of water services are operated or controlled by third parties, States parties have the obligation to prevent them from restraining affordable and equal access to safe water resources (UN Committee on Economic Social and Cultural Rights, 2003). States parties also have responsibility to prevent their own citizens and companies from violating the rights to water of individuals and communities in other countries (UN Committee on Economic Social and Cultural Rights, 2003).

2. National standards of humans rights to live in a healthy environment

Vietnam participated in international conventions including ICESCR which has article 11 and 12 related to the environment protection. It institutionalized the Government's commitment into environmental protection legislation, integrated the contents of the agreement into legal framework for environmental protection norms. The mechanism to ensure the implementation of rights through institutional factors (the Constitution, laws on environmental protection) and institutional protection of human rights to live in a healthy environment such as the legislature, executive, judiciary, political social institutions, and professional associations. However, the process of environmental action is pretty slow and uneven. There is a gap from changing perceptions, to act and behave to the environment. Dozens of laws on environmental protection and environmental components have been issued. However, in implementing public policy, the objectives for economic growth remains a top priority, while the environmental protection and environmental rights are disregarded environmental, causing increasingly severe pollution. In return, it impacts negatively on economic, social development, environment and human rights.

2.1 Linkage of National Constitution to the rights to live in a healthy environment

At the national level: the Constitution guarantees human rights as recognized in the National Constitution; the Constitution also recognizes the obligation and responsibility to ensure the implementation of human rights to live in a healthy environment as well as the responsibility to create and implement mechanisms in accordance with the global recognized principles. Moreover, the environmental protection legislation, the national action plan

on ensuring and protecting human rights in all fields, the objective's achievement and the people's legitimate interests are also be concern.

Environmental protection emerged from the Constitution in 1980 but was only recognized as fundamental human rights in the Constitution in 2013. Constitutional amendment in 2013 in the context that Vietnam has joined the World Trade Organization (WTO) for 7 years, foreign investors invested in Vietnam massively but it has been lack of selectivity while the legal system is not completed yet, especially environmental protection law and foreign investment law. Rapid development of urbanization makes the natural environment huge pressure, severe recession and severe pollution; environmental conflicts emerged around the industrial zones and urban areas. Reality shows that environmental protection activities have been overlooked because they are set inferior to economic development, perhaps this is one of the major reasons for increasing environmental pollution and serious degradation. It is the reason human rights to live in healthy environment needs to be amended in 2013 Constitution. Human rights to live in healthy environment was for the first time introduced and recorded in Article 43 of the Constitution in 2013 that "Everyone has the rights to live in a healthy environment and the obligation to protect the environment" (Vietnam Government, 2013). That is, people do not only have the rights to live, but also have the rights to live in a quality environment to protect their dignity and welfare.

Besides the recognition of rights, the constitution also noted the assurances of human rights to live in healthy environment and provides for the remedies to protect the rights in the Article 63 (Vietnam Government, 2013). In fact, human rights to live in a healthy environment cannot be performed with detachment of other human rights, such as the rights to life in Article 19 (Vietnam Government, 2013), rights to access to information in

Article 25 (Vietnam Government, 2013), the rights to health in the Article 20, 38 (Vietnam Government, 2013), rights social security in the Article 34 (Vietnam Government, 2013). This is the highest assurance for human rights to live in healthy environment only in the latest amended Constitution in 2013.

To ensure human rights to live in a healthy environment, environmental protection activities are mentioned more in the constitution; placed on a same level with economic, social, cultural activities and industrialization and modernization process. The Constitution also confirms that the State has the responsibility to promulgate policies and legislation for environmental protection, effective and sustainable natural resources management and utility, nature conservation, preserving nature, biodiversity, combating natural disasters, responding to climate change in the Article 63.1 (Vietnam Government, 2013). It can be seen that the work of environmental protection, responding to climate change become strategic tasks. Thus, living in a healthy and safe environment is not only the needs of each person, but it also is human rights which is recognized by the National Constitution and guarantees the implementation.

