



The right to education for ethnic minority girls in rural areas in Vietnam

Finding the extent to which Vietnamese laws and policies fall short in meeting Vietnam's obligation under international law to fulfill the right to education for ethnic minority girls in rural areas and providing solutions for future improvement

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LIST OF ABBREVIATIONS

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
GR/GC	General Recommendation/General Comment
UN	United Nations
UNDRM	United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities
UNGA	United Nations General Assembly
UNICEF	United Nations International Children's Fund
UNFPA	United Nations Population Fund

CHAPTER 1: INTRODUCTION

1.1. RESEARCH PROBLEM

Education is one of the most vital tools for developing individuals, communities, and countries. Therefore, the right to education is one of the most pivotal fundamental human rights; and helps boost and facilitate other rights and the dignity of people. The importance of the right to education is indicated through a plethora of international human rights instruments, such as the Universal Declaration of Human Rights.¹ For people belonging to marginalized populations, such as ethnic minority girls² in rural areas in Vietnam, education serves as a viable technique to break social stereotypes or a ticket out of poverty; thereby improving their quality of life. In essence, fulfilling the right to education for ethnic minority girls in rural areas could benefit national growth and achieve sustainable development.

As a dedicated member of numerous important international conventions concerning the right to education³, the Vietnamese government, through laws and policies, has affirmed its dedication to respect, fulfill and protect the right to education for everyone without discrimination. Notwithstanding the Vietnamese government's efforts, the process of fulfilling the right to education for ethnic minority girls in rural areas faces many difficulties and challenges, such as poverty, cultural norms, languages, and

¹ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 26.

Also, Principle 7 of the Declaration of the Rights of the Child (1959), the Convention against Discrimination in Education (1960), Articles 13–14 of the International Covenant on Economic, Social and Cultural Rights (CESCR) (1966), Articles 28-29 of the Convention on the Rights of the Child (CRC)

² Ethnic minority communities, people, languages or girls is a term which uses for Vietnamese people who belong to other groups with their own languages and cultures. This term is also used widely in periodic reports of Vietnam.

³ Vietnam became a member state of many conventions relating to the right to education such as the International Covenant on Economic, Social and Cultural Rights (1982), the Rights of the Child (1990), the Convention on the Elimination of All Forms of Discrimination Against Women (1982).

discrimination. Laws and policies were adopted and implemented to tackle these challenges. However, in reality, the right to education for ethnic minority girls in rural areas remains a perplexing problem which shows that Vietnamese laws and policies have limitations when it comes to meeting Vietnam's obligation under international law.

An examination of the periodic reports of the Vietnamese government on the process of fulfilling its obligation to enforce the right to education, reveals many positive improvements. Unfortunately, these improvements exist mainly in big cities where citizens have more advantages in obtaining education than people from ethnic minority communities living in rural areas. The first advantage is that in the big cities, they speak Kinh, widely known as Vietnamese, the dominant language of Vietnam. Children in big cities use Vietnamese on a daily basis. Therefore, it is easy for them to attend, understand and study in school when education programs are created in Vietnamese. However, for ethnic minority communities, children use different languages (their first language), making it difficult to access the education program and textbooks in Vietnamese (their second language). It gets even harder when teachers deliver information and lessons in Vietnamese. Therefore, girls and boys in these areas find it difficult to enjoy classes, gain knowledge and achieve good academic results. Moreover, ethnic minority girls in rural areas are regularly subjected to discrimination. There are also limitations of social interaction and the language barrier for them.

Children living in big cities also have access to quality school buildings, facilities, roads, and transportation. However, children of ethnic minority communities have a lower living standard, poor infrastructure, little to no means of transportation, or lack of school facilities such as buildings, classes, playgrounds, books, or sanitation. Also, the financial burden on rural families is a critical factor as these

families tend to force their children to drop out of school or prioritize the education of boys. Therefore, girls in rural areas are usually in a vulnerable position in which their rights are easily infringed. In addition, under the condition of low-income families in rural areas, girls tend to be forced to work earlier instead of studying.

Rural girls from ethnic minority groups not only face the difficulties of learning the Vietnamese language and the financial burden but also barriers to cultural norms, especially male children preference and early marriages. Vietnam is a country where society exalts males more than females. This issue is even worse amongst ethnic minority communities due to many factors, for example, the lack of proper education through many generations, patriarchal norms, or isolated places where people cannot reach out to campaigns or information about gender equality. Therefore, when it comes to education, boys are preferred over girls in these areas. Another burden based on cultural norms is early marriage. Since girls are frequently seen as having a lower position in society and inferior abilities in education, ethnic minority parents consider that marriage is a better option for girls. After getting married, education opportunities for girls are much tougher to enjoy since they have to procreate, take care of their husbands and do household chores.

1.2. BACKGROUND INFORMATION

Vietnam is a developing country that has the potential to be the strongest country in Southeast Asia. This country also is a dedicated member of several international human rights instruments. The right to education for female children has been acknowledged by the Vietnamese government which has adopted domestic laws and policies compatible with international human rights treaties to fulfill the obligation. However, several burdens could prevent Vietnam from fulfilling the right to education.

However, several burdens could prevent Vietnam from fulfilling the right to education. One of these difficulties for the Vietnamese government is the process of fulfilling education for ethnic minority communities in rural areas, especially girls belonging to these communities. Vietnam is a multi-ethnic nation with 54 ethnic minority groups. The Kinh is considered the majority with 86.83% of the national population (82.85 million people).⁴ The remaining 53 ethnic minority groups, comprising about 14.6% of the national population (13.39 million people)⁵, are considered ethnic minority groups. Ethnic minority people in Vietnam often reside in harsh weather and geographical conditions and have difficult socio-economic conditions. These locations also have the highest poverty rates (35.5%), higher than the national rate (10.2%).⁶ Consequently, to a certain extent, these conditions affect the opportunities and the implementation of human rights for ethnic minority groups as well as the right to education for ethnic minority girls in rural areas.

Although the Vietnamese government has paid attention to improving education for ethnic minority girls in rural areas, the literacy rate of ethnic minority girls (75.1%) is always lower than that of ethnic minority boys and girls from the Kinh ethnic group, which is 86.7% and 94.6% respectively.⁷ Furthermore, in the age group of women from 35 to 40, approximately 30% of ethnic minority women could not speak and write Vietnamese.⁸ Realistically speaking, the inability to speak and write Vietnamese for women prevents them and their daughters from enjoying the right to education. Firstly, they can neither help their daughters to learn nor render support with homework. Secondly, it becomes the norm and a precedent where society

⁴ Committee for Ethnic Minority Affairs, "The Kinh people" (4 November 2015) <<http://www.cema.gov.vn/gioi-thieu/cong-dong-54-dan-toc/nguoi-viet.htm>> accessed 20 July 2022.

⁵ General Statistics Office, "Survey on Socio-Economic Situation of 53 Ethnic Minority Groups of Viet Nam 2019" (2019).

⁶ *ibid.*

⁷ General Statistics Office, "The 2019 Population and Housing Census" (1 April 2019) <<https://www.gso.gov.vn/wp-content/uploads/2019/12/Ket-qua-toan-bo-Tong-dieu-tra-dan-so-va-nha-o-2019.pdf>> accessed 20 July 2022.

⁸ General Statistics Office, "Survey on Socio-Economic Situation of 53 Ethnic Minority Groups of Viet Nam 2019" (2019).

believes that ethnic minority girls in rural areas are not able to learn and should not gain access to education based on the abilities of women from their communities is set. Not only does the stereotype of society prevent ethnic minority girls in rural areas from enjoying their right to education, but the many factors related to infrastructure and quality of school facilities also reduce the chance for ethnic minority girls in rural areas to access education. In terms of infrastructure, children of 14 out of 53 ethnic minority groups have to commute between 20 km to more than 50 km filled with dangerous, mountainous, and rocky roads to go to school.⁹ As a result, they have to face many risks such as human trafficking, sexual harassment, and accidents which all reduce their motivation to go to school on a daily basis. To provide educational environments for ethnic minority children, the Vietnamese government has established more than 300 boarding schools and 1,097 semi-boarding schools. There is also the issue of inadequate sanitary facilities, safe water, secure school accommodations, and teachers without practical knowledge of ethnic minority cultures and languages. However, only 15% of these schools meet the national standard.¹⁰ Furthermore, harmful practices of gender bias or child marriage and poverty also threaten the opportunities to enjoy education for ethnic minority girls in rural areas.

1.3. RESEARCH QUESTION(S)

Within the context of the research problem, this thesis aims to answer the overarching research question:

To what extent do Vietnamese laws fall short in meeting Vietnam's obligation under international law to fulfill the right to education of ethnic minority girls in rural areas?

⁹ UN Women, "Policy Brief: Gender Issues of Ethnic Minority Groups in Vietnam" (2021) <https://data.opendevelopmentmekong.net/vi/library_record/policy-brief-gender-issues-of-ethnic-minority-groups-in-vietnam/resource/15712988-6362-4ddf-bc86-b54a0dade0e0> accessed 20 July 2022, 18.

¹⁰ Ministry of Education and Training, "Report on 10 years of Implementation of the Viet Nam Education Development Strategy 2011-2020" (2020).

Subsequently, to answer this main question, this thesis also provides further answers for the following sub-questions:

- *How have the international treaty bodies responsible for monitoring the relevant treaties interpreted the right to education in the context of the right to education of ethnic minority girls in rural areas in Vietnam?*
- *How has the Vietnamese government respected, protected, and fulfilled its obligations under international law in terms of the right to education for ethnic minority girls in rural areas?*
- *What are the limitations of Vietnam's legal frameworks and policies in terms of the right to education for ethnic minority girls in rural areas?*
- *What are the recommendations for Vietnam in this situation?*

1.4. LIMITATIONS

First of all, in terms of international human rights instruments on the right to education for ethnic minority girls in rural areas in Vietnam, this thesis limits its analysis to three treaties and instruments, which are: the CRC, the CEDAW, and the UNDRM. For this research, the three instruments are considered the most relevant when the subject of the discourse is ethnic minority girls in rural areas. Therefore, their rights are addressed across the rights of children (CRC), the rights of women and women in rural areas (CEDAW), and the rights of ethnic minority groups (UNDRM). Also, this thesis focuses on rights' protection for minority groups instead of indigenous groups because under the focus of the Vietnamese government called "unity in diversity"¹¹, ethnic minority groups are not recognized as indigenous groups.¹²

¹¹ Open Development Vietnam, "Ethnic minorities and indigenous people" (2019)
<<https://vietnam.opendevelopmentmekong.net/topics/ethnic-minorities-and-indigenous-people/#ref-3252299-2>>
accessed 20 July 2022.

¹² Ibid.

