

RELATIONSHIP BETWEEN CHILDREN'S RIGHT TO STUDY AND CHILD LABOR – REFLECTION FROM ETHNIC MINORITY GROUPS IN VIETNAM

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Right to study is one of the most important human rights, which is considered as the “right to empower” - the right as a basis for the exercise of other rights. For ethnic minority children, who are vulnerable persons with disadvantageous position (both in terms of being children and ethnic minorities), the exercise of right to study becomes even more important. There is no doubt that learning is the most effective way to fully develop children’s personality and talent, providing them equal development and job opportunities as well as creating them a good future. However, the reality of ethnic minority child labor in Vietnam is a problem that seriously affects the exercise of children's right to study, causing many negative consequences for themselves, their families, and society. Therefore, it is necessary to research, analyze and evaluate the interaction between the exercise of children's right to study and ethnic minority child labor; on that basis, proposing solutions to minimize child labor and ensure the right to study of ethnic minority children.

1. Overview of policies and laws of Vietnamese Government on child labor and the right to study of ethnic minority children

The Communist Party of Vietnam and the Government have consistent views and policies on child labor and guaranteeing the right to study of children, especially those of ethnic minorities. This is shown clearly and consistently in the Party's documents as well as the State's Constitution and the laws. The Constitution 2013 stipulates: "Children are protected, cared for and educated by the Government, family and society; are participated in children's issues. Infringement, torture, ill-treatment, neglect, abuse, labor exploitation and other acts infringing upon children's rights are strictly prohibited" (Article 37); "Citizens have the right and obligation to study" (Article 39); "Development of education is the top national policy to improve people's knowledge, develop human resources, and foster talents. The Government prioritizes investment and attracts other investment sources for education; step by step universalize secondary education. The Government gives priority to the development of education in mountainous regions, islands, ethnic minority regions and regions with extremely difficult socio-economic conditions..." (Article 61).

Vietnam is the first country in Asia and the second country in the world to ratify the United Nations Convention on the Rights of the Child. In order to ensure children's right to study and to protect children from labor exploitation, Vietnam has acceded to the Convention on Economic, Social and Cultural Rights (1966); ratify two basic conventions of the International Labor Organization (ILO) related to child labor, including: Minimum Age Convention (138, 1973) and Worst Forms of Child Labor Convention (Convention 182, 1999).

Vietnam has proactively internalized the provisions of the above-mentioned international conventions. Up to now, basically, the national legal system on child care and protection has been relatively complete, ensuring the consistency, synchronization and harmony with international law, forming a comprehensive legal corridor to address children's issues, including the education and labor rights of ethnic minority children. Law on Children 2016 stipulates: "Children have right to

education and study to develop comprehensively and bring out their best potential; have equal learning and educational opportunities; to develop talents, aptitudes, creativity and inventions (Article 16); “Children have right to be protected in all forms from exploitation; not "working" before working age, or "doing" heavy, hazardous or dangerous work as prescribed by law; not be assigned a job or a workplace that adversely affects the child's personality and 'comprehensive development' (Article 26); “The Government has policies to support, ensure all children go to school, minimize the drop-out rate; adopt policies to support children with special circumstances, children from poor households, near-poor households, ethnic minority children, children living in border communes, mountainous regions, islands and communes with extremely difficult socio-economic conditions to access to universal education, inclusive education, vocational training and job placement appropriate to their age and labor code (Article 44). Labor Code (amended in 2019) contains the provisions related to minor employees. For example, it is prohibited to illegally use minor employees (Article 8); the principles of using minor employees (Article 144). Education Law 2019 contains provisions on the rights and obligations of citizens to study (Article 13); regulations on universalization of education and compulsory education (Article 14); responsibilities of the family in facilitating the completion of 'compulsory education' (Article 90). Penal Code 2015 (amended and supplemented in 2017) contains provisions on violations of regulations on the employment of employees under 16 years old (Article 296), etc. In addition, the Government, ministries, and localities have also amended, supplemented or promulgated many other sub-law documents to create a complete legal framework on ensuring children's right to study and minimizing child labor.