Constitution recognizes human rights to live in healthy environment. It is the recognition of the principle that perpetrators to the environment have to take responsibilities and compensate for the damages: "Organizations and individuals cause environmental pollution, depletion of natural resources and declining of biodiversity should be dealt severely and have responsibility to remedies, compensation for damages" in the Article 63.3 (Vietnam Government, 2013). This principle is evident in economic punishment on environmental protection, impacting on the behavior of actors in favor of the environment.

The enforcement activities require uniformity in policies and methodologies “The Government unifies the State management of the environment” in the Article 96 (Vietnam Government, 2013). This reflects the responsibility of the State in ensuring the rights of all the people and obligations of all citizens on environmental protection to live in a healthy and safe environment. Government has a responsibility to respect, protect and promote human rights to live in healthy environment; creating favorable conditions for people’s enjoyment of their rights.

2.2 Linkage of National Law to the rights to live in a healthy environment

2.2.1 Vietnam Law on Environment Protection

The most relevant law to the rights to live in a healthy environment is the Law on Environmental Protection which was the first law in Vietnam to protect the environment passed in 1993 and came into enforcement in 1994 noting special importance of the environment for human life (Vietnam Government, 1993). The Law on environment protection in 2005 urges private sector involved in the environment impact assessment (EIA) according to the Article 21 (Vietnam Government, 2005). It also encourages and creates favorable conditions for organizations engaged in capacity management, waste treatment in the Article 70 (Vietnam Government, 2005), environmental monitoring activities in the Article 95 (Vietnam Government, 2005). It ensures the access to environmental information of all organizations and individuals in the Article 104 and 105 (Vietnam Government, 2005). It finally enhances the role of mass, social organizations and all citizens in environmental protection activities in the Article 124 (Vietnam Government, 2014). To meet the development practices, especially after the 2013 Constitution became effective, new law on Environment Protection was created in 2014. This law links the rights to live in a healthy environment to the law on environment protection (Vietnam Government, 2014).

In the environmental field, rights to access to information of environment are embodied in Article 10 of Law on Environmental Protection in 1993 (Vietnam Government, 1993); but in Law on environment protection in 2005, rights to access to information of environment are addressed in more detail in many terms, and are understood as: The right of all citizens under the law is capable of receiving and using environmental information by authorized agencies (Vietnam Government, 2005). Article 145 in law on environment protection 2014 stresses that the right of political organizations such as social, professional organizations, are provided and asked to provide information on environmental protection in accordance to the law“ (Vietnam Government, 2014). In addition, community representatives also have the rights to ask the concerned state authorities provide the results of the environmental inspection of enterprises. Article 146: the right of communities: (1) Representatives of communities in the province affected by environmental impacts of industries have the rights to request them to provide environment information (2) community representative in the province have the rights to ask the state authorities to provide inspection results on environmental damages (Vietnam Government, 2014). About compensation for damages of environmental pollution: Environmental Protection Law in 2014 stipulates the principle of imposing liability for organizations and individuals that cause environmental pollution in the Article 164, including stipulates the responsibilities of the head of an organization, enterprise to be responsible for violations of environmental protection law (Vietnam Government, 2014).

Similar to the Constitution on environment protection, the law on environmental protection issued responsibilities for all organizations, state agencies, households and individuals to protect the environment. To prevent environmental damages, the law requires investors to pass Environmental

Impact Assessments which serves as a tool for predicting environmental damages before its project comes into force in Article 17 of Vietnam Law on Environmental Protection in 2014. This law emphasizes on the remedy responsibility of the polluters by compensating the damages on the environment in Vietnam Law on Environmental Protection in 2014, Article 4(8). This point shows the innovation of the law on the environment protection which focuses on the remedy responsibility, however, also shows its weakness when it is likely to value economic development rather than environmental protection. It says “environmental protection must be in harmony with economic development, social security... to ensure the right people to live in healthy environment” in Vietnam Law on Environmental Protection in 2014, Article 4(2). Therefore, it is a clear contradiction in content of the law on environment protection. By requiring measures on environmental protection to harmonize with economic advancements and social security, law on environment protection is only viewed as a policy that comfort national security and development as the main goals instead of protecting the health of the environment and human rights to live in a healthy environment as priorities.

