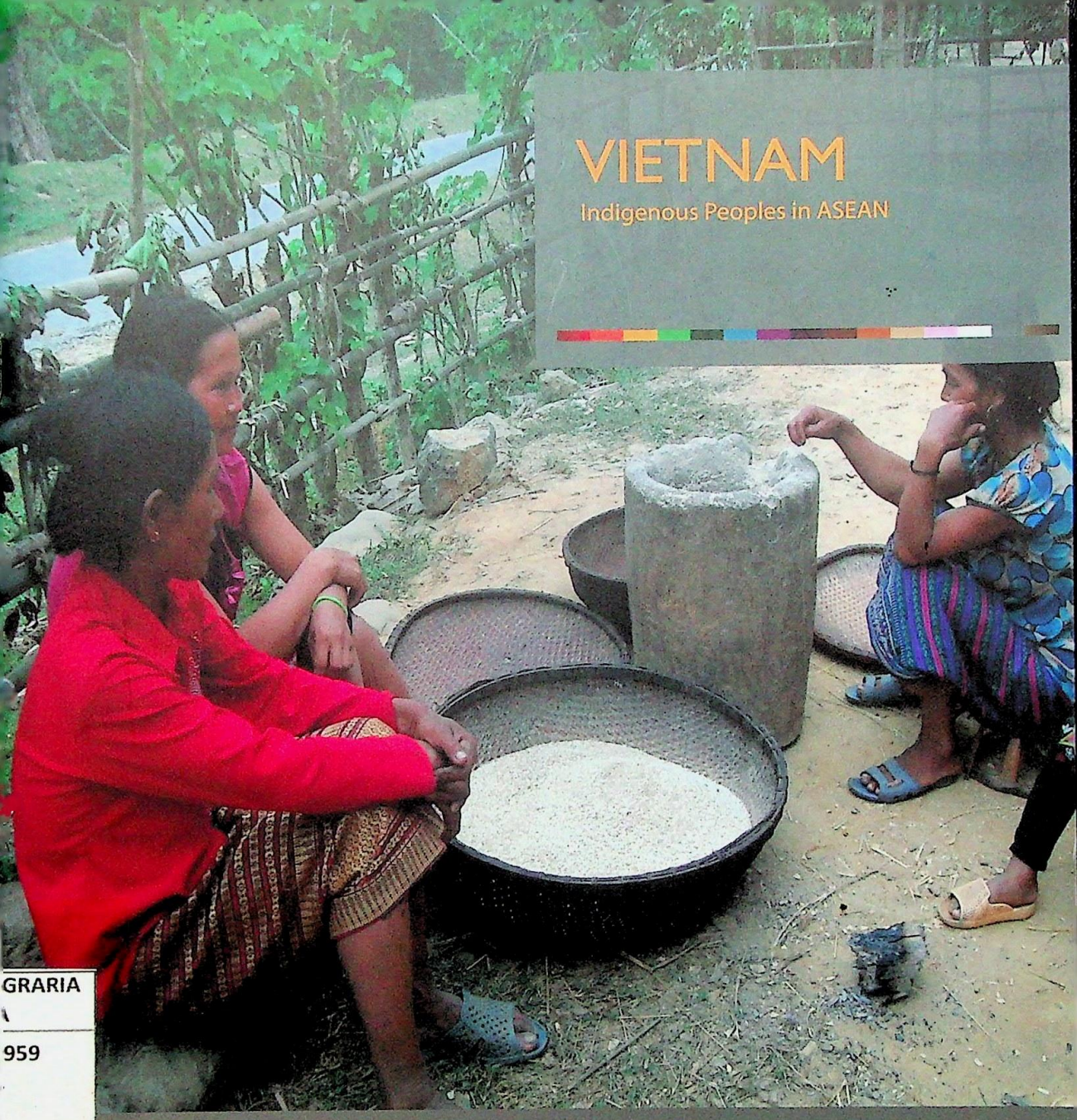


VIETNAM

Indigenous Peoples in ASEAN

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AIPP

Asia Indigenous Peoples Pact

IWGIA

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AIPP at a glance

The Asia Indigenous Peoples Pact (AIPP) is a regional organization founded in 1988 by indigenous peoples' movements as a platform for solidarity and cooperation. AIPP is actively promoting and defending indigenous peoples' rights and human rights, sustainable development and management of resources and environment protection. Through the years, AIPP has developed its expertise on grassroots capacity building, advocacy and networking from local to global levels and strengthening partnerships with indigenous organizations, support NGOs, UN agencies and other institutions. At present, AIPP has 47 members from 14 countries in Asia with 7 indigenous peoples' national alliances/ networks and 35 local and sub-national organizations including 16 are ethnic-based organizations, five (5) indigenous women and four (4) are indigenous youth organizations. It also specifically aims to empower indigenous women through networking, education and capacity building activities with the overall goal for indigenous women to assert, promote and protect their rights as women and as indigenous peoples.

Our Vision
Indigenous peoples in Asia are fully exercising their rights, distinct cultures and identities, are living with dignity, and enhancing their sustainable management systems on lands, territories and resources for their own future and development in an environment of peace, justice and equality.

Our Mission
AIPP strengthens the solidarity, cooperation and capacities of indigenous peoples in Asia to promote and protect their rights, cultures and identities, and their sustainable resource management systems for their development and self-determination.

AIPP Programmes
Our main areas of work among the different programmes are information dissemination, awareness raising, capacity building, advocacy and networking from local to global. Our programmes are:

- Human Rights Campaign and Policy Advocacy
- Regional Capacity Building
- Environment
- Indigenous Women
- Communication Development

AIPP is accredited as an NGO in special consultative status with the UN Economic and Social Council (ECOSOC) and as observer organization with the United Nations Framework Convention on Climate Change (UNFCCC), Convention on Biological Diversity (CBD), Green Climate Fund (GCF), Global Environment Facility (GEF) and the World Intellectual Property Organization (WIPO). AIPP is a member of the International Land Coalition (ILC).