2. The interaction between the implementation of children's right to study and child labor in Vietnam ethnic minority

Ensuring the right to study for children in general and ethnic minority children in particular is not only meaningful way to equip children with knowledge and skills and create opportunities for children to develop comprehensively but also to limit, minimize and eliminate child labor. On the contrary, children's difficulty in accessing school it is the direct cause of the increase in child labor. As a result, their educational attainment is limited, children's capacities are reduced while the cycle of poverty is increased, which is detrimental to generations and the whole nation.

There are 54 ethnic groups in Vietnam, of which the Kinh people account for the majority with ratio of 85.3%, the rest are 53 ethnic minorities with ratio of 14.7%. Among the total number of ethnic minorities, people under the age of 15 account for 29.7% (24.3% nationwide).

Over the years, the Government has focused on investing in education and training in ethnic minority regions. The Government implements many equitable policies in accessing education for ethnic minority children such as: promote universal education; eliminate the illiteracy; strengthening Vietnamese for preschool children and primary school students; develop the network and scale of specialized schools; infrastructure improvement, and so on. Thanks to the attention of the Party and the Government, 100% of communes in ethnic minority regions have primary schools and secondary schools, of which more than 90% of schools and classrooms are built solidly, the "white commune" status in terms of education has been removed, kindergarten classes were also initially formed and developed in highland communes; 100% of communes have reached the standard of primary school universalization, many places have reached the standard of secondary school universalization¹. Statistics over the past time have shown that the general enrolment rate of ethnic minorities is 100.5% at primary school, 85.8% at secondary school

¹ Committee for Ethnic Minority Affairs, General Statistics Office of Vietnam: general enrolment rate *Ibid*, page.45

(secondary school) and 50.7% at high school (high school) ². The rate of children going to school at the correct primary school age of 53 ethnic minorities is 96.9%³. Net enrolment rate at secondary schools and high schools is 81.6% and 47.0%, respectively. Comparing to 2015, the opportunity to go to school according to the prescribed age of ethnic minority children is better and better guaranteed. (In 2015, net enrolment rate of ethnic minority children at the correct age was 88.8% at primary school level, 72.5% at secondary school level, and 32.2% at high school level), in which, the most obvious is the high school level (Net enrolment rate increased by 14.8 percentage points)⁴. Ensuring the net enrolment rate is a prerequisite for ensuring the right to study for children and it is also an effective solution to prevent and minimize child labor.

In order to ensure children's right to study better, authorities in ethnic minority provinces have fully implemented policies for ethnic minority students, such as: providing free textbooks, student notebooks, school supplies, health insurance, scholarships, credits for students, priority in enrollment, training by particular address. Nationally, there are 1.2 million ethnic minority households receiving financial or material support, accounting for 36.9% of the total number of ethnic minority households residing in communes in ethnic minority regions⁵. Through the implementation of support policies of the Government, many ethnic minority

² General enrolment rate is the number of students enrolled in a general education level (regardless of age) per 100 people of school age for that level of education. According to the provisions of the Law on Education, the general education system of Vietnam is divided into 3 levels with specific regulations on time and age as follows: (1) elementary school is conducted for five school years from grade 1 to grade 5 and the age of students entering grade 1 is 6 years old; (2) the secondary school level is conducted in 4 years from grade 6 to grade 9 and the age of students entering grade 6 is 11 years old; (3) at high school level is conducted in 3 school years from grade 10 to grade 12 and the age of students entering grade 10 is 15 years old

³ Net enrolment rate is the number of school-age students of a general education level who are enrolled in that grade per 100 people of school age of that grade

⁴ Committee for Ethnic Minority Affairs, General Statistics Office of Vietnam: *ibid.* page 74

⁵ Committee for Ethnic Minority Affairs, General Statistics Office of Vietnam: *ibid.* Page 50

children are able to study, increasing the rate of children going to school, contributing to the minimization of child labor rate.