Those reasons are well understood in the context of Vietnam, a country transformation from poverty to development and industrialization which force it to scarify environment. The situation even becomes worsen with added factors such as poor legal structures, corruption and capacities to governance together with its poor technologies, finance, and human resources’ allocation in environment protection. Moreover, there is jurisdictional overlap between ministries and inconsistencies between central government laws and provincial laws in terms of implementing environment protection due to lacking of clear rules and regulations on procedural requirements for enforcement.

2.2.2 Vietnam's Law on Water Resources

Vietnam Water Resources Act was first promulgated in 1998 and passed in 1999. Law on Water Resources in 1998 was replaced by the Law on Water Resources in 2012 with new approaches including community based water resource management with provisions to protect human rights to live in healthy environment, such as the consultation of local communities and organizations and individuals in the exploitation and utility of water resources, discharge of waste water into water sources, public environmental information disclosure on the contents related to the exploitation, use, discharge and effects that may occur prior to implementation; ensuring a fair, reasonable, harmony of interests, equality of rights and obligations between organizations and individuals in the Article 6 (Vietnam Government, 1998). The polluting behavior, degradation, affecting water resources is prohibited in the Article 9 (Vietnam Government, 1998). In addition, the new law also provides for the assessment of the pollution, degradation, depletion, and sanitation of surface water, ground water, and seawater pollution; classified according to the degree of water pollution, degradation and depletion in the Article 12.2.d (Vietnam Government, 1998). Organizations and individuals have the responsibility to protect water sources they often exploit, use, and have the rights to monitor phenomena, behavior which degrade and deplete water resources by organizations or individuals in the Article 25 (Vietnam Government, 1998). Mining activities, using of water resources which degrades the function of water, causing collapse, land subsidence, pollution, salinity intrusion are remedial responsibility of polluters to pay compensation as prescribed by law in the Article 26 (Vietnam Government, 1998).

Again, the law on water resource is similar to the law on environment protection in the sense that it provides a relatively broad protective framework for water resource protection. However, its shortage lies on the fact that it

was created to harmonize with policy goals instead of protecting water resources in itself. On the one hand, the law said that “water is a natural resource of special importance, the essential component of life and the environment” in Vietnam Water Resources Act in 1998, Prologue, owned by the people of Vietnam under the management of the State Vietnam Water Resources Act in 1998, Article 1.1, delegated to the People’s Councils and People’s Committees Vietnam Water Resources Act in 1998, Article 4.3. On the other hand, the government also allows industry sector opportunities to disregard environmental provisions of this law by allowing water exploitation in a certain water body in Vietnam Water Resources Act in 1998, Article 24.2.b. This is quite problematic as it proves the conflict in nature of enforcement regulations of the law on water resources in comparison with other laws and policies which encourage development, and shows the inconsistency in the laws and policies.

Another example is that the law paves the way for industry sector to violate the water environment when it states that polluters which discharge waste water into water resources can compensate their violations into money in Vietnam Water Resources Act in 1998, Article 19.1.a and the industry has the rights to pollute Vietnam Water Resources Act in 1998, Article 19.1.b. This clearly proves the conflict and inconsistency in the same law and shows the political will for accommodating industry weakens the environmental provisions. The People’s Committees at provincial levels have responsibility to organize, evaluate, and conduct surveys of water resources in their jurisdictions Vietnam Water Resources Act in 1998, Article 60.4. However, by giving the law to this lower level bureaucrat to manage the implementation and enforcement, it gives a room for corruption and arbitrary decision making process for water exploitation permission (Quinn, 2002). Moreover, with a limited funding allocation for developing environment

protection regulations and practices, political commitment to water quality protection turns out to be the great ideal in policy and legislation rather than in practice.