This thesis focuses mainly on Vietnam's situation. Therefore, the resources can come from materials in Vietnamese. This thesis also deliberately limits its analysis to secondary data. Empirical research on the subject would have produced a more detailed and comprehensive analysis. However, due to the constraints of time and resources, this thesis relies most of the time on articles, commentaries, policies, legislation, and conventions. Many obstacles prevent fulfilling the right to education for ethnic minority girls in rural areas in Vietnam. However, the thesis addresses four main focuses which strongly impact education rights for these girls. These are gender equality, financial burden, language barrier, and early marriage. Also, the thesis provides recommendations for laws and policies based on the four considerations.

The concept of intersectionality is a theory about marginalization that shaped another way of thinking about equality.¹³ This theory transforms many aspects in which it is used, including human rights laws in general and women's rights in particular.¹⁴ Intersectionality is a theory in which a person can suffer subordination based on many factors such as "gender, class, sexual orientation, or disability."¹⁵ Therefore, if we view discrimination towards a victim as a single ground of discrimination, that cannot be enough and satisfying remedies for victims.¹⁶ The evidence of discipline and punishment in education towards Black girls in the United States shows that Black girls experienced discrimination based on their race and gender simultaneously.¹⁷ Therefore, they need intersectional remedies in this case. When applying the concept of intersectionality to this thesis, ethnic minority girls in rural in Vietnam experience not only gender discrimination but also discrimination based on ethnicity. However, discrimination based on

¹³ Johanna Bond, "Foundations of Intersectionality Theory", *Global Intersectionality and Contemporary Human Rights* (Oxford, 2021) 6.

¹⁴ Ibid.

¹⁵ ibid 7.

¹⁶ Ibid.

¹⁷ Johanna Bond, "Global Application of Intersectionality Theory", *Global Intersectionality and Contemporary Human Rights* (Oxford, 2021) 42.

ethnicity also could affect ethnic minority boys who are not the focus of the thesis. Thus, this thesis deliberately mentions gender discrimination within its context in order to focus on one subject and steer clear of overlaps.

1.5. METHODOLOGY

This thesis will use the black letter law methodology as the primary. This methodology allows for an evaluation of the process of the Vietnamese government acting toward the attainment of the right to education for ethnic rural girls. It also helps to examine Vietnam's obligation to the relevant international human rights treaties, such as the CRC, the CEDAW, and the UNDRM. Black letter law methodology also assists in evaluating the domestic law and policies concerning the right to education for ethnic minority girls in rural areas. All these works seek to point out the extent to which Vietnamese laws and policies remain limited when compared to the international protection for the right to education for ethnic minority girls in rural areas. In essence, this thesis aims to contribute to the scholarship on the relationship between international human rights law and Vietnamese law regarding the right to education of ethnic minority girls in rural areas. This aim requires a critical analysis of the international human rights legal framework and Vietnamese laws and policies. To that effect, the black letter law methodology is the most fitting. Through this methodology, this thesis will become persuasive and ensure its validity and reliability since it will provide a comparison between international standards and action(s) to fulfill the obligations of member states. Consequently, we can point out the limitations of national action(s) when measured against international standards.

1.6. OVERVIEW OF THE CHAPTERS

This thesis includes five chapters. Each chapter with its own purpose aimed at achieving the goals of the research and answering the research questions. Chapter one is an introduction to the research, the research

problems, and the research questions. It concludes with background information on the main subject of the thesis and the limitation of the thesis. Chapter 2 will seek to interpret the right to education for minority rural girls through legal provisions under the CRC, the CEDAW, and the UNDRM to examine Vietnamese legal frameworks and policies in the next chapter. Therefore, chapter 3 examines Vietnamese legal frameworks on the right to education for ethnic minority girls in rural areas. After the examination, this thesis attempts to find the limitations of Vietnamese laws and policies in fulfilling Vietnam's obligations of the right to education to ethnic minority girls in rural areas in chapter 4. Chapter 5 mainly seeks solutions to the problem and concludes the research.

CHAPTER 2: THE INTERNATIONAL LEGAL FRAMEWORKS

2.1. INTRODUCTION

Human rights first gained international recognition in 1948 through the Universal Declaration of Human Rights. From that moment, civil and political rights and social, economic, and cultural rights are made out to be enjoyed equally by every person in any country. The right to education is a social, economic, and cultural right. This right belongs to all people in the world, regardless of nationality, citizenship, gender, or ethnicity.¹⁸ Also, the right to education is a multiplier and enabling right that helps people enjoy many other rights.¹⁹ Thanks to the right to education, people gain knowledge about other rights. Then they use their knowledge to reach their freedom, protect their rights and attend to social activities without interruption.²⁰ Therefore, the right to education is a concrete and vital foundation that ensures other human rights of people. For this reason, the right to education is “widely recognized not just in international and regional treaties but also in domestic constitutions.”²¹ Within the scope of this thesis - concerning the right to education for a specific group of people: ethnic minority girls in rural areas in Vietnam - this chapter will focus on provisions of the right to education under three international legal frameworks: the CRC, the CEDAW, and the UNDRM

2.2. THE CONVENTION ON THE RIGHTS OF THE CHILD

To ensure children are treated equally in, all forms of discrimination against children are prevented under Article 2 of the CRC, which states that:

¹⁸ The Office of the United Nations High Commissioner for Human Rights, “What are human rights?” < <https://www.ohchr.org/en/what-are-human-rights>> accessed 25 July 2022.

¹⁹ Katarina Tomaševski, *Human Rights Obligation in Education: The 4A Scheme* (Woolf Legal Publisher, 2006) 7.

²⁰ Christian Courtis and John Tobin, “Article 28: The Right to Education”, *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press, 2019) 1058.

²¹ *ibid.*

“All children have all these rights, no matter who they are, where they live, what their parents do, what language they speak, what their religion or culture is, whether they are a boy or girl, whether they have a disability, whether they are rich or poor. No child should be treated unfairly on any basis.”²²

Therefore, children are to enjoy their education without discrimination based on their background. Article 29(c) under the CRC is also worth mentioning when it entails a positive obligation about the protection of the right of a child to education, facilitating respect for "cultural identity, language and values" and “for the national values of the country in which the child is living.”²³ This article is in light of article 2 of the CRC and article 20 of the ICCPR, which “forbids any advocacy of national, racial, or religious hatred, into a positive instruction in the context of education.”²⁴

There are two important articles concerning education because the right to education is one of the essential principles for humans and children. This right is not only guaranteed under the CRC but also under numerous instruments.²⁵ Under the CRC, there is a need for education to be “child-centered and child-friendly and empowering.”²⁶ Education is a tool that helps children to reach their potential in the future, fulfill these other rights and guarantee their dignity. Within the enormous advantage of education for children, echoing Article 13 of the ICESCR, Article 28 of the CRC enshrined the right to education for

²² UNGA, “Convention on the Rights of the Child” (20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3) 2.

²³ *ibid* art 29

²⁴ Klaus Dieter Beiter, “The Protection of the Right to Education by International Legal Instruments”, *The Protection of the Right to Education by International Law* (Martinus Nijhoff Publishers, 2006) 120.

²⁵ See n 1.

²⁶ UN Committee on the Right of the Child, “General Comment No 1 The aims of education” (17 April 2001) para 2.

all children with new specific contributions.²⁷ Article 28 reconceptualized the right to education from the perspective of children and emphasized that the holder of the right to education is children.²⁸

Even though the right to education is enshrined in a plethora of international human rights instruments, the definition of education remains unclear. The definition also remains absent under article 28. However, The CRC Committee emphasized that basic skills include not only literacy and numeracy but also other skills such as the ability to make decisions, resolve conflicts in good behavior and practice critical thinking.²⁹ The Committee believes that these broadened skills are necessary tools for children to pursue their goals in their life.³⁰

Under the first paragraph of Article 28, the CRC imposes on the Member States to achieve the first and foremost goal of the right to education, which is making education “available” and “accessible.” When the State Parties could provide and maintain a good education system, children would be able to reach their opportunities to enjoy education. Therefore, the CRC requires the States Parties to take both financial and technical actions to fulfill this obligation.³¹ In the context of availability, a variety of aspects could be taken into consideration, such as building, books, transportation, teacher, food, and water. These kinds of facilities vary between each country based on that country's capacity. However, under General Comment 13 of the CESCR Committee, States are obliged to fulfill some indispensable aspects without excuses for

²⁷ Christian Curtis and John Tobin (n 20) 1059.

²⁸ *ibid* 1062.

²⁹ UN Committee on the Rights of the Child, “General Comment No 1 on the Aims of Education” (17 April 2001) UN Doc CRC/GC/2001/1, para 9.

³⁰ Mieke Verheyde, “Article 28: The Right to Education” in André Alen, Johan Vande Lanotte, Eugeen Verhellen, Fiona Ang, Eva Berghmans and Mieke Verheyde (eds), *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, Leiden, 2006) 12.

³¹ *ibid* 15

the development status of States.³² Therefore, some aspects such as buildings, sanitation facilities for both genders, safe water, teaching materials, and competent teachers could be seen as a minimum quality of education.³³ Therefore, all countries should provide this minimum quality of education regardless of their economic situation.³⁴

Besides the aspect of availability, the CRC requires the States to guarantee the accessibility in education. This means threats to education resulting from consequences of discrimination, physical access, or affordability.³⁵ Regarding the discrimination dimension, under Article 28(1), at primary and secondary levels, there is no distinction based on the capacity and ability of a child.³⁶ Therefore, children have a right to attend these levels without any discrimination coming from the evaluation of educational institutions or society. The concept of physical accessibility points to a reasonable and safe distance in which students can attend education within convenient situations.³⁷ In the case of students from rural areas, States should ensure reasonable distance in some ways, such as neighboring schools or providing transportation for students in these areas. These efforts help students to access education without physical barriers. The third dimension is affordability, in which the charging of fees at three levels is considered.³⁸ This obligation requires the States to ensure education for children by some measures, such as free education or providing financial aid or scholarship for students. Under Article 28(1), the primary school fee is free while this principle implicitly endorses that the tuition in secondary and higher education would be charged.

³² UN Committee on Economic, Social and Cultural Rights, “General Comment No 13 on the Right to Education” (8 December 1999) UN Doc. E/C.12/1999/10, para 6.

³³ Verheyde (n 30) 16.

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ *ibid.* 17.

³⁷ *ibid.* 18.

³⁸ *ibid.* 19.

However, the CRC recommends that the States should provide financial support in that the accessibility of secondary and tertiary education would not be interrupted.³⁹

Free education is one of the most important obligations under Article 28(1). Although the level of obligation through each level of education could differ, the main point of this obligation is to require that States take measures to fulfill the obligation as much as possible. Under the level of primary school, Article 28 of the CRC imposes on the States to make primary school free. The obligation of free primary school must be recognized as immediate realization instead of progressive realization.⁴⁰ Furthermore, the free primary school should be made available to every child, not only to children who come from poverty, vulnerable groups, or other categories.⁴¹ When it comes to fees, it contains only tuition fees which is a direct cost. However, under General Comment No.11 of the CESCR Committee, some indirect costs such as school uniforms, school canteens, textbooks, and medicine should be made free.⁴² The CRC and The CESCR provide the same view that the word “free” goes further than the meaning of free access.⁴³ In addition, the CRC Committee also imposes the obligation that States assistants (at least) students from low-income families purchase facilities for attending school or learning such as textbooks, learning supplies, and uniforms.⁴⁴ When it comes to the level of secondary education, the cost-free obligation is not compulsory. Instead, States are required to take appropriate measures to introduce free education or provide financial assistance at this level.⁴⁵ It could be said that the process of making a cost-free secondary

³⁹ Verheyde (n 30) 19.

