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Recognizing Ethnic Minority Customary Land Rights in Vietnam and the Philippines

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Key message:

Vietnam needs new laws to protect land owned by ethnic minorities from development pressures and to recognize their customary rights and attachment to land they have lived on for generations.

Introduction

Most ethnic minorities in Vietnam such as the Vietnamese-Thai, Tay, Nung, Hmong, Muong and Dao have a special relationship with the land, elements and other living creatures. This relationship goes beyond mere economic interests to cultural and spiritual connections to the places they have inhabited for generations. These connections have been transmitted and nurtured from generation to generation and ethnic minorities still possess the belief that “Land is sacred and land is life”. The expression of this sacredness is the worship of deities and spirits within the land and its resources that provide the essence of their existence.

Recognition and realization of traditional and customary land rights is the basic foundation for emancipation of ethnic minorities and their development – economically, politically and culturally. Their relationship with their land and resources is deeply intertwined with their customs, culture, and political practices; it is the expression of their social wholeness. In their opinion, living, working and nurturing the land with full control and tenurial security is key to living fully and surviving as a people. Taking land from them implies losing their distinct identity, a serious deprivation of their sense of what makes them unique. Recognition by legislation of their struggle for land and life as an expression of their self-determination to carve their own destinies is a basic prerequisite for the fulfilment of their rights and cultural development.

Although Vietnam has a number of legislations and policies on lands and other natural resources, none of these laws provide legal recognition of ethnic minorities’ customary rights to land and other natural resources. This policy brief uses examples from the indigenous people in the Philippines, to argue that legal recognition of ethnic minority customary rights to land and natural resources will contribute to better resource management and improved local livelihoods. However, in order to do so, a number of critical issues need to be addressed.

The Philippine Experience

Indigenous peoples (IPs) in the Philippines constitute 10-15% of the total population and are scattered across the major islands of the archipelago. The greatest numbers of ethnic groups are located in the south, in Mindanao and in the north, in Luzon. For almost four centuries of colonization by the Spanish and Americans, these people have struggled for recognition of their traditional and customary lands. Land was declared as belonging to the State and laws were implemented without considering IPs. This alienated them from their ancestral domains and as time elapsed they gradually lost their distinction as a special group of people.

In the last 30 years, however, the Government has introduced radical legal reforms to recognize IPs' claims and demands. In 1987, the Philippine parliament changed the Constitution (Art. II, Sec. 22): "The State recognizes and promotes the rights of Indigenous Cultural Communities/Indigenous Peoples within the framework of national unity and development". In July 1997, the Indigenous Peoples Rights Act (IPRA) was passed to fulfil the promise of the 1987 constitutional recognition of IPs: "... ancestral land rights and its commitment to uphold international obligations. The IPRA Law recognizes, protects and promotes the rights of indigenous peoples, creates a National Commission on Indigenous Peoples (NCIP), establishes implementing mechanisms, appropriating funds for other purposes".

The IPRA Law recognizes the indigenous concept of ownership. It sustains the view that ancestral domains and all resources found therein shall serve as material bases of IPs' cultural development. The concept of ownership generally holds that ancestral domains are private but community property which belongs to all generations and therefore cannot be sold, disposed of, or destroyed. The IPRA Law provides clear and defined provisions on the rights to traditional resources to ensure sustainable development and land tenure security of IPs.

The NCIP is in charge of taking the necessary steps to identify, delineate, and distribute lands which IPs traditionally occupy and guarantee effective protection of their rights to ownership and possession. After all necessary requirements and legal documents are processed, the NCIP will issue a Certificate of Ancestral Domain Title (CADT), which formally recognizes the rights of possession and ownership of IPs. The NCIP has issued 71 CADTs to date, covering an area of 1,635,973 hectares and 180 Certificate of Ancestral Land titles for an area of 5,628 hectares. In total, 251 certificates have been issued for an area of 1,641,601 hectares.

The IPRA Law, through the NCIP, instituted processes and procedures for free and prior informed consent and legal assistance to IPs that involve national development programs and projects. It also encourages indigenous communities to implement their traditional and customary laws on resolving disputes and developing their own justice systems and conflict resolution mechanisms based on traditional practices. This serves as an alternative dispute resolution mechanism among communities and tribes. The IPRA Law provides guidance for IPs in conflict resolution and the development of traditional justice systems appropriate to existing judicial systems of the country.