Table 1 Comparison between International Standards and the National Constitution and Laws on the Rights to live in a healthy environment

International Standards on Rights to live in a healthy environment	National Constitution and Laws on Rights to live in a healthy environment
<ul style="list-style-type: none"> - In International non-binding documents: - Stockholm Declaration in 1972 - 1972 World Heritage Convention - The 1985 Vienna Convention - The 1987 Montreal Protocol on Substances that Deplete the Ozone Layer - The 1989 Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and Their Disposal - The Framework Convention on Climate Change in 1992 - The 1992 The Convention on Biological Diversity - Rio Declaration on Environment and Development in 1992 	<p>In National Constitution 2013:</p> <ul style="list-style-type: none"> - Rights to live in a healthy environment (Article 43, 63) - Rights to life (article 19) - Rights to access to information (article 25) - Rights to health (article 20,38) - Rights to social security (article 34) - Responding to climate change (article 63.1) - Compensation for environmental damages (article 63.3) - Enforcement activities for environmental protection (article 96)

International Standards on Rights to live in a healthy environment	National Constitution and Laws on Rights to live in a healthy environment
<p>In legally binding documents:</p> <p>ICCPR:</p> <ul style="list-style-type: none"> - Rights to public participation and Rights to access to information (Article 19). They are essential to the realization of rights to water and sanitation according to Principle No. 14 of The free flow Principles' <p>Freedom of expression and Rights to water and sanitation.</p> <p>ICESCR:</p> <ul style="list-style-type: none"> - Rights to water (article 11, 12) and General comment No. 15 of UNCESCR - Rights to health (article 12) 	<p>In Law on environmental protection in 2005:</p> <ul style="list-style-type: none"> - Environmental impact assessment (EIA) (article 21) - Waste treatment (article 70) - Environmental monitoring (article 95) - Access to environmental information (article 104,105) - Protection activities (article 124) <p>In Law on environmental protection in 2014:</p> <ul style="list-style-type: none"> - Rights to information in environment (article 145) - Rights to ask for environmental damages inspection - EIA (article 17) - Remedy responsibilities (article 4(8)) - Harmony environment protection with economic growth (article 4(2)) - To be responsible for violations of environmental protection (article 164) <p>In Law on water resource</p> <ul style="list-style-type: none"> - The water polluting behavior is prohibited (article 9) - Assessment of water pollution (article 12.2.d) - Responsibility to protect water sources (article 25) - Remedial responsibility (article 26)

3. Limitations of Enforcement of National Laws on human rights to live in a healthy environment to prevent seawater pollution in Vietnam: A case study of Ha Tinh, Quang Binh, Quang Tri, Thua Thien Hue

When it comes to water pollution in the sea, a recent significant case is Formosa (a Taiwanese-owned steel plant) which is responsible for toxic waste water leading to massive fish deaths that have decimated tourism and fishing in four provinces (Ha Tinh, Quang Binh, Quang Tri, Hue). This case highlighted the risks of rapid growth in foreign investment. It is estimated that 70 tons of dead fish washed ashore along more than 200 km (125 miles) of Vietnam's central coastline in April 2016, sparking rare protests across the country after the Taiwanese company denied any wrongdoing. From this case, it is said that the rights of the people to participate in the process of planning, implementing and monitoring policies related to the environment is still limited. People have not accessed to adequate information on the environmental impact assessment as well as direct participation in the EIA process in most projects. The case above shows that the rights to participation in environmental protection especially EIA and SEA are only in paper and have not been exercised in reality yet. For instance, participants of EIA reports and strategic environmental assessment (SEA) should have professional qualifications. But Vietnam does not have legal provisions' requirement in this regard. In fact, the local government representatives participated in EIA and SEA just sign in the documents to complete legal formalities without counseling with the affected communities. In fact, on July 14, 2014, Formosa sent a letter to Ministry of Natural Resources and Environment (MONRE) requesting the construction of a discharged pipeline to the sea and more than a month later, on August 26, 2014, the General Administration of Environmental Protection issued a written approval for Formosa to discharge to the sea. As such, MONRE only needs more than a

month to complete all procedures from the inspection, to the adjustment of Formosa's environmental impact assessment (EIA). It can be said that not only Formosa is defective but the fault lies in the system of state agencies, such as the Ministry of Natural Resources and Environment, Ha Tinh Department of Natural Resources and Environment, environmental police and inspectors.

From the case, it can be seen that there are still limitations in the current national laws to implement and realize the rights to live in a healthy environment in practice.