In addition to the above results, the ensuring the right to study of ethnic minority children in Vietnam is still facing many difficulties and challenges. This is also one of the basic causes leading to the increase in ethnic minority child labor. In general, the educational level and learning performance of ethnic minority students are still low; there is a big disparity in education for ethnic minority and Kinh children. Network of schools, facilities, teaching equipment, and policies for ethnic minority students have not yet met the requirements of developing the scale and improving the quality of education. Ratio of ethnic minority children attending school at the correct age is quite low (about 70% including primary schools, secondary schools and high schools). Ratio of ethnic minority children outside school in 2019 was 15% (nearly 2 times higher than the ratio of out-of-school children in the whole country and nearly 3 times higher than this rate of Kinh⁶)⁷. Ratio of ethnic minority children outside of school also varies greatly among schooling levels, the higher the education level, the higher this ratio increases. At the primary school level, there are about 2 children not go to school per every 100 children of school age; the corresponding figure at secondary school level is 13 students, at high school level is 46 students. The fact that ethnic minority students at age of high school do not attend school is common among most ethnic groups. 27 out of 53 ethnic minorities have more than 50% children who do not attend school⁸.

The National Survey Report of the Ministry of Labour, Invalids and Social Affairs, the ILO (International Labor Organization) in Vietnam and the General

⁶ Ethnic minority children outside of school are ethnic minority children who are of general school age (born in the period 2001-2012) but have never attended or dropped out of school.

⁷ Committee for Ethnic Minority Affairs, General Statistics Office of Vietnam: *ibid.* Page 75

⁸ Committee for Ethnic Minority Affairs, General Statistics Office of Vietnam: *ibid.* Page 76

Statistics Office of Vietnam shows that currently, Vietnam has 1,754,066 children engaging in economic activities. (also known as children working, children participating in labor), accounting for 9.1% of total number of children at age of 5 - 17 in the whole country⁹. Among economically active children, 1,031,944 children are identified as child laborers, accounting for 5.4% of total number of children at age of 5 - 17, accounting for 58.8% of children participating in economic activities. Among child laborers, 519,805 children are identified as child laborers doing heavy, hazardous and dangerous work, accounting for 2.7% of total number of children at age of 5-17, accounting for 29.6% of total economically active children and accounting for nearly 50.4% of total child laborers.

Participating in labor negatively affects children's enjoyment of the right to study and access to education. Child labor loses the learning and career development opportunities, leading to a vicious cycle of poverty. The more engaged in labor, the less chance of going to school children have. Ratio of children who do not go to school in the group of economically active children is 37%, increasing to 50% in the group of child labor and 61.4% in heavy, hazardous and dangerous child labor¹⁰. Among 1,031,944 child laborers, nearly a quarter are still attending school and 48.6% have dropped out and 1.4% have never attended school. Ratio of child laborers at age of 5-12 who do not attend school is nearly 9%, increasing to 38% in the age group of 13-14 and increasing to 75.8% at age of 15-17¹¹. Majority of children involved in child labor are children aged 15 -17, however, more than 18% of child labor is at age of 5-12.

⁹ Not all economically active children are child laborers. child labor is a child engaged in labor contrary to the law and labor activities hinder the physical, intellectual, personality and comprehensive development of children

¹⁰ International Labor Organization, General Statistics Office of Vietnam, Ministry of Labour, Invalids and Social Affairs (2020): *National Survey on Child Labor in 2018*, page 11. See https://ilo.org/wcmsp5/groups/public/---asia/--ro-bangkok/---ilo-hanoi/documents/publication/wcms_764355.pdf

¹¹ International Labor Organization, General Statistics Office of Vietnam, Ministry of Labour, Invalids and Social Affairs (2020): *Ibid*, page 49

Among child laborers in Vietnam mentioned above, about 84% of child laborers are concentrated in rural regions and more than half of them work in the agricultural, forestry and fishery sectors¹². Other regions also have a lot of child laborers, such as: services, industry and construction.

At present, there are no officially published survey data on ethnic minority child labor, but the data shows that 84% of child labor is concentrated in rural regions while the ratio of ethnic minority children outside the school in 2019 is 15% (46% in high school). These data show that the situation of ethnic minority children labor in Vietnam is quite serious and complicated.