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Acronyms

ADB	Asian Development Bank
AEC	ASEAN Economic Community
APF	ASEAN People's Forum
ASEAN	Association of Southeast Asian Nations
EMWG	Ethnic Minorities Working Group in Vietnam
MONRE	Ministry of Natural Resources and Environment
NRD	New Rural Development
REDD+	Reduced Emissions from Deforestation and Forest Degradation
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

A. Context

A small but very heavily populated country, the Socialist Republic of Vietnam is at the eastern end of South-East Asia and borders the People's Republic of China to the north, Laos to the west, Cambodia to the south-west, and the South China Sea to the east. Primarily dependent on agriculture, at least 75% of its population, and 90% of poor people nationwide, live in the rural areas. It is estimated that four out of five of the country's poor are agriculture-dependent. The country has focused on agriculture development to meet its Millenium Development Goals on poverty reduction, thus this sector has significantly contributed to getting a significant number of rural poor from the poverty line.[1] Recent years saw the country rise out of extreme poverty in one of the so-called success stories of poverty alleviation, falling from 60% to 20% in the last two decades.[2] But these economic gains may have come at the expense of the indigenous peoples of the country most of who have traditionally lived in the remote and mountainous areas. Indigenous peoples in Vietnam living in remote areas still face harsh natural conditions and frequent natural disasters. They are particularly vulnerable to seasonal hardships, community-wide crises and unexpected events, such as diseases, which increase a household's expenses and reduce income. In the case of Vietnam's eager embrace of ASEAN economic integration, indigenous peoples in the country may be in for more challenges in meeting their basic needs, ensuring their dignity and fully enjoying their individual and collective rights.

On July 28, 1995, Vietnam officially became the 7th member of the Association of Southeast Asian Nations (ASEAN). In its 16 years in the ASEAN, Vietnam has participated in all fields - from politics, economy, culture and social fields to foreign relations. It became the Chair twice, first in in 1997 when the Hanoi Action Plan was adopted and then again in 2010. It was the first time that the ASEAN People's Forum was held in Hanoi, Vietnam. It was the first time that the ASEAN People's Forum was held in Vietnam.

Indigenous peoples from Vietnam and from other ASEAN member States participated in the forum by organizing a workshop to raise awareness on the rights and situation of indigenous peoples in the region.

B. Profile of indigenous peoples in the country

B.1 Who are the indigenous peoples in the country?

The government of Vietnam does not use the terms indigenous peoples, native people, aboriginal people, or hill tribes and tribal people to refer to peoples who may well be within the characteristics commonly ascribed to indigenous peoples under international law. It only uses the terms "ethnic majorities" and "ethnic minorities." The terms "Vietnamese ethnic people" or "Vietnam ethnic communities" refer to all ethnic groups living in the country who have Vietnamese nationality, irrespective of their origin. Except for the ethnic majority Kinh and the well-assimilated Hoa ethnic groups, the other ethnic groups who are referred to officially as ethnic minorities, may well be

1 IFAD technical notes, 2012.

2 http://www.worldbank.org/en/news/feature/2013/01/24/poverty-reduction-in-vietnam-remarkable-progress-emerging-challenges. Accessed 30 June 2015. The report qualifies that the results of the research may not be nationally representative because this report focuses on three provinces in Vietnam with the highest ethnic minority poverty (World Bank 2008b). However, it is taken to be indicative of the situation of other ethnic minorities in other provinces.

characterised as indigenous peoples under international law and thus covered by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). In this report, although ethnic minorities are often used to refer to them, the term will actually refer to those peoples who are defined as indigenous peoples under international law. Whatever term is used to refer to them, these peoples' collective rights must be upheld and their right to self-identify as indigenous peoples be respected.

The national Census defines "ethnic minorities" as "ethnicities with a population of less than one of the majority within the territory of the Socialist Republic of Vietnam" and that an ethnic majority is "the ethnicity with the population of more than 50% of the total population of the country." An ethnic minority area, according to the Decree No.05/ND-CP is an area with a large number of ethnic minorities settling down in the territory of the Socialist Republic of Vietnam. Further, the Article says special ethnic minorities are ethnicities with a population of less than 10,000 individuals.

B.2 Population

According to 2013 data, Vietnam's population is approximately 90 million. There are 54 ethnic groups of which the largest is the Kinh, accounting for 86.2% of the total population.[3] The remaining 13.8% is composed of 53 different ethnic minorities. Only six ethnic groups have a population of over 1 million people, 14 ethnic groups have a population of 100,000 to 1 million people, others have a population of more than 100,000 people and some groups are composed of only a few hundred people such as the Brau, O du, Pu Peo, Si La and the Ro Mam. Most of the ethnic groups live in mountainous and remote areas in North Vietnam, Central Highlands, Central Vietnam and the Mekong delta.[4]

B.3 Geographical location/territory

The ethnic groups in Vietnam are dispersed mostly in mountainous and forested areas which are important in economy, politics, security, defense and ecology. Each ethnic group is concentrated in certain regions. The Kinh and some ethnic groups such as Khmer, Hoa and Cham groups mainly live in plain, coastal and midland areas. Some ethnic minorities live with other ethnic groups within the province, district, commune and village. About 40-50 years ago, inDakLak in the Central Highlands, most residents were natives and each ethnic group had its own area of residence. Boundaries among ethnic groups and villages were clear. Nowadays, such boundaries are hard to find and this trend continues to spread. Currently, Kinh people in Dak Lak form a sizable proportion of the population and the ownership of lands. It can be said that there is no province or district in the mountainous area in Vietnam where only one or two ethnic groups live. In many provinces such as Lai Chau, Lao Cai, Yen Bai, Ha Giang, Tuyen Quang and Lam Dong, there are more than 20 ethnic groups living together. In most of the districts, there are five or more resident ethnic groups. In many communes and villages, there are up to 3-7 ethnic groups coexisting. Recently, along with the Kinh, ethnic minorities in the North have migrated into these areas (including planned and unplanned migration) in relatively large numbers. However, when talking about unplanned migration, the government agencies only refer to ethnic minorities instead of

3 Article 5 of the Decree No.05/ND-CP on Ethnic Work of the Government issued on 14/01/2011.

4 The overall result of the Census of Population and Housing in Vietnam in 2009.

mentioning the fact that the Kinh have been accumulating most of the land under the name of private companies or privatized forestry.

These mountainous areas account for three quarters of the total area of the country and are rich in natural resources, particularly lands and forests. There are precious minerals such as aluminum in the Central Highlands, stannum in Cao Bang and gold in most provinces. Most of the strategic land-borders in the mountainous areas have been firmed up by thousands of years of construction for the defense of Vietnam. There are recorded victories of protecting the frontiers by the ethnic minorities. From past to present, these have also been often used for illegal entry, smuggling or political scheme to undermine the country's security.