The first is an inadequate legislation mechanism. Congress enact legislation, the Government and ministries, State agencies at local level issue guidelines depending on their functions, tasks, making a law documents have many different guidelines, leading to inconsistency and conflict in implementation.

The second is that provisions of the law on environmental protection have not clarified the rights and responsibilities of key actors and stakeholders involved; only stipulated general obligations that "everyone has obligation to environmental protection". The definition of responsibilities and competences among different ministries and agencies at national and provincial scales are unclear. It is not specified, explicit about the processes, procedures, agencies responsible for dealing with complaints and denunciations about the environment as well as the responsibilities of agencies and individuals to settle complaints and denunciations about environment. The settlement provides for compensation for damage caused by environmental pollution is not for the benefit of people, the victims can not claim to their justice.

The third is environment management and monitoring, there is lack of involvement of citizens; The provisions on the reporting of environmental

impact assessment (EIA) and Strategic Environmental Assessment (SEA) have been overlooked, not specified and lacks the rigor of the process, qualifications and responsibilities of reporters.

The fourth is that the level of administrative sanctions in environmental protection is too light, lack of radical treatment for many businesses who are eager to discharge to the environment and pay compensation. It can be said that the law enforcement and the law on environmental protection are the weakest legal process in Vietnam to enhance human rights to live in a healthy environment. Enforcement of environmental law is complex and is related to many laws. Environmental management agencies at all levels are incompetent for execution, provisions of the law are not close to reality. The system of law enforcement agencies on environmental protection and human rights protection in the field of environment was very weak and lacking the appropriate means of support. The organizational model is not stable; not been legalized; documents lack specific guidance, particularly in the coordination of activities.

Many of the provisions in the legal system in the form of Environmental Protection implement only general principles, general rules, framework, there is no connection with the human rights, there is no consensus on common goals. Therefore, they did not meet the requirements to ensure human rights to live in healthy environment during industrialization and modernization and international integration. The legal documents have not focused on integrating human rights approach in environmental protection; There is no connectivity and unification in functions and tasks. Every law related to environmental protection remains independent document. Guiding documents for the implementation of specific regulations are not clear in processes procedures and sequence for citizens to exercise their procedural rights (rights to access to information of environment, participation

rights) when they detect any violations of law on environmental protection and when their rights are infringed upon, resulting in lacking of involvement of people in environmental protection monitoring activities. Law on environment protection in 2005 regulates responsibility of environmental officials to disclose information on environment but hardly there is any performing this role and hardly being seen any case that environmental officers is punished for not performing the task to announce environment information.

Moreover, the problem of competing interests between economic development and environment protection has made the law enforcement more complicated. Those conflicts in economic development and environment protection strategies reflected in conflicts in the other existing laws and regulations (Loan, 2013). The law on water resources is not an exception (Loan, 2013). As a result, the quality of water resources decreased dramatically (Loan, 2013). Due to lacking of organization in the law making, it has created difficulty for government officials at all level to follow regulations (Quinn, 2002). Due to lacking clarification, the Vietnamese government has created space for investors to self-regulate the laws in many instances which creates unpredictable results for environmental health (Doberstein, 2004).

Human rights to access to justice in environmental disputes have not been guaranteed by the current legal mechanisms. According to the rule, people are affected by environmental pollution can choose one of the following forms: petitions, complaints, accusations or lawsuits to protect their rights and their legitimate interests. However, legal conditions are barriers to access to justice. First, the form of complaints, according to the Law on Complaint No. 02/2011/QH13, the complaint procedure only applies to administrative decisions, administrative acts. Second, the form of

denunciations need an act to commit to law violation - proving violations in the field of environment is very difficult and complicated in terms of technical requirements, professional and accurate numbers so local people cannot do it. Third, in the form of lawsuits to claim damages, the petitioner must prove: the damage has occurred, there are illegal acts and causal relationships. Proving is beyond the capacity of the people seen in this case. Fourth, the form of proposals for environmental pollution mechanism lacks binding legal documents, jurisdiction and time to solve the cases. Therefore, it needs judicial reforms to ensure the right of access to justice of people.