The children's participation in production and business activities is increasing continuously, the ratio of children attending school is decreasing at the same time. Compared with the national average enrolment rate of 94.4%, only half of child laborers attend school. This figure is even lower in the group of child labor who do heavy, hazardous and dangerous jobs. Only 38.6% of ethnic minority child laborers work in agriculture, forestry, services, industry, construction and household works. Ethnic minority children, especially those from poor families, have had to work in the field, livestock and poultry raising; collecting water, collecting firewood, doing housework, babysitting, taking care of family members, or serving in tourism since childhood. A painful reality has been happening in highland tourist destinations. From early morning to late evening, whether it's cold or hot, you can see the image of ethnic minority children often stalking tourists to sell goods, being forced to beg or taking pictures with guests to ask for money and gradually giving up their academic road. The early participation in the labor has affected ethnic minority children's right to access to education, depriving them of the opportunity of studying and developing their age-appropriate personality. This context puts vulnerable ethnic

¹² International Labor Organization, General Statistics Office of Vietnam, Ministry of Labour, Invalids and Social Affairs (2020): Ibid, page 47

minority children to the situation of exploitation, abuse, exhaustion, even trafficking, violence and other potential risks and dangers.

Children joining labor early can create immediate material benefits for their families, but in the long term, those benefits cannot compensate for the disadvantages they have to bear and the negative consequences that their family and society have to face. During an online seminar co-organized by the Ministry of Labour, Invalids and Social Affairs, the International Labor Organization (ILO) and the United Nations Children's Fund (UNICEF) in Hanoi on June 12, 2020, Ms. Rana Flowers, UNICEF Representative in Vietnam affirmed: *“Children trapped in child labor are deprived of their childhood, their health is compromised, their chances of escaping poverty are lost, and face more risks. When children drop out of school, they can earn a small amount, but they can be poor all their life”*¹³.

There are many reasons that lead ethnic minority children to difficulties in accessing education and being forced to work early. First of all, due to the limited awareness and the lack understanding of laws and policies on children's rights of families, employers, labor brokers and children. Many ethnic minority families do not fully understand the value of children's right to study; they think that studying is meaningless, it would not help them to get a job, so they let their children drop out of school or if their children go to school, they don't monitor and tutor their children, which results in the low studying performance and dropping out of school. Secondly, poverty is also the cause that makes it difficult for ethnic minority children to access education, and is the main reason for children to join the labor force early. Currently, rate of poor and near-poor households among ethnic minority households is 35.5%, 3.5 times higher than the national rate (10.2%)¹⁴. There are 23.8% of ethnic minority households living in unstable or simple houses; 1.4% of hamlets,

¹³ See <http://baochinhphu.vn/Utilities/PrintView.aspx?distributionid=397970>

¹⁴ Committee for Ethnic Minority Affairs, General Statistics Office of Vietnam: *ibid.* Page 49

corresponding to 809 hamlets, have not yet used electricity¹⁵. Poor households have fewer resources to invest in education and child care. Poverty makes households vulnerable, especially, in the past time, poor ethnic minorities have been affected by economic shocks, floods, droughts, epidemics. When they have to face more and more difficulties in living, it is understandable that they must minimize living expenses and find sources of income. That increases pressure on their children, forcing them to drop out of school and engaging them to join the workforce early. Education is an important solution to break the cycle of poverty in ethnic minority regions, but it is the poverty that causes an increase in child labor, depriving ethnic minority children of the chance to access the educational system. Third, the inequality in access to education for ethnic minority children also roots from the regions' specific difficulties, including difficult terrain, the distance between school and home, unavailable means of transportation; many outdated customs; language barrier; problem of child marriage (21.9%), inbreeding (5.6% 0); malnutrition, disease and so on. The inspection, examination and handling of violations related to violations of children's learning rights and child labor are still inadequate...^{16 17}

Thus, despite a relatively complete legal framework, strong commitment and practical actions of the Government and the community, ensuring the right to study, minimizing ethnic minority children labor in Vietnam is still limited, inadequate and facing many difficulties and challenges.

3. Solutions to ensure children's right to study and minimize ethnic minority child labor in Vietnam

¹⁵ Committee for Ethnic Minority Affairs, General Statistics Office of Vietnam: *ibid.* Page 39

¹⁶ The distance from home to the nearest primary schools and secondary schools for ethnic minorities is 2.2 km and 3.7 km, respectively. However, the distance to the high schools is still relatively far, on average 10.9km to go to school (only students of the ethnic groups: O Du and Ro Mam have to travel a long distance to go to school, respectively 52.2 km and 44.3 km)

¹⁷ Committee for Ethnic Minority Affairs, General Statistics Office of Vietnam: *ibid.* Page 61.62

In order to ensure children's right to study and minimize ethnic minority child labor in Vietnam, it is necessary to drastically implement the following solutions:

Firstly, propagating and disseminating policies and laws on both children's rights and the importance of learning and minimizing child labor.