⁴⁰ *ibid* 20.

⁴¹ *Ibid*.

⁴² UN Committee on Economic, Social and Cultural Rights, “General Comment No 11 on Plans of action for primary education” (10 May 1999) UN Doc. E/C.12/1999/4, para 7.

⁴³ Verheyde (n 30) 20.

⁴⁴ E.g. UN Committee on the Convention on the Rights of the Child, Concluding Observations: Sierra Leone (UN Doc. CRC/C/94, 2000), paras 180–181; the Central African Republic (UN Doc. CRC/C/100, 2000), para 468; Cameroon (UN Doc. CRC/C/111, 2001), para 380; Guinea-Bissau (UN Doc. CRC/C/118, 2002), para 75; and Mozambique (UN Doc. CRC/C/114, 2002), para 306.

⁴⁵ UNGA, “Convention on the Rights of the Child” (20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3)

school is recommended and encouraged by the CRC. According to Hodgkin and Newell, students in higher education can lean on financial assistance or potential scholarships provided by States.⁴⁶

Consistent with free education, the compulsory aspect of education is a vital one enshrined in several human rights documents.⁴⁷ However, the age for compulsory education and the importance of this aspect under three levels of education remain unclear.⁴⁸ Accordingly, the CRC Committee recommends States Parties determine the age for the end of compulsory education, but it should be in line with the minimum age for employment. Within the context of the minimum age for employment, under the International Labour Organization Convention No.138, the age for children completing their compulsory schooling should not be under the age of 15.⁴⁹ The CRC Committee thus recommends the States set the limitation of age for compulsory education at the age of 15. Even though Article 28(1) only draws attention to compulsory schooling at the primary level, secondary and higher levels of education in some countries are also encouraged to be compulsory.⁵⁰

Under Article 28(1), the content and form of education are also taken into consideration. It is worth noticing that human rights in general and child's rights are recommended to include in curricula of all levels of schooling, even in public or private schools.⁵¹ The CRC mentions two types of education which

⁴⁶ Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child* (New York/Genève, UNICEF, 2002), 425.

⁴⁷ See also Article 26(1) of the UDHR; Article 13(2)(a) and 14 of the CESCR; Article 13(3)(a) of the Protocol of San Salvador to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights and Article 11(3)(a) of the African Charter on the Rights and Welfare of the Child.

⁴⁸ Verheyde (n 30) 25.

⁴⁹ ILO Convention No 138, Convention concerning Minimum Age for Admission to Employment (adopted on 26 June 1973, entered into force 19 June 1976).

⁵⁰ Angela Melchiorre, "At what age? . . . are school children employed, married and taken into court?" (2nd edn, Lund, Raoul Wallenberg Institute, 2002), 119.

⁵¹ E.g. UN Committee on the Convention on the Rights of the Child, Concluding Observations: Norway (UN Doc. CRC/C/29, 1994), para 174; Colombia (UN Doc. CRC/C/38, 1995), para 96; Denmark (UN Doc. CRC/C/38, 1995), para 198; the United Kingdom of Great-Britain and Northern Ireland (UN Doc. CRC/C/38, 1995), para 234; Canada (UN Doc. CRC/C/43, 1995),

are educational and vocational education. Also, the first paragraph of Article 28 provides a unique provision of information and guidance for educational and vocational education. It is the first time international human rights law focuses on free assistance for vocational education.⁵² This provision of the available and accessible information and guidance for these educational forms could provide access to students from some excluded groups to benefit their lives and career paths.⁵³

Last but not least, Article 28(1)(e) provides for the responsibility of the States to take action to ensure the attendance of pupils as well as keep them in school.⁵⁴ The school drop-out or attendance rates could reflect the efforts of the States fulfilling the right to education for children. Thus, this provision pushes the States to figure out the underlying reasons and viable solutions for the issues.⁵⁵ For example, the rate of girls dropping out of school is higher than that of boys because of causes such as early marriage and teenage pregnancy. So, the States could include sex education in education programs or provide chances for pregnant girls to complete their education without discrimination.

2.2. THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

While the discrimination towards girls still exists, the right to education for girls needs more attention under international human rights law. The CEDAW was adopted in 1979 by the UNGA to provide a legal instrument for women's and girls' rights. In the context of my thesis, Article 10 under the CEDAW is the

para 87, Ukraine (UN Doc. CRC/C/46, 1995), para 67; Belgium (UN Doc. CRC/C/43, 1995), para 112, Germany (UN Doc. CRC/C/46, 1995), para 105; Niger (UN Doc. CRC/C/118, 2002), para 147; and Japan (UN Doc. CRC/C/15/Add.231, 2004), para 21.

⁵² Verheyde (n 30) 31.

⁵³ *ibid* 32

⁵⁴ *ibid* 34

⁵⁵ *ibid*

most important provision which creates a foundation for girls' right to education. Therefore, this part will focus on how Article 10 protects the right to education for women and girls. Eight sub-articles under Article 10 of the CEDAW require State Parties to take all appropriate measures to fulfill these obligations. The phrase "take all appropriate measures" gives the States room to devise their policies and laws. However, all these measures should aim for one goal which is to tackle the impediment to girls enjoying their educational rights.⁵⁶ Although the CEDAW leaves latitude for the States to develop their measures, they require each State to justify the level of appropriateness of measures and demonstrate their effectiveness and results when implementing these measures.⁵⁷ Throughout Article 10, the frequent use of the word "the same" indicates the spirit of Article 10 which is to ensure education "on a basis of equality of men and women." Furthermore, the Convention requires the States not only to recognize "the same" here as a term of equivalence or passing laws⁵⁸ but also need to develop equality policies with a substantive understanding.⁵⁹

The right to education under the CRC and CEDAW has some similarities. In general, the availability and accessibility aspects of education should be done under these treaties. However, the CEDAW is more specific to girls. Article 10 of the CEDAW obliges the States to provide "the same conditions" for access to all types of education (Article 10(a)), to enjoy curricula, examinations, teaching staff, facilities, and equipment at schools without any discrimination (Article 10(b)), to create "the same opportunities" in which girls could obtain "benefits from scholarships and study grants" (Article 10(d)), "access to programs of continuing education" (Article 10(e)) and "participate actively in sports and physical education"

⁵⁶ Marsha A. Freeman, Christine Chinkin, and Beate Rudolf, *The UN Convention on the Elimination of All Forms of Discrimination Against Women: A commentary* (Oxford University Press, Incorporated, 2012), 330.

⁵⁷ *ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

(Article 10(g)). These obligations are positive obligations that the States need to fulfill these requirements. Article 10 of the CEDAW also contains negative obligations that States should eliminate the discrimination against girls in school settings.⁶⁰ Furthermore, the CEDAW includes some new provisions which could have vast positive impacts on how the States create an equal environment in school for girls. Article 10(c) of CEDAW requires States Parties to steer clear of gender stereotyping in providing access to education and the content(s) of educational materials, such as textbooks or educational programs.⁶¹ The gender stereotypes in educational materials could lead to misleading information for both girls and boys. Since the position of males tends to be higher than females, gender stereotypes have a more negative impact on females. Also, Article 10(f) is worth noting because this provision requires States to facilitate girls continuing their studying after leaving prematurely. The occurrence of dropping out of school earlier for girls is a consequence of some unexpected reasons such as early marriage or child pregnancy. Therefore, the States should provide special programs or classes for these girls. This action could reduce the drop-out rates of female students and provide a remedial measure to help these girls overcome their inferiority complex and social pressures or stereotypes to enable the enjoyment of their right to education. Article 10(h) obliges the States to create a platform for girls about the information and advice on health and family planning. Without this awareness, girls may not completely understand the adverse consequences of early pregnancy or marriage for their education journey.

Last but not least, it is worth noting that under the CEDAW, the right of females in rural areas are mentioned in separate provisions. Females in rural areas have a lower quality of life than urban females, such as poor conditions, low income, illiteracy, facility of workplace or housing, and harmful practices. Their rights are difficult to protect due to interferences from some traditional and religious beliefs.

⁶⁰ Marsha A. Freeman, Christine Chinkin, and Beate Rudolf (n 56).

⁶¹ See n 56.

According to Article 14(b) of the CEDAW, women from rural areas should be guaranteed the right “to have access to information” about sexual and reproductive issues. This obligation meets the spirit of Article 10(f) in which a lack of information about sexual and reproductive issues could lead to unplanned events such as pregnancy and marriage for women in general. However, when it comes to rural women, unplanned events not only preclude them from the right to education but also create a cycle of poverty among generations. Therefore, the States are urged to strengthen the right to access information for women in rural areas through family education programs. Article 14(2)(d) focuses on the education of women in rural areas and suggests that all levels of education for women are equally important. The discrimination in education that the States should eliminate not only between men and women but also between women in rural areas and women in urban areas. Therefore, Article 14(2)d could be seen as a provision that reinforces Article 10(a). Both require state parties to provide “the same” educational system and opportunities for education for females, especially the ones in rural areas.

2.3. DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS, AND LINGUISTIC MINORITIES.

The right of persons belonging to minorities could be found separately under the UNDRM. It can be said that the UNDRM was inspired by article 27 of the ICCPR.⁶² However, the UNDRM is more elaborate, provides details and focuses solely on the right of persons belonging to minorities. Education for ethnic minority people is one of the vital means of preserving their identity.⁶³ Therefore, within the context of my thesis, the UNDRM is a great contribution to protecting the right to education for ethnic minority girls in rural areas.

⁶² Beiter (n 24) 146.

⁶³ *ibid* 142.

First, under Article 4(1), the UNDRM requires all States to ensure that all members of minorities “may exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law.”⁶⁴ Because persons belonging to minorities tend to be subjected to discrimination and be excluded from society, Article 4(1) obliges the States to protect and ensure that persons belonging to ethnic minorities can enjoy their fundamental human rights equal to the rest of society, not just ethnic minority rights. Article 4(3) obliges the States to take measures to ensure ethnic minority persons “have adequate opportunities to learn their mother tongue or have instruction in their mother tongue.”⁶⁵ However, there are arguments that this article is a weak obligation.⁶⁶ Because, first, it states that States “should” instead of “shall” take measures toward the obligation.⁶⁷ Second, it is deficient when it refers to the instruction in the mother tongue as alternatives.⁶⁸ Finally, the phrase “wherever possible” also lower the power of the obligation.⁶⁹ Article 4(4) also indicated the importance of reflecting on the history, tradition, and cultures of minorities through education, which should be called intercultural education. Within intercultural education, minority people could obtain “opportunities to gain knowledge of the society as a whole.”⁷⁰ This provision also is a measure to eliminate discrimination when the rest of society gains knowledge and shows respect towards another culture and language.