B.4 Brief Information on their Economic, Social and Cultural Systems

There are two contrasting images of ethnic minorities in Vietnam: one side is the happy, healthy ethnic minority in all their colorful finery from all diverse cultures amidst a backdrop of stunning landscapes celebrated in tourism brochures; the other side is the face of poverty.

> *Ethnic minority poverty is a growing and persistent challenge. Although Vietnam's 53 ethnic minority groups make up less than 15percent of the population, they accounted for 47percent of the poor in 2010, compared to only 29percent in 1998. Using a new poverty line that better reflects living conditions of the poor,66.3percent of minorities were poor in 2010 compared to only 12.9 percent of the Kinh majority population.*[5]

This situation does not even look promising for the future of ethnic minorities. There is the risk of falling back into poverty due to the lack of policies for poor households in ethnic minority and mountainous areas. According to the Ministry of Labor, War Invalids and Social Affairs, there are more than 1.5 million poor households in Vietnam, of which the majority are ethnic minorities and mountain peoples.[6] The gap between the poor and the near-to-the-poor is slim. The near-to-the-poor households, or households who have just escaped from poverty, do not have the resources, support, and technical knowhow of the market place to be able to permanently stay out of poverty. In the end, the fallback into poverty is inevitable. In addition, there is no priority policy on direct support to escape from poverty for ethnic minority near-to-the-poor households who live in mountainous areas.

5 http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/08/20/000445729_20130820124256/Rendered/PDF/749100REVISED00al000Eng000160802013.pdf, p. 69.

6 Statistical Yearbook 2013 – General statistics office of Vietnam.

Poverty Rates (percent poor) by Ethnicity in 2009

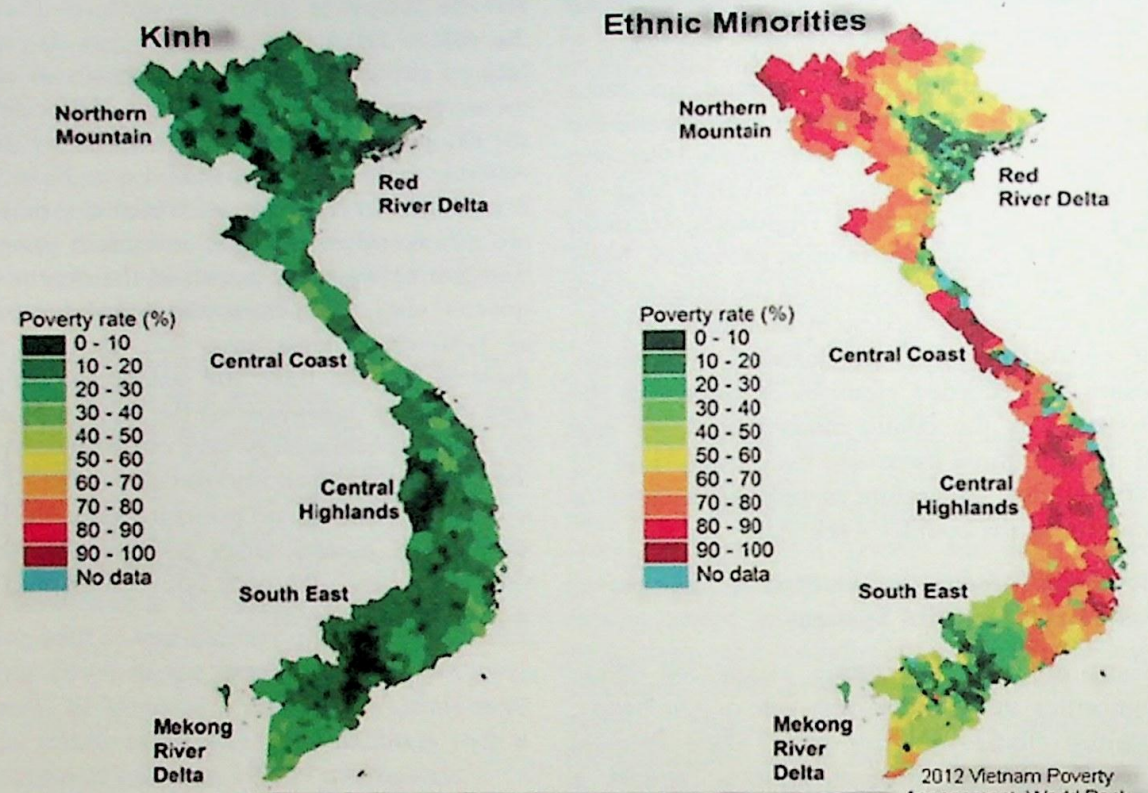


Figure 3: Poverty Rates (percent poor) by Ethnicity in 2009

Source: 2012 Vietnam Poverty Assessment, World Bank in Vietnam Hanoi, 2012. P.7

The ethnic minorities are the most disadvantaged and vulnerable sector among the population groups in Vietnam. Their rights are often the most violated, regardless of their great contribution to the general development of Vietnam for many years. Despite State efforts, they are still standing outside of development gains, and their political, civil, economic, social and cultural rights are not guaranteed. They still suffer discrimination, injustice, illiteracy and deprivation of economic and public services, especially now that the natural/forest resources which they are dependent on are becoming exhausted.

Although Viet Nam has made significant achievements in implementing the Millennium Development Goals (MDGs), poverty reduction and MDG achievement in ethnic minority communities severely lag behind national trends. The poverty rate of ethnic minorities accounted for56% of the country's poor households, and the minorities had difficulty accessing basic services, such as those for healthcare, clean water and education. The child mortality rate among minorities was double that of

Kinh people and the malnutrition rate of ethnic minority underweight babies (33 per cent) contrasted with the national average (15.3percent).[7]

UNDP in Vietnam

In the three provinces where the World Bank[8] conducted a study which it updated in 2010, the following were identified as areas where ethnic minorities are clearly disadvantaged versus the ethnic majority:

• Ethnic minorities have less access to education, higher dropout rates, and delayed school enrolment. There is lack of ethnic minority teachers and bilingual education for ethnic minorities. School fees are also a burden for ethnic minorities.

• Ethnic minorities have less mobility, with Kinh migrant households enjoying better benefits from government programs and their social networks. Kinh migration even has had negative effects on local minorities in certain places.

• Ethnic minorities have less access to formal financial services.

• Ethnic minorities have less productive land, while they are more dependent on swidden agriculture and have less off-farm employment.