It is necessary to diversify forms of propaganda suitable to population regions and target groups, especially ethnic minority families with difficult circumstances and high risks. Promoting propaganda for parents to be well aware of children's right to study; well aware of the immediate and long-term harms and consequences of child labor; understanding the extent to which children can participate in labor, which appropriate jobs can they do to help their families in their age, recognizing the violation of the law of forcing children drop out of school or work early.

Raising awareness and responsibilities of Party committees and authorities at all levels in formulating and implementing child protection programs, especially in ethnic minority regions; improving the capacity of child workers, the community and children themselves in child protection. It is necessary to develop a mechanism to mobilize participation and strengthen interdisciplinary cooperation in ensuring children's rights and minimizing child labor.

Secondly, completing and fully implementing policies and laws on children's right to study and to minimize child labor.

Reviewing policies and laws, detecting legal gaps, inappropriate and unfeasible regulations to propose the National Assembly, the Government and relevant ministries to amend, supplement and complete the policy and law to ensure the right to study and prevent and combat child labor. In particular, it is necessary to specify sanctions to handle the behavior of parents who do not create conditions for their children to study or force their children to drop out of school or join the workforce early.

Continuously strengthen the child protection system and labor inspectorate; To step up the inspection and examination, to promptly detect and strictly handle acts that violate children's right to study, and illegal use of child labor.

Thirdly, increasing investment and development of education in ethnic minority regions, ensuring the right to study for ethnic minority children

Ensuring the right to study and the abolition of child labor are two closely related issues. When children's right to study is guaranteed, it will have a positive effect in minimizing child labor. On the contrary, children's early participation in labor will have negative impacts, limit their right to study, even deprive them of learning opportunities. Therefore, an important solution is to increase investment and develop education in ethnic minority regions, ensuring the right to study for children.

Focusing on investing resources to solidify and standardize school and classroom facilities at all levels in ethnic minority regions to meet the requirements of improving education quality. In the immediate future, it is necessary to prioritize investment in building new schools for communes where kindergartens are unavailable, upgrading school facilities, and focusing on facilities investment for individual schools to increase the mobilization scale children go to class; prioritizing capital sources to gradually improve the network of general schools, meet the needs of children of all ages. Implementing the policies on mobilizing and encouraging social resources to invest in education and training development in ethnic minority regions, gradually reducing the disparity in educational development between regions and regions. Implementing the priority policies, support for ethnic minority students, policy families, poor households, etc. Particular attention should be paid to school dropouts and working children to enable them to return to school or attend alternative educational programs.

Fourthly, continuing to implement hunger eradication and poverty reduction and improve the living standards of ethnic minorities.

Implementing livelihood support for families with difficult circumstances is an important prerequisite for ethnic minority children to have the opportunity to enjoy their right to study and to minimize child labor. In addition, it is necessary to eliminate outdated customs that negatively affect children's right to study, forcing them to work early; eliminating child marriage and consanguineous marriage which adversely affects children's mental and physical health, reduces children's chances of going to school, increases the risk of poverty, and reduces the quality of human resources in the future .

Fifthly, strengthening international cooperation in the protection of children's rights and the reduction of ethnic minority child labor.

Continuing to promote international cooperation activities in order to exchange experiences with other countries and international organizations; mobilizing resources, through international cooperation projects to facilitate ethnic minority children and their family to access to education, vocational training, health care, and other support services, in order to ensure their rights to study and minimize child labor.

Vietnam has made strong political commitments, promulgated policies and legal documents on ensuring children's right to study and preventing and combating child labor in general and ethnic minority children in particular, the important issue now is to improve law enforcement capacity and effectively implement those programs and policies. Continuing to mobilize the active participation of all actors in society: families, schools, communities, businesses, trade unions, social organizations and children themselves in ensuring the right to study and minimizing child labor. Synchronously implementing the above solutions will definitely build a safe and healthy environment, provide equal development opportunities, ensure the

right to study, minimize child labor, and help ethnic minority children in Vietnam to realize their dreams and aspirations for a bright future ./.