⁶⁴ UNGA, “Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities” (3 February 1992) A/RES/47/135, art 4(1).

⁶⁵ *ibid* art 4(3).

⁶⁶ Beiter (n 24) 17.

⁶⁷ *ibid*.

⁶⁸ *ibid*.

⁶⁹ *ibid*.

⁷⁰ See n 64, art 4(4).

CHAPTER 3: THE VIETNAMESE LEGAL FRAMEWORKS AND POLICIES

3.1. INTRODUCTION

In the previous chapter, this thesis summarizes essential aspects of international human rights law on the right to education for ethnic minority girls in rural areas. This chapter will examine how Vietnamese laws have respected, protected, and fulfilled the right to education for these girls under international law and how these laws have been implemented through policies. It is worth noting that Vietnamese laws do not have specific laws for the right to education for girls in general and ethnic minority girls in rural areas in particular. Therefore, in order to analyze the obligations of Vietnamese laws regarding the right to education for ethnic minority girls in rural areas, this chapter will consider four important legal documents, namely: the Constitution of the Socialist Republic of Vietnamese 2013 (hereinafter referred to as the Constitution), the Law on Education of Vietnam 2019 (hereinafter as the Education Law), the Law on Children of Vietnam 2016 (the Law on Children), and the Law on Gender Equality of Vietnam 2006 (the Law on Gender Equality).

3.2. VIETNAMESE LEGAL FRAMEWORKS AND POLICIES

3.2.1. THE CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM 2013

The Constitution is the supreme law of Vietnam. The current Constitution of Vietnam was adopted in 2013 and took effect in 2014. This document plays a central role in shaping the Vietnamese legal system. Because the Constitution is supreme, other laws should be built based on the Constitution's goals. After being a member state of the United Nations⁷¹ and the ratification of relevant treaties such as the ICESCR⁷²,

⁷¹ Vietnam became a member state of the UN on 20th September 1997

⁷² Vietnam ratified ICESCR in 1982

the CEDAW⁷³, and the CRC⁷⁴, the Vietnamese government has constantly changed the legal system to align it with international human rights law and in accordance with the situation of Vietnam.

When it comes to the right to education, the Constitution recognizes that the “Development of education is a primary national policy for the purposes of elevating the people's intellectual standards, training human resources and fostering talents.”⁷⁵ Within this context of Article 61, the Vietnamese government considers and prioritizes education as a long-term strategy to develop both people, society, and national economic growth. Under Article 61(2) of the Constitution, the Vietnamese government “guarantees compulsory primary education which is free of charge.” It also prioritizes investment in education to universalize other levels and forms of education and provide sustainable financial aid and scholarships. The third clause of Article 61 mentions the concerns of the Vietnamese government regarding educational development in rural areas and ethnic minority people. It obliges the State to pay extra attention to these groups of people when providing and developing education and vocational learning.

Regarding equal protection and non-discrimination, the Vietnamese government indicates in the Constitution the intention to respect and protect the equality of people in every aspect of life. This intention was deduced from Article 16, “all citizens are equal before the law” and “no one shall be discriminated against based on his or her political, civic, economic, cultural, or social life.” In line with Article 16, Article 14(1) indicates that “human rights in the political, civic, economic, cultural, and social fields are recognized, respected, protected and guaranteed in concordance with the Constitution and the law.” Thus, the right to education also is “recognized, respected, protected and guaranteed” under the Constitution.

⁷³ Vietnam ratified CEDAW in 1982

⁷⁴ Vietnam is the second country in the world and the first country in Asia to ratify the CRC in 1990

⁷⁵ The National Assembly, “The Constitution of the Socialist Republic of Vietnam” (2013), art 61, clause 1. Available at: < https://moj.gov.vn/vbpg/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=28814>

Furthermore, Article 26 of the Constitution also provides for equal rights in all fields for both males and females.⁷⁶ The State, society, and family are obliged to create an environment that facilitates women in realizing their varied abilities and roles in society.⁷⁷ These articles offer legal protection for the right to education for ethnic minority girls from rural areas. Furthermore, due to the fact that the Constitution has the highest validity in the legal system, Articles 14, 16, and 26 are a concrete foundation that ensures and protects the equality of the right to education for ethnic minority girls in rural areas in Vietnam.

3.2.2. THE OTHER RELEVANT LEGAL FRAMEWORKS AND POLICIES

This part will aim to provide Vietnamese laws and policies regarding the right to education for ethnic minority girls in rural areas. The analysis will be based on three crucial legal frameworks: the Education Law, the Law on Children, and the Law on Gender Equality. There are four categories that this thesis focuses on interpreting under Vietnamese laws: the equality of education, provisions about teaching language, financial burden, and early marriage. In order to implement the law, policies are important. Thus, this part is included in order to examine the commitment between the Vietnamese government's actions and the Vietnamese's obligation under international law through policies.

THE EQUALITY OF EDUCATION

In terms of the right to education for girls in general, the equality of education is a challenge. However, it gets harder for ethnic minority girls for many reasons such as gender stereotypes, ethnic minority cultures such as child marriage, boy preference, and low-income families. Therefore, the equality here could be understood to mean the equality between girls and boys in education. In order to provide legal protection for gender equality, the Law on Gender Equality was adopted to stipulate the goal of gender equality and

⁷⁶ The Constitution n 75, art 26, clause 1.

⁷⁷ *ibid* art 26, clause 2.

improve women's rights as well.⁷⁸ Under the Law on Gender Equality, the equality of education between girls and boys is protected in many aspects such as the age for schooling⁷⁹, the decision related to career major and job⁸⁰, and the access to educational policies.⁸¹ The equality of education is also protected under other laws such as the Law on Children⁸² and the Education Law.⁸³ The Education Law provides for open education system where everyone will obtain the same opportunities to access education at all levels and in all forms.⁸⁴ The right to education is recognized under article 13 of the Education Law. Furthermore, everyone has the right to be equal in learning opportunities “regardless of their ethnicity, religion, belief, sex, personal characters, family background, social status, economic circumstances.”⁸⁵ In addition, the Law on Children also clarifies one more time the importance of equal opportunities for study and education.⁸⁶

In order to implement the equality of education, policies were created, for example, Decision No. 201/2001/QĐ-TTg approving the Education Development Strategy for the period of 2001-2010, which stipulates that its objective is to substantially advance education quality, implementation of social justice in education and create opportunities for better education for all social strata, especially in areas with

⁷⁸ UN Committee on the Elimination of Discrimination Against Women, “Consideration of reports submitted by States parties under article 18 of the Convention seventh and eighth periodic reports of States parties due in 2011, Viet Nam” (2013) CEDAW/C/VNM/7-8, para 26.

⁷⁹ The National Assembly, “The Law on Gender Equality” (2006) art 14, clause 1. Available at: < <https://luatvietnam.vn/chinh-sach/luat-binh-dang-gioi-2006-29203-d1.html>>

⁸⁰ Ibid art 14, clause 2

⁸¹ Ibid art 14, clause 3

⁸² The National Assembly, “The Law on Children” (2016) art 16. Available at: < <https://luatvietnam.vn/lao-dong/luat-tre-em-2016-104818-d1.html>>

⁸³ The National Assembly, “The Education Law” (2019) art 4 and art 13. Available at: < <https://luatvietnam.vn/giao-duc/luat-giao-duc-2019-175003-d1.html>>

⁸⁴ Ibid art 4, clause 3.

⁸⁵ Huu Phuoc Ngo, “Gender Equality in Education – Comparative Perspective between International Law and the Legal System, its Practice in Vietnam” (2021) 7(2) Journal of Human Rights and Peace Studies < <https://so03.tci-thaijo.org/index.php/HRPS/article/view/248882>> accessed at 28 July 2022

⁸⁶ See n 82 art 16, clause 2.

difficulties.⁸⁷ Also, the National Action Plan on Education for All from 2003 to 2015 has regarded gender equality as a prioritized objective specified as “elimination of gender inequality in primary and secondary schools by 2005, achieving gender equality in education by 2015, ensuring girls’ full and fair access to and fine completion of basic education.”⁸⁸

THE PROVISIONS OF TEACHING LANGUAGE

Under the Education Law, although the official language of schooling is the Kinh (Vietnamese)⁸⁹, the Vietnamese government also facilitates and suggests ethnic minority groups use their own mother tongue to learn and communicate.⁹⁰ Though the linguistic obstacles affect all ethnic minority children in Vietnam’s rural areas, it impacts girls’ education more than boys for some reasons.⁹¹ For example, ethnic minority girls in rural areas do not have too many chances to practice Vietnamese in daily life when compared to boys.⁹² Boys could gain more public interaction through trading activities.⁹³ This advantage helps them to get familiar with Vietnamese. Accordingly, they can attend class with more confidence, understand educational materials better and perform better than the girls academically. Furthermore, concerning the inability to use Vietnamese, follow the lesson in class, and their low position in society, girls will increasingly feel motivated and unconfident about their ability in school.

⁸⁷ The Prime Minister of Government, “Decision No. 201/2001/QĐ-TTg approving the Education Development Strategy for the period of 2001-2010” (2001) Available at: < <https://thuvienphapluat.vn/van-ban/Giao-duc/Quy-dinh-201-2001-QD-TTg-phe-duyet-Chien-luoc-phan-trien-giao-duc-2001-2010-48949.aspx>>

⁸⁸ See n 78, para 133.

⁸⁹ See n 83, art 11, clause 1.

⁹⁰ *ibid* clause 2.

⁹¹ The Ha Chau, “The Potential of Education to Empower: The Perceptions of Ethnic Minority Women in Vietnam” (DPhil thesis, The University of Newcastle 2018).

⁹² *ibid* 70.

⁹³ *Ibid*.

The idea of learning in the mother tongue language of ethnic minority groups was first time mentioned in the Constitution 1946 “In local primary schools, citizens of ethnic minorities shall have the right to be educated in their own language.”⁹⁴ Up till now, the government has maintained effort to make this idea become a practical tool in order to fulfill the right to education for ethnic minority children in rural areas in general and girls in particular. Therefore, the government decided to create a vital policy which is Decree No. 82/2010/ND-CP of the Government dated 15 July 2010, about the rules of teaching and learning both verbal and written ethnic minority languages in the school setting.⁹⁵

FINANCIAL BURDEN

The conditions of education in rural areas are lower than in urban ones. For example, school locations are out of reach because of poor roads or because it takes ethnic minority children in these areas a long time to travel from their houses to populated areas where the schools are located.⁹⁶ Thus, ethnic minority children in these locations are not able to attend classes or pursue their learning journey. In recent years, the Vietnamese government has paid more attention to ensuring that facilities are available and accessible. When it comes to ethnic minority girls in rural areas, it gets more challenging due to some barriers such as gender bias, discrimination, and negative cultures such as child marriage. Therefore, the accessibility and availability of education require plenty of improvement and strategy from the government and policymakers when they try to fulfill the right to education for this group of girls through laws and policies.