• Ethnic minorities have lower market access and poorer returns from markets. While this varies among ethnic groups, ethnic minorities engage in trading activities less than the Kinh group.

• Ethnic minorities are subject to stereotyping and misconceptions, not just among Kinh households but even among ethnic minorities themselves, which hinders their participation to their own development.

Factors that bring about impoverishment of ethnic minorities in Vietnam

a. Lack of residential lands and production lands

The Chair of the Ethnic Minority Council reported in 2012 that by year 2016 there wil' be 326,909 ethnic minority households or million ethnic minority peoples who have to b supported in residential lands and productio lands, especially in rocky mountainous areas such as Cao Bang, Ha Giang provinces.[9]

His report pointed out that "the land reclaimed for the people no longer exists or it is very little in many places, and in some places, where land can be reclaimed, it would require huge investments." Apart from that, in available scattered lands, there is lack of water for efficient production. In addition to the fact that "land cannot be expanded anymore," his report also pointed out subjective reasons such as the infrastructure planning on productive and residential lands, relocation and resettlement after construction and mining regardless of the culture, customs and production conditions, and inefficient land management. Moreover, the transfer, pledging or mortgaging of allocated lands lead to a "re-lacking of land." Some solutions have been put forward including taking

7 http://www.vn.undp.org/content/vietnam/en/home/presscenter/articles/2015/01/29/improve-ethnic-minority-lives-and-narrow-development-gap.html. Accessed 30 June 2015.

8 http://siteresources.worldbank.org/EXTINDPEOPLE/Resources/407801-1271860301656/Chapter_8_Vietnam.pdf, p.2.

9 Report of the Committee for Ethic minority to Standing Committee of National Assembly on December 13, 2012.

back uncultivated, inefficient or improperly used land from the State-owned farms, which accounts for more than 4 million hectares, to allocate to the people. In practice, there is still confusion, from the central to thelocal levels, in finding solutions for residential lands and production lands for the ethnic minorities in the context of increasing migration of outsiders to ethnic minority territories.

b. Land consolidation

Studies[10] conducted in Son La and Lam Dong provinces and other mountainous areas showed that land consolidation has gradually led to the loss of land tenure by ethnic minorities. Companies developing rubber, coffee, tea, vegetables and flowers have misappropriated thousands of hectares of fertile land from local people. In Lam Dong, the forest land is not allocated to local people but priority was given to private companies. Moreover, state-run agro-forestry farms have ineffectively managed large areas of lands without creating any changes in the quality of life for surrounding forest-dependent communities. In the Northern mountainous provinces, representatives of the Vietnam Rubber Corporation themselves stated that planting rubber in Northwest regions is risky with low effectiveness. However, they still do it because they agreed on fulfilling a state plan for rubber tree expansion. Since then, forests have been continuously cleared although the rubber plantation has not yet reached the planned area.

c. Ethnic human resources and educational status

The illiteracy rate of indigenous peoples is still high. The Northern mountainous region with the highest ethnic minority population proportion is also the region with the highest percentage of illiterate population of people above 15 years old (12.7%). The Central Highland and Mekong River delta are next, ranked 11.73% and 8.4%, respectively. There is a high percentage of children who drop out of school early and the attendance rate is low. The percentage of population completing primary, secondary, vocational training and universities in the ethnic minority groups is very low: the Thai-1.6%, the Muong- 2.0%, the Khmer- 1.0%, the H'Mong – 0.3%, and the other groups -1.5%.[11]The reason for this low attendance lies in the difficulties in terms of languages, studying conditions (poor school infrastructure, lack of learning aids), poor living conditions (long distance to schools, remoteness and poverty incidence), and irrelevant curriculum and teaching methods.

An important development in the ethnic minorities' field of culture and education is that due to its continuing efforts, the Vietnam Indigenous Knowledge Ketwork (VTIK) successfuly advocated that the Thai language be taught in the high schools of the two mountainous provinces of Dien Bien and Son La. Currently, VTIK has successfully advocated to the local government of Thanh Hoa to give recognition to the text book written in the Dao language.

The percentage of unskilled labor among indigenous peoples is higher than the national average. The Mekong River delta and the Central Highlands have the highest percentage of unskilled labor, which is more than 90%.

10 Reports presented at the Policy Forum on the Situation of and Solution for Land Management in Ethnic Minority and Mountainous Areas, held by the State Committee for Ethnic Minorities and UNDP, January 2013.

11 IWGIA – The indigenous World 2013 – Vietnam page 320.

B.5 Brief information on indigenous peoples'customary institutions/political, governance, justice systems, livelihood systems

For a long time now, traditional customary laws that govern social relationships in the ethnic minority community have been disrespected, accused to be out-of-date, inappropriate and violating national regulations. Since the 1980s, customs and habits were prohibited without any explanation.

Though many laws have been issued on addressing the situation of ethnic minorities, most of these ethnic minority groups do not have knowledge of national laws. In the past, disputes in the community were resolved in a timely manner by negotiations, fines and fair penalties by the traditional leaders and elders of the village. Nowadays, there is an observed increase in murders, attacks, thefts and petty quarrels. There is also an observed decreasing number of indigenous males in the Vietnam-Laos border villages of Thai, Mong in Son La, Dien Bien since a significant number of them have been arrested for drug smuggling. Two reasons for the lack of knowledge of the law by indigenous peoples are: first, all the legal documents are in the majority Kinh language which most indigenous peoples are not literate in. Second, judicial officers in the commune perform more administrative work than providing advice to their constituency. This is exacerbated by the lack of indigenous lawyers or advocates who can give appropriate legal advice. In December 2012, the Ministry of Justice issued a circular providing legal aid, enhancement of people's awareness on law, and respect and observance of the law for all ethnic minorities.

In all regions, indigenous peoples now mainly adhere to the political institutions and state administration of Vietnam although some village leaders are elected by villagers as prescribed by customary law. Going with the trend these days, village leaders are younger because they have advantages, such as facility with the Kinh language, good communication skills, can drive motorbikes, and are healthy.

Currently, the indigenous peoples in Vietnam are not allowed to practice their own customary laws, or to have their own political institutions, governance and justice systems. Recently, the State recognized the role of the elders in the community; however, they cannot participate in the village's political system if they are not chosen through official elections.