Article 63 of the 2013 Constitution stipulates: "Organizations and individuals causing environmental pollution, depletion of natural resources and biodiversity decline should be punished severely and responsible for compensate for damage". 2014 Environmental Protection Law also stipulates liability for organizations and individuals that violate the law on environmental protection... "(Article 160) or "Organizations and individuals have rights to complaints and lawsuits for violations of environmental protection activities" (Article 162). However, in reality, the violations in the field of environment are a lot, but the number of cases being detected and dealt with is very little and the number of cases brought to trial is extremely low. Activities violating environmental legislation took place in many areas, in various forms, increasingly serious, complex and tricky nature, forms of violations increase sophisticatedly and diversely. Environmental violations especially in water resources have been deeply affected economic development and the environment of the country, directly to the infringement of the rights to health, rights to property, livelihoods and employment of people.

It can be seen that the regulations on rights to access to information of the environment, the rights to participate and rights to access to justice recorded relatively full in Constitution and law on environmental protection

of Vietnam. However, the regulations are only were formed in general principles, it is a far distance between theory and reality. Many regulations cannot be implemented due to demonstrating the causal relationship between the behavior of corporate polluters and damages of the environment is extremely complex and requires a lot of technical and professional expertise. Moreover, lack of transparency and accountability on public decisions and policies related to people's environment is the first serious hurdle for the public's rights to access to information of the environment. Indeed, the formulation and implementation of public policy relating to development did not set priorities for environmental protection and human rights to live in a healthy environment. To let human rights to live in healthy environment become realization, being member of international treaties is not enough, there needs more strong mechanisms, policies and conditions to ensure the implementation of the rights and protection of rights. Due to human rights to live in healthy environment is in a very wide connotation and rights violations are varied, to exercise the right it needs the participation of various entities (state, business sector, communities and individuals), the involvement of both rights holders and subject of responsibilities through various measures, from human rights education to raise awareness to participation in supervising the implementation of punishment on environmental violations (Nguyen Dang Dung et al, 2009:427).

Conclusions

Currently the environment is seriously contaminated in Vietnam. The case of polluted seawater in Quang Binh, Quang Tri, Hue is a typical case impacting on various aspects of human life, water, food, health, livelihoods and other human rights including rights to water. Therefore, environmental

justice is critically important in its context. Human rights to live in a healthy environment are new human rights, having a wide connotation and are relatively complex without theory and specific contents. Thus, human rights to live in a healthy environment desperately need in-depth studies in both theory and practice to theorize human rights to live in such an environment.

States parties have obligations to respect, protect the above mentioned provisions for the fulfillment of the rights to a healthy environment according to ICESCR. States parties also have to prevent any harm caused by the third parties and include them in environmental protection activities. Finally, States parties must fulfill economic, social and cultural rights by providing inclusive legislative, judicial, administrative and other measures for full realization of the Covenant provisions by maximizing their available resources.

Despite various efforts in laws amendment in environment and water protection, Vietnam still faces many challenges, particularly with water protection. The country suffers from a poorly developed water protection framework and a lack of political will to protect water quality from industrial pollution. Vague and conflicting statements within the law on environmental protections and water resources, and by allowing low-level bureaucrats to routinely ignore the law for the sake of economic expediency, it paves the ways for corruption influences to hinder water and environmental protection.

The Government needs to develop enforcement system of existing and modified legal regulations, as well as an operational environmental adjudication system to serve the human rights to live in a healthy environment and clean water. It needs to stress that a strong political will need to engage citizens into the law enforcement process. To do so it needs the government to open criticism towards its policies. It poses to the question of whether or not the government balances environment, water

protection and lives of people at the same level of attention as economic growth and national security.