⁹⁴ The National Assembly, “The Constitution of the Socialist Republic of Vietnam” (1946) art 15. Available at: <<https://thuvienphapluat.vn/van-ban/Bo-may-hanh-chinh/Hien-phap-1946-Viet-Nam-Dan-Chu-Cong-Hoa-36134.aspx>>

⁹⁵ Government, “Decree No. 82/2010/ND-CP of the Government dated 15 July 2010 about the Rules of Teaching and Learning both Verbal and Written Ethnic Minority Languages in the School Setting”. Available at:<[⁹⁶ The Asian Development Bank, “Viet Nam: A dream fulfilled in the Remote Mountains” \(2018\) accessed 28 July 2022 <<https://www.adb.org/results/dream-fulfilled-remote-mountains-viet-nam>>](https://thuvienphapluat.vn/van-ban/Giao-duc/Nghi-dinh-82-2010-ND-CP-day-va-hoc-tieng-noi-chu-viet-cua-dan-toc-108787.aspx#:~:text=Ngh%E1%BB%8B%20%C4%91%E1%BB%8Bnh%20n%C3%A0y%20quy%20%C4%91%E1%BB%8Bnh,t%E1%BA%BFng%20d%C3%A2n%20t%E1%BB%99c%20thi%E1%BB%83u%20s%E1%BB%91>.”</p></div><div data-bbox=)

Knowing that education is a national priority⁹⁷, to support the education system, the Vietnamese government invests over 20% of public funds for education in general.⁹⁸ Furthermore, the State supports the right to education for children and protects the equality of accessibility and educational opportunities in laws and policies.⁹⁹ These laws and policies ensure all children in Vietnam have a chance to enjoy the right to education and keep dropout rates low.¹⁰⁰ Under the Education Law, the State increases the accessibility and availability of education by investing in education.¹⁰¹ The majority of investment in education comes from the state budget¹⁰², however, the Vietnamese government facilitates and welcomes legal investment from other organizations both domestic and international ones.¹⁰³ However, there is no special budget spending for education in rural areas under national laws or policies.

The efforts to increase the availability of education under Vietnamese laws do not directly mention ethnic minority children in rural areas in general and girls from these places in particular. However, the government implemented a plethora of educational policies for ethnic minority groups, such as Decision No. 85/2010/QĐ-TTg on supporting policies for semi-boarding pupils and boarding schools for ethnic minorities or Decree No. 57/2017/NĐ-CP of the Government dated 9 May 2017 stipulates the preferential policies and supports for children in kindergartens, students, and students of ethnic minorities with few people.¹⁰⁴ Thanks to both policies, 876 boarding schools were established.¹⁰⁵ These schools for ethnic

⁹⁷ See n 75 art 61, clause 1.

⁹⁸ UN Committee on the Rights of the Child, “Combined fifth and sixth periodic reports submitted by Viet Nam under article 44 of the Convention” (2018) CRC/C/VNM/5-6, para 133.

⁹⁹ *ibid* para 132.

¹⁰⁰ *ibid*

¹⁰¹ See n 83 art 17.

¹⁰² *ibid* clause 3

¹⁰³ *ibid* clause 2

¹⁰⁴ Government, “Decree No. 57/2017/NĐ-CP of the Government dated 9 May 2017 stipulates the preferential policies and supports for children in kindergartens, students, and students of ethnic minorities with few people.” Available at: <
<https://vbpl.vn/bogiaoducdaotao/Pages/vbpq-van-ban-goc.aspx?ItemID=123126>>

¹⁰⁵ See n 98 para 136

minority children can connect students from the same background, such as ethnic minority groups, location, and family situation, and provide for their needs efficiently and effectively. Also, ethnic minority children can seek help in terms of books, school supplies or food, and rental accommodation as well.¹⁰⁶

EARLY MARRIAGE

Early marriage is one of the harmful practices amongst ethnic minority groups and a persistent issue in Vietnam.¹⁰⁷ Early marriage can reduce the chance of education for ethnic minority girls when they have to drop out of school because of child pregnancy or stay at home for household work. There are findings that education has an immeasurable impact on early marriage. For example, girls without education can involve in early marriage seven times higher than those who complete higher secondary education, or children whose parents obtain a good academic background have a lower risk of involving early marriage.¹⁰⁸ The Vietnamese government recognizes the adverse consequences of early marriage, especially for ethnic minority girls. Therefore, the government has addressed and taken action to prevent early marriage through laws and policies. Under The Marriage and Family Law, men and women marry after the age of 20 and 18 respectively.¹⁰⁹ Marriages that violate this provision are seen as unlawful marriages.¹¹⁰ Under the Law on Children, early marriage is addressed as a violation of the rights of children.¹¹¹ The Penal Code contains the sanction for people who organize and register for early marriage, which can be imprisoned (up to two years).¹¹² The government also has implemented policies to protect

¹⁰⁶ See n 104

¹⁰⁷ UN Children’s Fund (UNICEF), “Understanding Child Marriage in Viet Nam: Ending Child Marriage Empowering Girls” (2017) < <https://www.unicef.org/vietnam/sites/unicef.org.vietnam/files/2018-09/Child%20Marriage%20Eng.pdf>>

¹⁰⁸ *ibid* 5.

¹⁰⁹ The Nation Assembly, “The Marriage and Family Law” (2014) art 8. Available at: < <https://thuvienphapluat.vn/van-ban/Quy-en-dan-su/Luat-Hon-nhan-va-gia-dinh-2014-238640.aspx>>

¹¹⁰ See n 109

¹¹¹ See n 82, art 6

¹¹² See n 78, para 251

ethnic minority girls from early marriage. For example, Decree No. 32/200/ND-CP dated 27 March 2002 was passed to regulate marriage for ethnic minority groups. It was effective in eliminating obsolete traditions in marriage. Also, a national program addressing early marriage amongst ethnic minority communities from 2015 to 2025 also helps to reduce the practice of early marriage for ethnic minority girls.¹¹³ After five years of the National Program, the rate of early marriage in 2018 is 21,9% while that of 2014 is 26,6%. The rate of early marriage in the Central Highlands in Vietnam remains the highest. However, it decreased from 29,6% in 2014 to 27,5 in 2018.¹¹⁴

¹¹³ The Prime Minister of Government, “Decision No.498/QĐ-TTg on Reduction of Child Marriage and Inter-Family Marriage in Ethnic Minority Areas for the period 2015-2025” (2015). Available at: < <https://thuvienphapluat.vn/van-ban/Van-hoa-Xa-hoi/Quy-dinh-498-QĐ-TTg-2015-Giam-tao-hon-hon-nhan-can-huyet-thong-vung-dan-toc-thieu-so-2015-2025-271746.aspx>>

¹¹⁴ Committee for Ethnic Affairs, “Reducing Child Marriage and Consanguineous Marriage among Ethnic Minorities: Situation and Solutions” (2021) accessed 28 July 2022 < <http://dtg.ubdt.gov.vn/giam-thieu-tinh-trang-tao-hon-va-hon-nhan-can-huyet-thong-trong-dong-bao-dan-toc-thieu-so-thuc-trang-va-giai-phap.htm>>

CHAPTER 4: THE LIMITATIONS OF VIETNAMESE LAWS AND POLICIES

4.1. INTRODUCTION

With respect to international instruments on the right to education, the previous chapter affirms that the Constitution of Vietnam and the laws and policies recognize, respect, protect and fulfill the right to education for all Vietnamese citizens in general and the right to education for ethnic minority girls in rural areas in particular. With tremendous and continuing efforts to improve and implement better laws and policies, the Vietnamese government, as the duty-bearer, has achieved many noticeable achievements in fulfilling the right to education. However, there are numerous challenges to the process of fulfilling this right for ethnic minority girls in rural areas. Also, the limitations of the Vietnamese laws and policies regarding the right to education for ethnic minority girls in rural areas still exist. The aim of this chapter is to point out the limitation(s) of the Vietnamese laws and policies on the right to education for ethnic minority girls in rural areas based on four categories: gender equality, financial burden, language barrier, and early marriage.

4.2. GENDER EQUALITY

Gender equality, in general, is one of the biggest societal problems worldwide. For decades, governments have tried to solve gender disparities in many aspects of life, such as education, the jobs market, politics, and health. According to the Sustainable Development Goals (SDGs) of the UN, women play a vital role in many targets for a sustainable world.¹¹⁵ Therefore, the achievement of gender equality is “a necessary foundation for a peaceful, prosperous and sustainable world.”¹¹⁶ Gender quality in education is even more

¹¹⁵ UN Women, “SDG 5: Achieve gender equality and empower all women and girls” <<https://www.unwomen.org/en/news/in-focus/women-and-the-sdgs/sdg-5-gender-equality>> accessed 30 July 2022

¹¹⁶ UN Sustainable Development Goals, “Goal 5; Achieve gender equality and empower all women and girls” <<https://www.un.org/sustainabledevelopment/gender-equality/>> accessed 30 July 2022

critical when it is one of the shortest, fastest, and most sustainable measures in which gender equality in society could be ensured.¹¹⁷ Thus, when it comes to the right to education, many international human rights instruments require member states to take all appropriate measures in order to ensure the right to education for women and girls and eliminate gender disparities in the school setting.

However, discrimination in education based on gender still exists in many countries. For example, because of their low position in society, women in Africa cannot fully enjoy their right to education.¹¹⁸ Therefore, when it comes to the decision of educating either a son or a daughter, because of the poor or insufficient resources, African parents tend to prioritize the son or African parents in rural communities only send girls to primary school due to the same reason.¹¹⁹ In remote rural areas in Nepal, girls with disabilities even cannot attend classes because Dalit parents want to protect them from discrimination.¹²⁰ At the same time, the educational environment could be a good place to raise people's awareness of gender equality.¹²¹ Thus, in order to improve gender equality and empower women and girls in every aspect, governments should ensure gender equality in education as the first step. The implementation of gender equality in education needs to be enforced and ensured by national laws under international standards. Regarding gender equality in education, Vietnam has many achievements appreciated by the international community. However, when it comes to gender equality in education for ethnic minority girls in rural areas the limitations of Vietnamese laws and policies still exist.

¹¹⁷ Huu Phuoc Ngo (n 85) 209.