Customary and political institutions, governance and justice systems have been gradually replaced by laws and regulations of the State, which are very different from the indigenous governance systems. For example, the disappearance of the collective ownership of natural resources, especially on lands and forests, causes the disappearance of their link with their communities, lands and resources, and the spirit of collective responsibility for the nurturance of these resources.

Traditional livelihood systems are no longer or rarely used. The forest and land resources are not owned by the people. Some locals are just hired as workers by state enterprises for forest protection. High poverty rate in the mountains shows the reality that the overwhelming majority of ethnic minorities have almost no resources such as savings, equipment and household assets. The support from outside sources mainly comes from State coffers.

In the past, the livelihood system of the ethnic minorities was sustainable. Forest resources were never used up but nurtured for future generations. Forests have always helped ethnic minorities to overcome disasters or economic pressures, especially in the context of climate change. Shifting cultivation, a common traditional occupation among the indigenous peoples, is considered a sustainable practice and preserves a large amount of carbon in the forests.

B.6 Natural resource management

The relationship between the indigenous peoples and their natural environment is illustrated by the way natural resources are managed.

Under the provisions of the 2013 Constitution article 54, land is a special and an important national resource. The State shall allocate or lease land to, and recognize land use rights of organizations and individuals. The article also prescribes that land users may transfer their right to use the land, to exercise their rights, and to perform their obligations in accordance with the law. The State may recover or repossess land currently used by organizations or individuals in case of extreme necessity prescribed by a law. Thus although land rights shall be protected by the law, it does not explicitly state what is referred to as ''an extreme necessity'' that will allow the State to require the land. Ethnic minorities in Vietnam do not have legal ownership of their traditional lands and every decision on land management is made by the government.

The Law on Forest Protection and Development regulates the forestry land allocation to communities. According to this law, communities do not have equal rights as individuals or households because they just have land tenure rights without ownership rights. They benefit from the entitlement right on the land but not from the right to lease or sell the timber.[12]

Article 54 of the Constitution states that the ethnic communities have no legal status to enjoy the right to use the land, as the article only refers to "individuals or organizations." However, the Land Law was revised in 2004, allowing for the allocation of land to communities.[13] Still, and according to the Vietnam General Department of Forestry, only 1.3% of the forest land is allocated to communities, 28.6% to households, forest management units represent 39.9% of the territory coverage of forests, economic unit 14%, military forces 2.2%, and other units 4.2%. Forest production, managed by the Peoples' Committees which are administrative bodies at all levels, accounts for 23% but are not allocated to the people.[14] Moreover, the aforementioned Land Law does not actually give formal governance powers over land[15] so that the ethnic minority's traditional way of managing natural resources, especially land and forests, is still not recognized.

Most of the ethnic minorities survive on agricultural cultivation, forest resources and other valuable resources, such as water and minerals, etc. Since ethnic minority communities are not considered legal entities, they are not able to make decisions on land management in their territories. This is disadvantageous to the community when integration happens because these territories can be landgrabbed by people

12 Law on Forest Protection and Development .Item 3 : forest allocation to communities ; rights and responsibility of communities. Articles 29 and 30.

13 IWGIA, 2012.

14 Decision No. 1739 /QĐ-BNN-TCLN 31/7/2013 of the Ministry of Agriculture and Rural Development).

15 Truong and Genotiva, 2010.

who do not have close attachment to the lands. Traditional relations will be weakened, conflicts may arise and the traditional knowledge and links to the land will definitely be lost. In the context of climate change and REDD, the ethnic minorities are at risk of losing or getting fewer benefits from forests.

B.7 Indigenous minority women and children

Ethnic minority women in Vietnam are the ones who keep the cultural practices and knowledge of the community alive and are responsible for inter-generational transfer of indigenous knowledge and values about the forest. They protect biodiversity and genetic resources in the forest and rivers and share new knowledge and experiences in protecting and improving the forests. They expand the forest area utilized for sustainable livelihoods and plant new seedlings following their customary laws and practices that will preserve the productivity of the forests. They are family medical doctors who take care of the health and ensure the well-being of their families and communities using herbal medicines from the forest and other natural resources.

However, ethnic minority women also face serious challenges in forestry land tenure because the right to use the forests in some provinces is not ensured for ethnic minority peoples in general and for the women in particular. Indigenous women's role in managing and protecting forests is becoming less important because of the lack of recognition and weakening of indigenous knowledge which is kept and transmitted by women. The complicated system of forest classification and administrative management has caused difficulty for the people, especially the women, in dealing with policies, programs, projects, investment and credit policies.

The erosion of traditional culture also weakens the role of women in the indigenous communities and the society. The traditional cultures which are mostly preserved and developed by women, for example clothes, foods, songs, dances, etc., will also gradually disappear because of assimilation into the mainstream society.

Trafficking of women is also increasing in Vietnam and is aimed at the ethnic minority women, especially those in remote areas, who are the most vulnerable for several factors: language, such that they do not understand fully the details of transactions; more trusting because that is the norm in most remo communities; lack of livelihood choices in tl community thus lack of income to meet famil needs, among others.

According to the State Committee on Anti-human Trafficking at the Ministry of Police, just into the first half of 2013, there were 227 trafficking cases reported with 451 women and children victims.[16] This was an increase of 0.44% cases and 3.81% victims on the same period of 2012. This body also reported that in the first half of the year 2014 there were 301 cases with 651 victims. Women and children trafficking occurred mainly at the borders of Vietnam and China, and Vietnam and Cambodia where most victims are ethnic minority women and children.[17]

The malnutrition rate of the ethnic minority children in terms of weight per age, height per age and weight per height ratios has been

16 Source: http://anninhthudo.vn/tu-van-phap-luat/ngan-chan-triet-de-tinh-trang-buon-ban-tre-em-phu-nu/584228.antd.

17 Source: http://www.hoilhpn.org.vn/newsdetail.asp?CatId=156&NewsId=21345&lang=VN.

reduced for the last years, but it is still high compared to the national average. The mortality rate of children under one year-old is twice or even three times higher than the national average in the Northern Mountains and in the Central Highland regions. The indigenous peoples' life expectancy is lower than the average life expectancy in Vietnam and the difference in boy/girl ratio is higher than the national average. For some very small-sized population of indigenous peoples such as the Mang, the La Hu, the Cong, the Co Lao, the PuPeo, the Romam, the O'Du peoples, the life expectancy is too low in comparison with the national average and it can be said that their survival as peoplesis under threat.[18]