References

- Baruchello, G., & Johnstone, R. L. (2011). Rights and Value : Construing the International Covenant on Economic, Social and Cultural Rights as Civil Commons, 5(1), 91–125.
- Baruchello, G., & Johnstone, R. L. (2013). Comment on Rights and Value : The Committee on Economic , Social and Cultural Rights Addresses the Environment, 7(1), 175–179.
- Boyd, D. R. (2012). The Constitutional Right to a Healthy Environment, (December 2014), 37–41. <http://doi.org/10.1080/00139157.2012.691392>
- Boyle, A.E. and Anderson, M. R. (1996). *Human rights approaches to environmental protection*. Clarendon Press. Oxford: Clarendon Press.
- Boyle, A. (2011). Human Rights and the Environment: A Reassessment. In *First Preparatory Meeting of the World Congress on Justice, Governance and Law for Environmental Sustainability*. Kuala Lumpur. Retrieved from <http://www.unep.org/delc/portals/24151/towardsthedeclarationhuman-rights.pdf>
- Curry, P. (2006). *Ecological Ethics: An Introduction*. Polity Press, UK.
- Doberstein, B. (2004). EIA models and capacity building in Viet Nam: An analysis of development aid programs. *Environmental Impact Assessment Review*, 24(3), 283–318. <http://doi.org/10.1016/j.eiar.2003.09.001>
- Hanh, L. H. (2014). The rule of law and need to protect the national environment. Hanoi, 21-23 October 2014: the international scientific conference of Environment and the rule of law: the law enforcement of environment in Southeast Asia.

- Leib, L. H. (2011). *Human Rights and the Environment: Philosophical, Theoretical and Legal Perspectives*. Leiden, Boston: Martinus Nijhoff Publishers. Retrieved from <https://books.google.co.th/books?hl=en&lr=&id=fmHLWEqRTY0C&oi=fnd&pg=PR3&dq=Leib,+L.+H.,+Human+Rights+and+the+Environment:+Philosophical,+Theoretical+and+Legal+Perspectives,+Queen+Mary+studies+in+international+law,+vol.+3+Martinus+Nijhoff+Publishers,+Leid>
- Loan, N. T. P. (2013). *The Legal Framework of Vietnam's Water Sector: Update 2013. Economic Policy*. Retrieved from https://mpira.uni-muenchen.de/52996/1/MPRA_paper_52996.pdf
- Quinn, B. J. M. (2002). Legal Reform and Its Context in Vietnam. *Columbia Journal of Asial Law*, 15(2), 219–291. <http://doi.org/10.1525/sp.2007.54.1.23>.
- Ruppel, O. C. (2008). Third-generation human rights and the protection of the environment in Namibia, 101–119.
- The United Nations Conference on the Human Environment. Declaration of the United Nations Conference on the Human Environment - (1972). Stockholm. Retrieved from <http://www.unep.org/documents.multilingual/default.asp?documentid=97&articleid=1503>
- UN Committee on Economic Social and Cultural Rights. General Comment No. 14 (2000). Retrieved from <http://www.refworld.org/pdfid/4538838d0.pdf>
- UN Committee on Economic Social and Cultural Rights. General Comment No. 15 (2003). Retrieved from http://www2.ohchr.org/english/issues/water/docs/CESCR_GC_15.pdf
- United Nations. Rio Declaration on Environment and Development (1992). Retrieved from <http://www.jus.uio.no/lm/environmental.development.rio.declaration.1992/portrait.a4.pdf>

- Vietnam Government. Vietnam Law on environment protection (1993). Vietnam. Retrieved from http://www.moj.gov.vn/vbpq/lists/vn_bn_php_lut/view_detail.aspx?itemid=10443
- Vietnam Government. Vietnam Water Resources Act (1998). Vietnam. Retrieved from <http://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Luat-Tai-nguyen-nuoc-1998-08-1998-QH10-41679.aspx>
- Vietnam Government. Vietnam Law on environment protection (2005). Retrieved from http://www.moj.gov.vn/vbpq/lists/vn_bn_php_lut/view_detail.aspx?itemid=16747
- Vietnam Government. The Constitution of the Socialist Republic of Vietnam (2013). Vietnam. Retrieved from http://moj.gov.vn/vbpq/lists/vn_bn_php_lut/view_detail.aspx?itemid=28814#
- Vietnam Government. Vietnam Law on environment protection (2014). Vietnam. Retrieved from <http://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Luat-bao-ve-moi-truong-2014-238636.aspx>