¹¹⁸ Djouguela Fotso Danielle, "The Right to Education for the Girl-child and Problems Facing Adolescent Girls in the Pursuit of Their Right to Education: A Focus on South Africa" (LLM Thesis, University of Pretoria 2012)

¹¹⁹ *ibid* 33-34

¹²⁰ Dev Datta Joshi, "Inclusive Education: A Tool for Social Change", *The Himalayan Times* (2018)

<<https://thehimalayantimes.com/opinion/inclusive-education-tool-social-change>> accessed 30 July 2022

¹²¹ See n 117

The Law on Gender Equality is one of the most important legal frameworks which ensures gender equality in general and gender equality in education. This law is consistent with article 10 of the CEDAW. However, under the concluding observations of the CEDAW 2015, the Committee pointed out some concerns about gender equality in education in Vietnam:

“The Committee notes with concern:

- (a) That there is a lack of monitoring and insufficient resources for the education sector;
- (b) That discriminatory gender biases and stereotypes are perpetuated in education materials;
- (c) That girls are segregated in traditional fields of study;
- (d) That girls belonging to ethnic minorities have limited access to all levels of education.”¹²²

According to the abovementioned paragraph and the existing laws about gender equality in education, the Vietnamese laws still lack special measures to enforce and ensure substantial gender equality in the right to education. There are no special measures to empower and support girls in education.¹²³ The Law on Gender Equality only states that males and females should be treated equally in the field of education without further guidance or more special treatment for girls. However, as a vulnerable group like ethnic minority girls in rural areas, girls require more attention from lawmakers and policymakers in order to obtain opportunities to enjoy their right to education. Low-income families cannot afford it and view an investment in daughters' education as a waste of money. Therefore, the lack of special measures or specific solutions under laws and policies for these girls will make it harder to prevent discrimination in the field of education and lead to infringements of the right to education of ethnic minority girls in rural areas.¹²⁴

¹²² UN Committee on the Elimination of Discrimination against Women, “Concluding observations on the combined seventh and eighth periodic reports of Viet Nam” (2015) CEDAW/C/VNM/CO/7-8, para 26.

¹²³ Huu Phuoc Ngo (n 85) 226.

¹²⁴ *ibid.*

For example, under the Education Law, article 85 aims to provide scholarships and financial aid for different groups. However, it does not identify ethnic minority girls in rural areas as a group that needs this support.¹²⁵ It is also worth mentioning that even though equality in education is stated in many provisions in the current laws and policies of Vietnam, gender-neutral language is a limitation that could reduce the legal protection of the right to education for ethnic minority girls in rural areas.¹²⁶ The expressions such as “everyone is equal”, “learning is the right, as well as the obligation, for citizens”, or “create conditions for each person to access education” are examples of provisions in which the difference between girls and boys are not clarified. The Committee of CEDAW also recognized that there is “the general lack of knowledge about gender equality persists” in Vietnam.¹²⁷ Although these laws and policies indirectly ensure equality in education, that is not clear enough to ensure the right to education for ethnic minority girls in rural areas.¹²⁸

4.3. LANGUAGE BARRIER

Language is a tool to express and contain thoughts and ideas.¹²⁹ In classes, the first language is important for children because it has a huge impact on how children interact with teachers and express their opinions about the educational environment, such as how teachers deliver lessons, their satisfaction with school facilities, and their needs to improve school settings.¹³⁰ Therefore, the language barrier could lead to poor academic results and decrease many opportunities in education for children.¹³¹ Ethnic minority children in Vietnam grow up in their own mother tongue and use it on a daily basis. As such, most of them find it

¹²⁵ Huu Phuoc Ngo (n 85), 226

¹²⁶ *ibid* 227. Also see n 9, 19.

¹²⁷ See n 122, para 8

¹²⁸ See n 85, 226

¹²⁹ Helen Pinnock, “Step Towards Learning: A Guide to Overcoming Language Barriers in Children’s Education” (Save the Children, 2009) 7.

¹³⁰ *ibid* 8.

¹³¹ Helen Pinnock (n 129) 5.

hard to understand and speak Vietnamese, the dominant language of Vietnam. The inability to use Vietnamese in daily life prevents ethnic minority children from understanding educational materials mainly created in Vietnamese.¹³² The CRC Committee also includes in the concluding observations that:

“Limited access to mother tongue-based education for ethnic minorities and indigenous groups; an insufficient number of ethnic minority and indigenous teachers and a lack of appropriate training for these teachers to teach in bilingual education, as well as the low quality of textbooks for children belonging to ethnic minorities or indigenous groups, which impedes the right of children belonging to such groups to learn adequately their distinctive language and preserve it”¹³³

The linguistic obstacles lower not only the ability to understand the information in the school setting of ethnic minority children but also their self-esteem when they cannot express themselves or interact with teachers, other Vietnamese students, and educational staff. One of the consequences of the language barrier is the high dropout rates amongst ethnic minority children in Vietnam.¹³⁴ In addition, the fact that in rural areas, ethnic minority boys have a higher position than girls because of son preference. Due to the lack of social interaction, girls often have lower academic results which could even worsen the position of girls in society. It also makes them feel humiliated or unconfident when going to school, thereby increasing female dropout rates.¹³⁵ Second, ethnic minority girls use their mother tongue for the purpose

¹³² See n 91, 24

¹³³ UN Committee on the Rights of the Child, “Concluding Observations: Vietnam. Considerations of reports submitted by States parties under article 44 of the Convention.” (2012) CRC/C/VNM/CO/3-4, para 67.

¹³⁴ *ibid.*

¹³⁵ See n 9.

of preserving their tradition.¹³⁶ According to DeJaeghere & Miske (2009), this tradition could limit ethnic minority girls in rural areas in terms of their ability to use Vietnamese in schools.¹³⁷

Realizing the negative impact of the language barrier on ethnic minority girls in rural areas, the Vietnamese government has issued a clear legal framework and implemented policies for tackling this problem. One of the most noticeable solutions to this problem is the implementation of bilingual education for children belonging to ethnic minority groups. However, Kosonen (2004) states that the bilingual education policy is not as successful as was expected.¹³⁸ In reality, there is a lack of competent teachers who can speak both Vietnamese and other ethnic minority languages fluently.¹³⁹ In addition, the bilingual concept has limitations when the education system still uses it as a subject instead of a language to teach and learn officially in class.¹⁴⁰ The outcome of the bilingual education policy raises a question about the feasibility of this policy. At the same time, there are plenty of limitations that could be found within the education of ethnic minority languages in the school setting, such as teachers, educational materials, and the process of administration, all of which have not met the quality and requirements.¹⁴¹ Without concrete and practical solutions to tackle the language barrier, ethnic minority girls in rural areas keep facing the threat of illiteracy and are stuck in the circle of poverty.

¹³⁶ The Ha Chau (n 91) 71.

¹³⁷ Joan G. DeJaeghere and Shirley J Miske, "Limits of and possibilities for equality: An analysis of discourse and practices of gendered relations, ethnic traditions, and poverty among non-majority ethnic girls in Vietnam" (2009).

¹³⁸ Kimmo Kosonen, "Language in education: Policy and Practice in Vietnam" (UNICEF, 2004)

¹³⁹ Ministry of Education and Training and UNICEF, Summary Report on Out-of-school Children 2016: Vietnam Country Study (2016 <<https://www.unicef.org/vietnam/media/2481/file/Main%20report%20Out-of-school-children-report-2016.pdf> >

¹⁴⁰ Constance Lavoie, "The Educational Realities of Hmong Communities in Vietnam: the Voices of Teachers" (2011) 8/2 Critical Inquiry in Language Studies < <https://www.tandfonline.com/doi/full/10.1080/15427587.2011.571348> > accessed 30 July 2022.

¹⁴¹ *ibid*

4.4. FINANCIAL BURDEN

Poverty is one of the biggest threats for education in rural areas for ethnic minority children in general and ethnic minority girls more specifically. While 53 ethnic minority groups comprise 13.8% of Vietnam's population, they account for 70% of the impoverished population in Vietnam (World Bank, 2009). Therefore, when it comes to education in rural areas and amongst ethnic minority communities, poverty is always a negative factor which prevents ethnic minority girls from enjoying their right to education.¹⁴² This problem exists not only in Vietnam but also in many countries in Africa. Lambert, Perrino, and Barreras (2012) state that parents in extremely difficult areas of Africa cannot afford both direct and indirect costs in education such as school fees, transportation, school uniforms, or extra contributions to schools. This reality leads to other problems in Africa. Parents prefer to send boys to schools because they believe in the cultural norm that boys could earn money back to support their families. However, girls only earn money through only early marriage instead of education.¹⁴³ This is prominent in Vietnam as well, especially amongst ethnic minority communities in rural areas. In low-income conditions, high cost of education, and gender bias, female education from ethnic minority parents' perspective is an investment with minimal economic value.¹⁴⁴ Additionally, poverty also leads to a consequence in which ethnic minority girls in rural areas have to work to support their families with household chores.¹⁴⁵ These girls need to stay at home to take care of their younger siblings or work on the farms, all of which are likely to limit and reduce the effectiveness of learning for girls. Thus, they tend to drop out of school or do not have higher achievement in academics.

¹⁴² The Ha Chau (n 91) 66.

¹⁴³ Djouguela Fotso Danielle (n 118) 42.

¹⁴⁴ The Ha Chau (n 91) 68.

¹⁴⁵ *ibid.*

Even though Vietnamese laws and policies have paid attention to tackling the problem of poverty and providing financial aid for ethnic minority children in rural areas¹⁴⁶, many girls cannot enjoy the right to education due to poverty. One of the root reasons for the limitation is the lack of policies that address the issues for ethnic minority girls in rural areas directly. From the situation mentioned earlier, many advantages prevent girls' educational opportunities. However, policies only provide the implementation in terms of poverty for ethnic minority children in general.¹⁴⁷ Without solutions to prevent the negative impact of poverty on girls' education, ethnic minority girls in rural areas cannot achieve higher results in academic performance and escape poverty. In addition, the limitation also comes from a financial aid system could be managed and coordinated effectively and equally for both boys and girls. Many scholarships or financial aid for ethnic minority children from educational policies do not provide sufficient sources.¹⁴⁸ Therefore, ethnic minority girls in rural areas and their families still cannot afford the high schooling costs.