Based on the assessment of ethnic minority health status on some key indicators such as malnutrition rate, child mortality rate, diseases and life expectancy, it was found that ethnic minority teenagers have low health status. Also, the malnutrition rate of the children in the ethnic minority and mountainous areas in terms of weight per age, height per age and weight per height ratios has been reduced for the last years, but is still high compared to the national average. The factors influencing the human resource in the minority and mountainous areas are the high poverty incidence, the poor maternity care given to women, the limited access to health care services, and the habits and traditions of some ethnic minority groups. Child marriages are not controlled leading to a high percentage of marriages before nineteen years old, such as: 15% for men and 36.8% forwomen in the Northern mountainous region, and 10% for men and 31.8% for women in the Central Highland.[19] Consequently, the ethnic minority labor forces are physically and technically weak, and do not benefit from high levels of education resulting to underemployment. The trafficking of girl children, the status of child labor, illiteracy and other factors (alcohol, drugs and prostitution) are spreading quickly to the ethnic minority regions. In this case, ethnic minority teenagers are the most susceptible. The lack of relevant services, the recognition and respect of their rights as indigenous peoples with collective rights, and their alienation from their homelands are the underlying factors which create the conditions ethnic minorities find themselves in. They are lowly educated, poor in Kinh communication skills, have limited relevant skills in the modern labor market, discriminated for having different lifeways from the majority. Thus, the misconceptions on ethnic culture among mainstream society have a deep influence on teenagers, all of which will alarmingly facilitate the disappearance of the indigenous traditions.

C. Legal status of indigenous peoples

The Government of Vietnam's point of view is that there are no indigenous peoples but ethnic minorities as part of its constituency. Thus, legal documents, laws, policies and programs of the Government only reflect rights and programs regarding "ethnic minorities." Even then, Vietnam has not yet laid down any specific law on ethnic minorities, but only programs and policies for them in different aspects. Between 2006 and 2012, the Government issued 160 legal documents related to the policy on socio-economic development for ethnic minorities and those living in mountainous and remote areas. This included Resolution No. 30a/2008/

18 Seminar on Population - Reproductive Health for ethnic minorities held by the Ministry of Health in collaboration with the People's Committee of Lao Cai Province in Lao Cai City, on 11.29.2012. Government's National Strategy on Reproductive Health published in 2011.

19 Institute for Social Development Studies (ISDS), "Vietnam National Sexuality and Sexual Health Survey", Hanoi, 2010

NQ-CP by the Government on sustainable poverty reduction.

"The Socialist Republic of Vietnam is a unified nation of all ethnicities living together in the country of Vietnam. All the ethnicities are equal and united with one another, respect and assist one another for mutual development; all acts of discrimination against and division of the ethnicities are prohibited. The State shall implement a policy of comprehensive development and create the conditions for the minority ethnicities to draw upon further their internal strengths and develop together with the country. And All ethnic peoples have their citizenship and equal rights as majority peoples." (Article 5, Constitution)

In terms of political participation, among the 500 delegates elected to the XIII Congress of the Communist Party of Vietnam, 78 delegates are from ethnic minorities, accounting for 15.60%, 12 persons less than expected. This represents a decrease of 2.05% compared to the XIIth Congress.[20]

According to the Chairman of the Ethnic Council, the number of ethnic minority officers, officials and employees is still low. At the national level, the total number of ethnic minorities accounts for less than 5% and the number of persons holding important positions is even lower.

Indigenous peoples have the right to use their own language in legal procedures and enforcement in accordance with the provisions for legal assistance for all citizens. Government agencies must provide interpretation services for non-Kinh speakers, if needed, in order to protect their rights. However, indigenous peoples' languages are not mentioned in the law and by the enforcement agencies although the Constitution clearly provides that "Every ethnic group has the right to use its own spoken and written language to preserve its own identity and to promote its fine customs, practices, traditions and culture." (Article 5, Constitution)

Moreover, ethnic minority-spoken and written languages are not taught in schools, hence, making it impossible for indigenous peoples' and ethnic minority languages to be used in pursuit of legal protection. While the Constitution guarantees the right to be instructed in minority languages, the 'bilingual education' thatis in place in at least some of the main minority and indigenous languages, is in fact completely misleading. 'Bilingual education' as practiced only involves teaching a minority language as a subject - not using it as medium of instruction - and only for the first few years of education.[21]

Resolution No. 30-NQ/TW (March 12, 2014) of the Politburo promulgated that due to the lack of agricultural lands in mountainous areas, ethnic minorities who do not have forestry lands can work for other people or to lease lands from the Forestry Enterprises for cultivation. Meanwhile the Forestry Enterprises still own a large number of forest areas but their economic efficiency is very low. The number of loss-making enterprises accounts for up to ¼ of total enterprises. Thus, Resolution No. 30-NQ/TW is considered as a clear advance and a key to the ethnic minorities' recovery of forestry lands from the unprofitable enterprises.

Vietnam has no special laws and policies recognizing and protecting indigenous knowledge, traditional customary laws and

20 Information elections - National Assembly XIII (2011 – 2016) of Socialist Republic of Vietnam.

21 http://www.minorityrights.org/2318/vietnam/vietnam-overview.html.

practices, and tenure rights of ethnic minorities. Although Vietnam has developed many programs and policies for the ethnic minorities, there is no specific law for their recognition as indigenous peoples with collective rights. The lack of recognition of the disadvantaged position of indigenous peoples with distinct cultural, socio-economic and political systems had led to the failure of government to enact special measures to address the development and rights gap. People always look at the ethnic minorities through the political prism. They are labelled "politically sensitive" and this has hampered the efforts in recognizing their human rights and fundamental freedoms. The ethnic minorities, especially in the border regions, meet difficulties in accessing external support, especially from NGOs. On the other hand, some indigenous territories are off-limits to outsiders, exacerbating the lack of visibility of these peoples and their conditions.

D. Government laws, policies, programs and agencies/institutions

D.1 Council of ethnic minorities

The Council on Ethnic Minorities is responsible for the ethnic minority issues at the National Assembly. The number of members is limited to 40 persons and most of them work part-time, so it is very difficult to convey all problems of the ethnic groups to the National Assembly, as well as to monitor effectively the implementation of laws and ordinances.

D.2 Government agencies

D.2.1 The Committee for Ethnic Minorities Affairs (Committee for Nationalities) (CEMA)

A ministerial-level agency, the CEMA is responsible for the development of programs and performs the function of State management of ethnic affairs throughout the country. It also represents the government in State-invested enterprises under its management as prescribed by law.