Overall, the experiences from the Philippines show that, with the legal recognition of IP rights, significant values and importance of ancestral domains for national development have been recognized. Recognition of the customary tenure rights have contributed to IPs' increasingly important role in forest and wildlife preservation. It has also enabled regulated timber cutting, harvesting of forest materials, community efforts on reforestation of hardwoods, and replanting of herbal trees/plants and their preservation and classification in accordance with their customary and traditional laws. The legal acts allowed indigenous communities to voice opposition to the increasing number of mining projects located on indigenous territories, even though this opposition often proved feeble in the face of the powerful interests behind mining. Consequently IPs have become major players and partners in overall nation-building.

What Is at Stake in Vietnam?

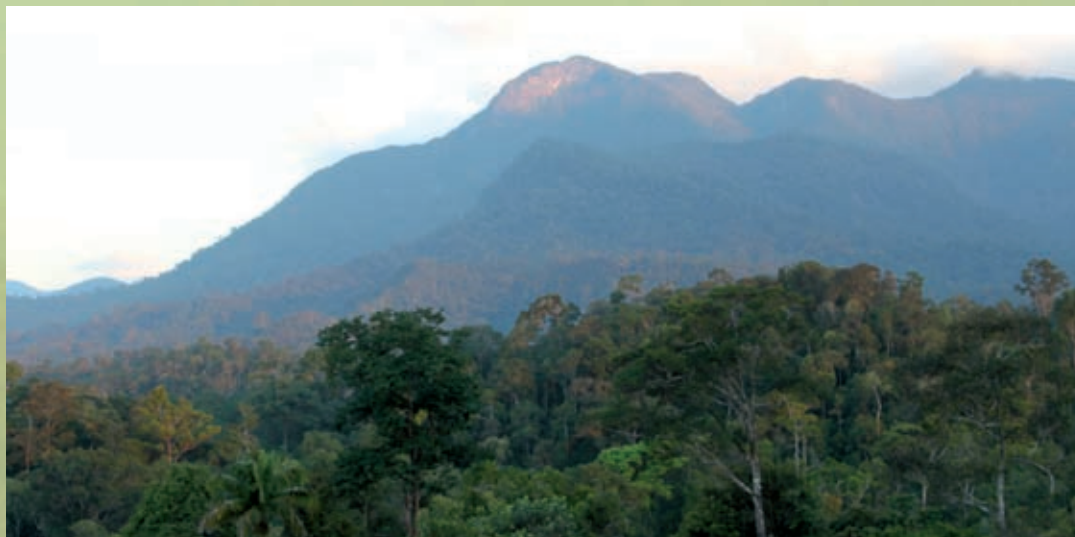
With 54 ethnic groups, Vietnam has a rich ethnic diversity, although the Kinh or Viet ethnic majority constitute 86% of the country's population. Land remains an important productive resource for minority ethnic groups, particularly those living in remote areas. These communities attach high political and cultural significance to land, and their control over it. Customary institutions and management are present in many ethnic villages, even though agricultural collectivization and the nationalization of forestland in the past have weakened them.

In Vietnam, all people are equal by law. This is reflected in Article 5 of the 1992 Constitution (see Box 1). Nevertheless, the emphasis on equality fails to recognize that most ethnic minority people are underprivileged and marginalized. Unlike the Philippine Constitution, Vietnam does not offer special protection to them, despite their historical status and contemporary marginalization. Thus ethnic minorities, particularly those in remote areas, are often left behind in social development and have become one of the most disadvantaged groups, despite State policies now being implemented (Swinkels and Turk 2006).

The emphasis on equal treatment sidesteps the significance of transnational conventions on IPs, which the Vietnamese Government has signed. In September 2007, Vietnam became a party to the United Nations Declaration on the Rights of Indigenous Peoples, which, among other things, grants IPs the right of free, prior and informed consent in relation to State interventions. In contrast to the Philippines, Vietnam so far lacks a specific law for ethnic minorities that defines them as a unique group of people, especially on the issues of customary land rights, cultural integrity, and socio-economic development.

Box 1: Article 5 of Vietnam's 1992 Constitution

"The State of the Socialist Republic of Vietnam is a united State of the various ethnic communities cohabiting on the Vietnamese land. The State applies a policy of equality, solidarity and mutual support among the various ethnic communities and prohibits all acts of ethnic discrimination and division. The various ethnic communities have the right to use their own language and writing, to preserve their ethnic identity and to nurture their fine customs, traditions and cultures. The State implements policies for all-round development aimed at gradually improving and raising the material and spiritual conditions of life of ethnic minorities".