4.5. EARLY MARRIAGE

One of the most harmful cultural practices of ethnic minority communities is early marriage. Early marriage could lead to many consequences for girls, such as separation from family and friends, the lack of freedom to communicate with the community, and especially reduced educational opportunities.¹⁴⁹ Early marriage is a result of gender discrimination which presupposes that girls do not have the same

¹⁴⁶ The Prime Minister of Government, "The National Target Program on Education and Training up to 2010", Decision 07/2008/QĐ-TTg (2008) focus on providing scholarships, learning equipment to minority pupils at national schools, minority pupils with financial difficulties, pupils residing in areas with socioeconomic difficulties; and strengthening vocational training, vocational support at elementary level or regular vocational training for rural workers, ethnic minority youth and the disabled. Available at: <https://thuvienphapluat.vn/van-ban/Giao-duc/Decision-No-07-2008-QĐ-TTg-of-January-10-2008-approving-the-national-target-program-on-education-and-training-up-to-2010-85208.aspx>

¹⁴⁷ *ibid.*

¹⁴⁸ Phan Minh Phung, "The right to education for ethnic minority people in Vietnam" (PhD Thesis, Graduate Academy of Social Sciences of Vietnam 2017) 117. Available at: < <https://thuvienso.quochoi.vn/handle/11742/44628>>

¹⁴⁹ Djouguela Fotso Danielle (n 118) 34.

position as boys in society.¹⁵⁰ It also is “endemic within a wide variety of communities in most countries of the world.”¹⁵¹ In addition, poverty could lead to early marriage as well when parents decide to marry girls off early “as a family survival strategy”¹⁵², so the family could gain some money after marriage from the husband or husband’s family. Recognizing the adverse consequences of harmful practices and early marriage in particular, both the CRC and the CEDAW contain specific obligations to the elimination of harmful practices.¹⁵³ Additionally, the joint GR/GC by the CEDAW and the CRC on harmful practices again emphasizes the consequences of early marriage.¹⁵⁴

In Vietnam, early marriage is a cultural tradition and belief that limits the fulfillment of the right to education for ethnic minority girls in rural areas.¹⁵⁵ The work of Nguyen and Wodon (2012) states that early marriage could lower the participation of girls in school while DeJaeghere and Miske (2009) believe that early marriage is a traditional practice that is “a result of patriarchal norms and gendered roles.”¹⁵⁶ Most Vietnamese girls married under 20 come from ethnic minority areas where early marriage has been practiced for many years.¹⁵⁷ The consequences of early marriage hand in hand with another detrimental effect on girls’ education: early pregnancy. Also, girls who engage in early marriage suffer from social discrimination.¹⁵⁸ Therefore, Vietnamese laws strictly prohibit forced and early marriage strictly through many legal provisions. However, early marriage still exists in many rural areas in Vietnam.¹⁵⁹ It is likely

¹⁵⁰ UN Committee on the Elimination of Discrimination against Women and on the Rights of the Child, “Joint general recommendation No 31” of the CEDAW and “general comment No 18 of the CRC” on “Harmful Practices” (2014) CEDAW/C/GC/31/CRC/C/GC/18, para 6

¹⁵¹ Ibid para 8

¹⁵² Djouguela Fotso Danielle (n 118) 36.

¹⁵³ See (n 150) para 31

¹⁵⁴ Ibid para 20-24.

¹⁵⁵ See (n 107)

¹⁵⁶ Joan G. DeJaeghere and Shirley J. Miske, “Limits of and possibilities for equality: An analysis of discourse and practices of gendered relations, ethnic traditions, and poverty among non-majority ethnic girls in Vietnam” (2009).

¹⁵⁷ See (n 107)

¹⁵⁸ See (n 133) para 29.

¹⁵⁹ See (n 122) para 16.

that the implementation of the prohibition of early marriage is not effective. According to the joint CG/CC, this problem can happen:

“Even where laws explicitly prohibit harmful practices, prohibition may not effectively be enforced because the existence of customary, traditional or religious laws may actually support harmful practices.”¹⁶⁰

The lack of a special state agency that is responsible for controlling early marriage also could be another reason for the failure of the prohibition.¹⁶¹ For example, ethnic minority girls do not know where or whom to report this problem or seek legal protection. The Committee of CEDAW also recognizes that it is difficult for women and girls to access legal aid, especially for women and girls with disadvantages (language, low income) from ethnic minority groups when legal aid is not free of charge.¹⁶² Furthermore, the lack of policy on raising awareness about early marriage and its consequences in ethnic minority languages for parents and society could hamper the effectiveness of legal protection of early marriage for ethnic minority girls in rural areas.

¹⁶⁰ See (n 150) para 43

¹⁶¹ See (n 107)

¹⁶² See (n 122) para 10.

CHAPTER 5: THE RECOMMENDATIONS AND THE CONCLUSION

5.1. INTRODUCTION

In previous chapters, at both international and national levels, the right to education is recognized as an important right that should be protected, respected, and fulfilled for children, especially marginalized groups, such as ethnic minority girls in rural areas in Vietnam. As a dedicated member of many international human rights instruments, Vietnam has adopted compatible laws and policies to tackle the existing problems of the right to education for ethnic minority girls in rural areas. Vietnam's adoption of these laws and policies shows that education for children in general and ethnic minority girls in rural areas in particular is a priority to foster the development of the whole country as provided in the Constitution of Vietnam. However, as a developing country with a weak economy and existing negative cultural factors amongst ethnic minority communities, such as child marriage and boy preference, Vietnamese laws and policies on the right to education for ethnic minority girls in rural areas remain limited. Additionally, the CEDAW Committee mentioned that one of their concerns in Vietnam was that:

“The implementation of laws and policies remains weak owing to the lack of accountability mechanisms and insufficient human, technical and budgetary resources and unawareness of the concept of substantive gender equality by lawmakers and policymakers and government officials”.¹⁶³

Therefore, this chapter aims to provide some recommendations for both Vietnamese laws and policies while paying more attention to policies. After proposing some solutions for Vietnamese laws and policies

¹⁶³ See (n 122) para 8.

in terms of the right to education for ethnic minority girls in rural areas, this chapter concludes by restating the main findings, discusses the limitations, and indicates future research within the scope of the thesis.

5.1. RECOMMENDATIONS FOR THE LEGAL FRAMEWORKS

The Vietnamese government has implemented the protection of the right to education for ethnic minority girls in rural areas through laws, especially the Education Law, the Law on Children, and the Law on Gender Equality. However, the legal system related to the right to education in Vietnam for both the Kinh group and ethnic minority groups is incomplete and inconsistent in some aspects.¹⁶⁴ In light of the limitations of the laws, the overlapping of educational regulations for the two groups, and the disadvantage of ethnic minority groups in terms of education such as infrastructure, poverty, and linguistic or cultural norms, this thesis proposes that a new legal framework regulating and enforcing the right to education for ethnic minority groups could be taken into consideration.¹⁶⁵ In contextualizing the education of ethnic minority groups, it needs to draw more attention to the protection of the right to education for ethnic minority girls in rural areas. For example, the Education Law for Ethnic Minority groups sets out explicit provisions about people and organizations will be held accountable for the infringements of the right to education of ethnic minority girls in rural areas. There must be concrete sanctions on persons, organizations, and educational staff that violate the right to education for ethnic minority girls in rural areas. Also, my thesis believes that the legal framework on education for ethnic minority people in general

¹⁶⁴ Phan Minh Phung (n 148) 84.

The author stated: For example, The Education Law does not clearly define in detail what is the right of learners or a lack of mentioning the violations and forms of handling violations of the right to education such as discrimination in education, the usage of inappropriate curriculum, failure to maintain a transparent and effective mechanism for monitoring the right to education

¹⁶⁵ *ibid* 116. Phan Minh Phung indicated that compared to international standard, the Education Law of Vietnam is not enough to protect the right to education for ethnic minority groups, especially the mechanism to ensure implementation. The laws only recognized this right for ethnic minority people and the responsibility of family, social organizational and the State in terms of this right but do not stipulate a mechanism to ensure this right or handling measures for violation of education right of ethnic minority people.

and ethnic minority girls in rural areas in particular could help the mechanism to monitor the right to education, detect violations, provide solutions, and tackle problems quickly and effectively.

5.2. RECOMMENDATION FOR THE POLICIES

Chapter 3 shows that the Vietnamese government has recognized the importance of the right to education and has taken actions to tackle and fulfill the right to education for ethnic minority girls through laws and policies. However, ethnic minority girls in rural areas still lack access to (quality) education. For example, the illiteracy rate amongst girls from ethnic minority groups is roughly 27%, while that of boys is around 14%. In addition, only 33% of ethnic minority girls joined high school at the right age.¹⁶⁶ According to the report on ethnic minority policies in the period from 2006 to 2014, Vietnam has more than 130 policies supporting the development of ethnic minority communities in multiple aspects.¹⁶⁷ However, these policies lack conformity with the reality of ethnic minority groups in terms of education.¹⁶⁸ To enhance this problem, this part of the thesis will propose recommendations for educational policies for ethnic minority girls in rural areas.

Although the Vietnamese government has constantly put efforts into overcoming the challenges of gender equality in education in recent years, the discrepancy in education between girls and boys amongst ethnic minority communities in rural areas still exists. Only 3.4% of the total policies and programs for ethnic minority people are related to gender equality.¹⁶⁹ This means that ethnic minority girls are put in a disadvantageous position. Since boy preference has existed as a harmful practice for a long time amongst

¹⁶⁶ Viet Nam News, “Ethnic minority women need more support” (2019) <<https://vietnamnews.vn/society/523914/ethnic-minority-women-need-more-support.html>> accessed 1 August 2022

¹⁶⁷ Ủy ban Dân tộc, “Báo cáo kết quả rà soát chính sách dân tộc giai đoạn 2006-2014 và đề xuất chính sách giai đoạn 2016-2020, định hướng đến 2030” (2014 Hanoi)

¹⁶⁸ The Ha Chau (n 91) 85.

¹⁶⁹ See (n 166)

ethnic minority communities in Vietnam, gender discrimination is a big issue that requires many efforts to change the perspective of the whole society, not only in education but in many aspects of life. Under Article 5 of the CEDAW, States are required to take action to achieve “the elimination of prejudices and customary and all other practices based on the idea of the inferiority or the superiority of either of the sexes or stereotyped roles for men and women.”¹⁷⁰ Thus, boy preference needs to be addressed as a society-wide problem requiring urgent attention from the Vietnamese to ensure the right to education for ethnic minority girls in rural areas. “Gender neutral” language in the context of educational policies for ethnic minority students is a factor that continually escalates the existing problem of gender inequalities in education for ethnic minority groups.¹⁷¹ To overcome gender discrimination in education amongst ethnic minority students in rural areas, more policies directly addressing the problems confronting ethnic minority girls and gender equality in both society and education in Vietnam are due. There is some evidence of the direct policies for particular groups of girls in other countries, which help girls receive more opportunities to fulfill their education and raise people’s awareness about gender equality. For example, to promote school attendance for rural girls in Guatemala, CARE sponsored a program in which women can save or earn money for their daughters’ education through an account called Education Savings Groups (ESG).¹⁷² This program allows rural women to improve their families’ finance through a credit-and-saving strategy.¹⁷³ Simply, rural women will receive a loan from CARE then they will repay through the ESG account. This account will contain their saving for their daughters’ education. They only can make withdrawals from the account for educational expenses. To receive this loan and its benefits

¹⁷⁰ UNGA, “Convention on the Elimination of All Forms of Discrimination Against Women” (18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13), art 5(a).

¹⁷¹ See (n 9) 19.

¹⁷² Cynthia Prather, “Using Incentives to Improve Girls’ Participation in School” (1998 USAID’s Girls’ and Women’s Education Activities) 3.