D.2.2 Ministry of Education and Training: Department of Education for Ethnic Minorities

The Department assists the Ministry in performing the State management on education for ethnic minorities.

D.2.3 Ministry of Agricultural and Rural Development

Although it does not have a dedicated unit on ethnic minority affairs, the Ministry of Agriculture and Rural Development impacts on the rights of indigenous peoples as it is mandated to perform state management functions in the fields of agriculture, forestry, salt production, irrigation / water services and rural development nationwide, including state management functions with regard to delivery of public service and management of the State's ownership of rural state owned enterprises in accordance with legal documents. Since many of the country's resources are in indigenous territories, the programs, policies, and activities of this Ministry are crucial to the dignity and well-being of indigenous peoples.

D.3 Mass organisations

D.3.1 Fatherland Front: Advisory Council on Ethnic Minorities

The Advisory Council on Ethnic Minorities under the Central Committee of the Vietnam Fatherland Front and with a network from the central to the local level, collects and distributes the indigenous peoples' comments to the National Assembly and to the State in order

to develop practical strategies and policies. At the provincial level, the Provincial Ethnic Committee (composed of 10 to 15 members) helps the Provincial People's Committee to prepare and appraise the documents related to the ethnic affairs. Besides, districts also have the Ethnic Divisions to advise the District People's Committee on the ethnic affairs and implement the policies on ethnic minorities. The Ethnic Minority Councils and the Ethnic Minority Commission are participating in the formulation of law development policies for the ethnic minority. However, as they have limited human resources, implementation and monitoring of the policies for the ethnic minorities at local levels are very challenging and ineffective. Participation of the Provincial Ethnic Minority Committee and District Ethnic Minority Department in developing the provincial and district policies and programs is very limited, in spite of their functions. Instead of that, they only deploy the central programs.

D.3.2 Vietnam Women' Union

The Vietnam Women's Union is an umbrella organization of women at all strata throughout the country. It is a member of the Vietnam Fatherland's Front, the Women's International Democratic Federation and ASEAN Confederation of Women's Organization. VWU is mandated to strive for the equality and advancement of all women, protect and promote legitimate rights and interests of women. Because of its mandate as the mass organization for all womenin the country, it touches the lives of indigenous women and can be a channel for improving the respect, protection, and fulfilment of the rights of indigenous women in the country.

D.4 Policies and programs

In 2013, 14 policies regarding ethnic minorities were issued. Educational policies focus on exemption and reduction of education fees and vocational training and ethnic language education. Economic policies included proposals on socio-economic development, national target programs on sustainable poverty reduction and support for fixed resettlement. Cultural policies included ethnicculture preservation and development and policies for ethnic minority elders. Policies on legality consist of legal aid policy for ethnic minorities. At first glance, all these initiatives seem positive and hopeful but a deeper look reveals otherwise. Despite a number of positive government initiatives to try to respond to the needs of, and disadvantages and difficulties faced by, minorities and indigenous peoples, these efforts continue to pale in comparison to the negative. As recently as 2006 a series of reports from lending, development and human rights organizations confirmed that most minorities, and especially those in the north and the highlands, are not benefiting as much as the ethnic Kinh. On the contrary, the gap between the two is increasing. It is partially for these reasons that an Ethnic Minorities Working Group in Vietnam (EMWG) was set up in 2002 by NGOs and other development agencies, to try to better understand and improve on their efforts in the country.[22]

The current development policies still tend to result in minorities and indigenous peoples losing access to traditional land and resources. They are forced to relocate and witness others (often ethnic Kinh) being resettled on their traditional lands, creating in effect a self-perpetuating cycle of disenfranchisement and

22 http://www.minorityrights.org/2318/vietnam/vietnam-overview.html.

impoverishment.

The government has issued Decisions and Decrees to promote forest allocation to households, individuals and communities. The decision No.146/2005/QD-TTg issued on June 15, 2005, permitted forest production to be handed over from State-owned companies to poor ethnic minority households. However, the development approach of the government is organized in a hierarchic way with the Kinh at the top and others ranked according to their similarity to the Kinh. Government policies frequently aim towards 'developing' or 'modernizing' the minorities to become more like the Kinh.

In September 2007, the Ministry of Agriculture and Rural Development adopted a National Project on forest allocation for the period 2007-2010 to promote forest allocations, with 12.6 million hectares expected to be allocated to communities, households and economic units in late 2010. Despite such forest policies, there are delays, non-implementation or false implementation in poor forest tenure and no access to the forestry lands for ethnic minorities.

The New Rural Development (NRD) program carried out in all rural areas in Vietnam was supposed to bring opportunities for socio-economic development in mountainous areas. This NRD program has set up 19 criteria which can be seen as social, economic and cultural standards for every rural commune to achieve to be a "new rural commune," once more implementing a ''modernizing'' development approach, which does not take into account indigenous peoples' specific way of life. Moreover, the 19 specific criteria is extremely difficult to achieve for mountainous communes, putting pressure on the people for contributions that they have committed to implement amid the challenging economic conditions they are facing.

In the latest government pronouncement, the Deputy Prime Minister said that Vietnam must work harder to support its numerous ethnicities who mainly reside in remote, mountainous regions, by reviewing policies on ethnic minority groups. He urged that "agencies must co-ordinate their efforts and resources to support ethnic groups. Adjustments must be made to the nation's poverty-fighting programmes to prioritise the needs of ethnic groups and for the Committee for Ethnic Minority Affairs to utilise sources of funding outside the State, such as Official Development Assistance (ODA); and cooperation programmes on education, health care and production technology."[23]

Since 2009, Vietnam has been one of the pilot countries implementing a national REDD+ (Reduced Emissions from Deforestation and Forest Degradation) program. Vietnam was a pioneer with regard to implementing Free, Prior and Informed Consent (FPIC) in REDD+, with the K'Ho indigenous group in Lam Dong province. After the pilot FPIC process was conducted, draft guidelines were completed in late 2013 and tested in 2014 in Dien Bien, Lam Dong and QuangBinh provinces.[24]

E. National programmes linked to the ASEAN

On the occasion of the ASEAN's 30th anniversary of establishment and after all 10 Southeast Asian countries got involved in the Association in December 1997, the ASEAN heads of states adopted an important document,

23 http://vietnamnews.vn/politics-laws/272614/ethnic-minorities-to-receive-support.html. Accessed on July 3, 2015.
24 IWGIA report 2015, Vietnam.