Deficiencies in Vietnam's Land Legislation

As with the broader legal framework, Vietnam's land legislation does not pay explicit attention to ethnic minorities' particular relationship to land. The general land policy is progressive, as it provides for the allocation of agricultural land and forestland to individuals and organizations for long-term use. As a result, ethnic minority people nationwide have received land-use right certificates for agricultural land and, to some extent, forestland, just as their Kinh counterparts. By the end of 2009, ethnic minority or majority households had received 25% of all forestland, and communities held certificates to 1% of it.

Yet there are two key issues with current land policy from the perspective of ethnic minority people living in remote areas: First, much of the land important to them has been classified as forestland, even though they have used it for cultivation and livestock husbandry for a long time. This has caused severe economic hardship to ethnic minorities and has led to serious conflicts between forest protection officers and local villagers. Vietnam's land legislation is thus in stark contrast with the recognition in the Philippine law that land is a key resource for IPs' economic and cultural development.

Second, Vietnam's land legislation continues to ignore the role of communities in land governance, which is of particular concern in many ethnic minority villages. Although the 2004 revised Land Law allows land allocation to communities, they still do not possess any formal governance powers over land. They can receive collective land certificates, but they cannot make decisions about the use and assignment of land within communities. This runs directly counter to the customary role of community-based institutions and village leaders in land governance in many ethnic minority villages. It also radically differs from the recognition of indigenous notions of landownership in the Philippines' IPRA.

Growing Pressure on Ethnic Minorities' Land

The land held and claimed by Vietnam's ethnic minorities may also require special protection because of growing pressure from large foreign mining corporations and development projects. National demand for cheap energy and increasing world-wide scarcity of mineral resources mean that large tracts of ethnic minority land can no longer be considered remote. This land has attracted the interest of national development planners and international investors for the construction of hydropower dams and mining operations. For example, Vietnam is estimated to hold the world's third-largest bauxite ore reserves, most of which are located in the Central Highlands (Tay Nguyen). Several mining projects are already underway, and preparations for several aluminium processing plants in the Central Highlands are very advanced.

Ethnic minorities' land is also under threat from other sources related to changes in global commodity markets and governance regimes. Worldwide demand for rubber, coffee, pepper, and other primary commodities is revalorizing the land of previously remote ethnic minority villages, attracting interests by Kinh migrants, State companies, and outside investors. New forest governance initiatives, such as Payments for Forest Ecosystem Services (PFES) and Reduced Emissions from Deforestation and Forest Degradation (REDD+), are attaching new values to forests, thereby making them a profitable target for State companies and private investors. All this outside interest in ethnic minority land has the potential to cause serious conflict between these communities and outsiders and to marginalize them further.

Conclusions

After centuries of struggle, IPs in the Philippines have celebrated the enactment of the IPRA Law. Despite many criticisms and reservations about the provisions and definitions of the Law, particularly on the issue of the rights to ancestral domain (right to own, occupy and possess the land and its resources), ethnic minorities have gained constitutional and legal guarantees for claiming their rights as a distinct people. The Philippines Constitution and IPRA Law guarantees the right to claim back ancestral lands. Significant numbers of CADTs have been issued to different ethnic minority tribes in various parts of the country.

Vietnam can learn from the Philippine experience and avoid the emergence of widespread conflict between local communities and outside actors as well as growing dissatisfaction among ethnic minority groups and their further marginalization. Suitable lessons emerge from the Philippine legal framework, especially the presence of a law recognizing ethnic minorities' particular circumstances and demands as well as land legislation that recognizes IPs' historical alienation from their customary land.

More specific implications for appropriate policy in Vietnam include:

1. Introduce specific provisions on ethnic minority land in applicable land legislation (Land Law, Law on Forest Protection and Development etc.), particularly the recognition of customary rights to land, forest, and other natural resources.
2. Institute concrete implementation procedures for the Ministry of Natural Resources and Environment and the Committee for Ethnic Minority Affairs to identify ethnic minorities sacred lands and other sites such as mountains, forests, lakes, uphill streams, rivers, burial sites, worshipping places and hunting grounds.
3. Expand the Cultural Heritage Law to apply to customary land rights. Land rights and land governance are part of human heritage just as much as the 'Space of Gong Culture' in the Central Highlands of Vietnam recognized by the United Nations Educational, Scientific and Cultural Organization in 2005.
4. Develop a new Law on Ethnic Minorities in close consultation with their representatives at national, regional and local levels, to include provisions for the protection of customary land rights.

Reference

Swinkels, R. & Turk, C. 2006. *Explaining Ethnic Minority Poverty in Vietnam: A Summary of Recent Trends and Current Challenges*. Background paper for CEM/MPI meeting on Ethnic Minority Poverty in Hanoi, 28 September 2006. World Bank, Vietnam. •



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