¹⁷³ *ibid* 5

about low-interest rates or extra incentive support from the bank¹⁷⁴, rural women have to sign a letter in which they promise to keep their daughters in school, repay on time and make withdrawals only for academic purposes.¹⁷⁵ This program not only safeguard girls' education but also empower the role of women in the family because they can make decisions and contribute to the family's finance.¹⁷⁶ Furthermore, the requirement of cooperation with school and fathers also makes this program into a tool that raises people's awareness about the importance of girls' education.¹⁷⁷ The Indian government also adopted a saving scheme called Sukanya Samriddhi Yojana (SSY) in which parents will build a fund for future education and marriage expenses for their daughters.¹⁷⁸ Within this fun, Indian girls can become financially independent and empowered once they are mature for their own life decisions.¹⁷⁹

The educational policies for ethnic minority languages in the school setting have developed in recent years. However, the effectiveness of these policies does not meet the requirements of ethnic minority children in schools. Children, especially girls, still find it hard to understand and follow lessons in Vietnamese in class, which reduces their self-esteem and motivation to attend classes.¹⁸⁰ In the context of language barriers to education for ethnic minority girls in rural areas, this thesis proposes a solution in which the Vietnamese government will pay for the full tuition for ethnic minority girls with the condition that these girls will become teachers and then return to contribute to their communities. This idea was inspired by Mother tongue-based multi-lingual education (MLE) programs in Bangladesh. These programs help Adivasi children in Bangladesh can attend school in their mother tongue and get familiar

¹⁷⁴ Cynthia Prather (n 172) 4.

¹⁷⁵ *ibid.*

¹⁷⁶ *ibid* 5-6.

¹⁷⁷ *ibid* 4

¹⁷⁸ Canara HSBC Life, "Sukanya Samriddhi Yojana (SSY): All you need to know" <<https://www.canarahsbclife.com/blog/child-plan/sukanya-samriddhi-yojana.html>> accessed 1 August 2022.

¹⁷⁹ *ibid.*

¹⁸⁰ See (n 9) 18.

with Bangla (second language) after building a solid foundation in their first language.¹⁸¹ One of the key elements for the success of the MLE programs is the training process of local teachers.¹⁸² Within the existence of local teachers in classrooms, Adivasi children are more confident in learning and expressing their thought, especially girls.¹⁸³ Furthermore, local teachers also treat all children and girls in particular more fairly in classrooms.¹⁸⁴ However, within MLE programs in Bangladesh, the recruitment of local teachers could be a problem. This is because local teachers are employed “by the necessary qualifications and prerequisite.”¹⁸⁵ It could lead to some problems, including the inability of local teachers to deliver better knowledge, information, or lack of essential skills when teaching and communicating with students. Therefore, the thesis believes that training local teachers since they are ethnic minority girls is a better solution. Because they need to meet the requirement of being a decent teacher when they receive financial aid to better satisfy the needs of local teachers based on their languages. If this can be done effectively, more girls will obtain higher education and a stable career to break the cycle of poverty. Furthermore, their successes in education are good role models that can boost self-esteem for ethnic minority girls in rural areas in terms of the pursuit of education.

The right to education belongs to economic, social, and cultural rights. It means that the ability to implement the right depends heavily on each country's economy. Although Vietnam is a developing country that still faces many economic obstacles, the Vietnamese government has paid attention to providing school facilities, food, books, and clothes for ethnic minority children in rural areas. The Vietnamese educational system requires seven basic fees for education, including tuition fees, contribution

¹⁸¹ Terry Durnnian and Shishur Khamatayan project, “Mother Language First. Towards achieving EFA for Adivasi children in Bangladesh.” (Save the Children UK, 2007) 10.

¹⁸² *ibid* 15.

¹⁸³ *ibid*.

¹⁸⁴ *ibid* 15.

¹⁸⁵ *ibid* 30.

fees, textbooks, uniforms, learning tools, extra classes, and other fees such as food and transportation, and only exempts only tuition fees for primary school level. These education-related fees are concerns of the CRC Committee about education for ethnic minority children in Vietnam. The CRC Committee states:

“The fact that, despite the Constitutional provision for free-of-charge primary education, education-related fees are in fact being imposed, affecting the poorest, and mostly children of ethnic minorities and migrant children”¹⁸⁶

In addition, boy preferences still exist amongst ethnic minority communities, therefore, when it comes to financial burden, ethnic minority parents in rural often choose to send their boys to school and keep their daughters at home. To tackle this problem, incentives such as scholarships, books, or food will be a priority since there is research showing that incentives promote “positive effects on enrolment and attendance and can have a sustained, and even an intergenerational, impact on participation.”¹⁸⁷ In the same spirit as recommendations on gender equality for education, ethnic minority girls in rural areas need specific education policies to tackle their financial burden. For example, one of the standout programs in Bangladesh is called The Female Stipend Program (FSP). This program directly benefits girls’ education in rural areas in Bangladesh.¹⁸⁸ Through this program, families are encouraged to send girls to school thanks to an allowance. These rural girls need to meet the condition such as “maintaining of 75 percent attendance, obtaining a minimum of 45 percent in annual school exams, and remaining unmarried up to the Secondary School Certificate examination in Year 10.”¹⁸⁹ This program helped more than 4 million

¹⁸⁶ See (n 133) para 67.

¹⁸⁷ Cynthia Prather (n 172) 2.

¹⁸⁸ Janet Raynor, “Educating Girls in Bangladesh: Watering a Neighbour’s Tree?”, *Beyond Access: Transforming Policy and Practice for Gender Equality in Education* (Oxfam GB, 2005) 85.

¹⁸⁹ *ibid* 86.

girls have a chance to complete their education and stay at school until higher levels.¹⁹⁰ The FSP is a recommendation for educational policies in Vietnam when it comes to the financial burden of education for ethnic minority girls in rural areas. Financial aid comes with conditions, ethnic minority girls in rural areas will receive more advantages and opportunities to stay at school. This also prevents or delays harmful practices like early marriage.

Early marriage amongst ethnic minority groups is not only a consequence of cultural norms but also a result of other problems, including poverty, gender stereotypes, child pregnancy, or lack of education for both parents and children.¹⁹¹ This problem remains challenging, especially for ethnic minority girls in rural areas. According to the work between UNFPA, UNICEF, and UN Women, 18,8% of females living in rural areas get married before the age of 18, and 21,1% of ethnic minority women are victims of early marriages.¹⁹² Why does it persist even though the government has forbidden early marriage by law? Due to the lack of a mechanism to track illegal marriage, parents can hide early marriage so they can avoid the sanction.¹⁹³ According to article 5 of the CEDAW about harmful practices¹⁹⁴, States have to pay more attention to ending this cultural norm by appropriate measures. As such, a policy of curriculum in textbooks about sex education, marriage law, marriage information, or the right to education should be included,¹⁹⁵ especially in ethnic minority languages for ethnic minority girls in rural areas. Within this policy, ethnic minority girls will be fully aware of their rights, their choice of life, and alternative ways to protect themselves before early marriage and its consequences. The policy should be developed with a

¹⁹⁰ Janet Raynor (n 188) 87.

¹⁹¹ See (n 107) 7-8.

¹⁹² *ibid.*

¹⁹³ *ibid* 3, 11.

¹⁹⁴ See (n 170).

¹⁹⁵ UN Committee on the Elimination of Discrimination against Women, “General recommendation No 36” on “the Right of Girls and Women to Education” (2017) para 24.

view to empowering girls' position in deciding their life. The Vietnamese government should also consider educational policies for ethnic minority girls "who have left school prematurely"¹⁹⁶ because of unexpected events such as child marriage or pregnancy.¹⁹⁶ Educational programs in life skills also need to consider as non-formal education for these girls.¹⁹⁷ For example, in Kenya, the government introduced the Re-Entry Programs which allows and facilitates girls to return to school after giving birth.¹⁹⁸ Policies for school re-entry for pregnant girls also exist in many countries in Africa, such as Zambia, Tanzania, and Malawi.¹⁹⁹ All these policies contribute to closing the gap between the two genders in education in Africa and enhancing education for girls in places where harmful practices like child marriage still exist.

5.3. CONCLUSION

Through five chapters, the thesis has sought to point out the limitations of Vietnamese laws and policies on the right to education for ethnic minority girls in rural areas. To find out the limitation, in chapter two, the thesis examined the fundamental international human rights instruments relevant in the context of the right to education of ethnic minority girls in rural areas. Under these instruments, we can see that the right to education of ethnic minority girls in rural areas is recognized and protected at an international level. Based on the international standard, Vietnam should respect, protect and fulfill the right to education by legalizing this right under national laws and policies. With their continuing efforts, step-by-step, the Vietnamese government improves and ensures the right to education for children in general and ethnic minority children in rural areas in particular. However, the right to education for ethnic minority girls in

¹⁹⁶ See (n 150) para 63.

¹⁹⁷ See (n 150) para 64.

¹⁹⁸ Elimu Yetu Coalition, "The Challenge of Educating Girls in Kenya", *Beyond Access: Transforming Policy and Practice for Gender Equality in Education* (Oxfam GB, 2005) 115.

¹⁹⁹ Joy Nafungo, "School Re-entry for Pregnant Girls: Policy vs Practice in Eastern and Southern Africa" (2022), Global Partnership <<https://www.globalpartnership.org/blog/school-re-entry-pregnant-girls-policy-vs-practice-eastern-and-southern-africa>> accessed 1 August 2022.

rural areas is a different story since these girls are vulnerable and face many challenges in their pursuit of education. In this thesis, four main problems have been identified in this respect. There are gender discrimination, the language barrier, the financial burden, and early marriages. Through chapter 3, the thesis has examined the Vietnamese laws and policies in light of these four challenges. After that, chapter 4 points out the adverse effect of the four challenges and limitations of Vietnamese laws and policies in addressing them.

In conclusion, the limitations come from the lack of special measures (both in laws and policies) for ethnic minority girls in rural areas. Without support from laws and policies, the right to education is easily violable. In addition, the right to education for ethnic minority girls in rural areas is also weakened because of the scarcity of policies that helps to improve human and financial resources for education for ethnic minority girls in rural areas. The lack of teachers who are trained to have the ability to speak ethnic minority languages and the lack of financial resources to provide textbooks and information in classes in ethnic minority languages both prevent girls from obtaining their rights. Finally, the incompatible policies with the reality amongst ethnic minority groups and the lack of a mechanism to investigate and evaluate the effect of policies also are the limitations of the Vietnamese laws and policies when dealing with the process of fulfilling the right to education for ethnic minority girls in rural areas. The thesis also has proposed some solutions for both the Vietnamese laws and policies, which are the own contribution of the thesis's author during chapter 5.

In coming to this conclusion, the writer is fully aware of the thesis limitation. Existing studies in Vietnam about the right to education tend to focus on this right for ethnic minority people, children, or people with disabilities but not on ethnic minority girls in rural areas. In particular, there are no in-depth studies that

examine and seek the limitations and shortcomings of the Vietnamese law and policies in terms of the right to education for ethnic minority girls in rural areas. Therefore, it is a new field that needs more time for research and exploration to tackle salient issues in the near future. However, in the context of the background of ethnic minority girls in rural areas, the writer is of opinion that the right to education for these girls is an important field that requires more attention from lawmakers and policymakers in Vietnam. In light of this, the thesis wishes to emphasize the importance of the right to education, especially for these marginalized groups such as ethnic minority girls in rural areas in Vietnam. The writer hopes that more scholars will contribute to the right to education for ethnic minority girls in rural areas in Vietnam and jointly find more viable solutions to tackle this problem.

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