"The ASEAN Vision 2020," with the overall aim of promoting the Association to become "a concert of Southeast Asian nations, bonded together in a community of caring societies" based on three main pillars: political security, the economy and the cultural and social communities (Declaration Bali II/2003). In order to adapt to the rapid and complex changes in the international and the regional situation, the heads of the ASEAN countries in January 2007, decided to speed up the process of the regional linkage based on the legal basis of the ASEAN Charter. They agreed on the target of establishing the ASEAN Community by 2015, instead of 2020 as formerly agreed upon.

In this context, the Government of Vietnam has a number of steps to prepare for the ASEAN integration. Accordingly, the Government issued the Resolution No. 51/NQ-CP dated October 12, 2009 on the Governmental Action Program on the participation in the ASEAN cooperation until 2015, mainly in three fields of economics, culture, society and politics. The Governmental Action Program only focuses on education and propaganda for enterprises. The Government's reports and action programs do not mention the subject of ethnic minorities and this is a challenge for them in various aspects.

In the field of economic integration, and when the ASEAN Economic Community (AEC) will officially take effect, the ASEAN will become the sole market and production facility. Vietnam is facing the challenge of the differences in cultural values and religious beliefs, economic benefits, and the inequality between the ethnic minority communities and the mainstream society. There are occasional break-outs of religious conflicts with the H'mong people. The differences and gaps between the rich and the poor regarding economic development are getting bigger. The economic measures, especially the policies on lands, forestry lands and forest resources have not mitigated the conflicts and cannot yet bring income for local people even though everyone knows that the forests are the main resources of economic development for the ethnic minorities.

The natural and forestry resources which represent both the natural environment and the subsistence of ethnicminorities are being exhausted because of deforestation, forest fire, population increase, the rampant use of pesticides and plant protection drugs. As a matter of fact, recent research and evaluations of the implementation of the land allocation policies concluded that the legal framework does not recognize the traditional territory and land management systems of ethnic minorities or their livelihood practices, and that they have suffered from the negative impacts of hydropower and mining projects and landgrabbing by State farms. Vietnam has one of the largest network of dams and hydraulic infrastructure in the world alongside China and the USA. This network comprises over 7,000 dams of different types and sizes.[25]

At the Vietnam Development Partnership Forum 2013, Vietnamese NGOs stated that media, policy and public discourses still contain misunderstandings of, and prejudices and discrimination against, ethnic minorities' cultures and do not consider them as agents of development. This impedes peoples' participation and voice and diminishes the effectiveness of the government's development programs which, in the long run, may lead to their overdependence on external assistance.

25 Source : http://www.baoxaydung.com.vn/news/vn/thoi-su/tap-trung-kiem-tra-ra-soat-danh-gia-chat-luong-cong-trinh-thuy-dien-thuy-loi-nho.html.

There are still misunderstandings, prejudices and discrimination against ethnic minorities' cultures as they are not considered agents of development. Additionally, the risk of losing their cultural identities is an existing reality for every country, especially the undeveloped countries to participate in the progress of globalization. Globalization and the international economic integration intensify the exchanges and the homogeneity in all aspects of social life. The values originate from countries with strong economies and they significantly affect other countries and nations. The ASEAN integration means that the ethnic minority communities will have to face the effects of globalization not only with economic liberalization but also the conservation of their culture and society, and the risk of becoming a regional touristic attraction for the ASEAN economic purpose. This is not a small challenge which fades away or creates miscellaneous traditions and customs in the homogenous nations.

The ethnic minorities have not yet understood the impacts of the integration into the AEC. According to the Asian Development Bank (ADB), besides low-skills, most of ethnic minority villages have not been provided with techniques on "collective negotiation" to make a good response to unprofitable decisions for the community"[26]. On the other hand, the Government always tends to side with enterprises due to the pressure of economic development and the lobbying of enterprises. The ethnic minorities have agricultural traditions, and in fact their lives are linked with agriculture. Their human resources are not good at technologies and their cultural and foreign language standards are low, putting them at risk of being marginalised.

In the ASEAN Declaration on human rights, besides two traditional human rights (the civil and political human rights on one hand and the economic, social and cultural rights on the other hand), two new ones are recognized, including the right to development and to peace, in comparison with other international and regional documents. Nevertheless, this Declaration does not mention about the right to freedom of association despite stating the right to freedom of peaceful assembly (paragraph 24).This indicates caution for Vietnam, on the right to freedom of peaceful assembly as this is not specified by any separate law.

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26 "ASEAN Community 2015: Managing integration for better jobs and sharedprosperity" implemented by the International Labor Organization (ILO) and by the Asian Development Bank (ADB).

INDIGENOUS PEOPLES HUMAN RIGHTS DEFENDERS NETWORK

The Indigenous Peoples Human Rights Defenders Network (IPHRD Net) is a platform for solidarity, coordination and support among indigenous human rights defenders and their organizations. Through the IPHRD Net, indigenous peoples human rights defenders can more effectively address human rights issues and violations wherever these occur by working with other indigenous peoples organisations, other human right organisations, and with regional and international human rights mechanisms and bodies.

THE FUNCTIONS OF THE IPHRDS NET ARE AS FOLLOWS:

1. Mechanism for exchange of information and updates relating to human rights of indigenous peoples
2. Facilitation of technical, logistics and other forms of support
3. Forum for planning, capacity building and skills enhancement of network members
4. Mechanism for strengthening solidarity and cooperation.

ACTIVITIES

1. Documentation of human rights violations against indigenous peoples for use in lobby and advocacy at all levels
2. Manage the database of human rights violations against indigenous peoples in Asia
3. Capacity-building on human rights documentation and advocacy
4. Awareness-raising on human rights, in particular the UN Declaration on the Rights of Indigenous Peoples
5. Advocacy on indigenous peoples issues at all levels
6. Networking with other civil society organisations to gather support on the issues and concerns of indigenous peoples
7. Facilitate direct support to indigenous peoples human rights defenders at risk.

www.iphrdefenders.net

Have you witnessed a human rights violation against indigenous peoples?
Report to: www.iphrdefenders.net/index.php/iphrd-human-rights-violation-form

Are you an IPHRD at risk needing assistance?
Contact us at: www.iphrdefenders.net/index.php/request-for-assistance-form

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