

OBLIGATIONS TO IMPLEMENT INTERNATIONAL CONVENTIONS IN ENSURING THE RIGHTS OF ETHNIC MINORITIES IN VIETNAM TODAY

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***Abstract:** In the context of extensive international integration, ensuring the rights of ethnic minorities in Vietnam today is always associated with the obligation to effectively implement international human rights conventions, especially is the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1965). Legal and practical analysis, as well as the justification for the solution to this problem, are the central task of the article.*

***Keywords:** Implementation obligations; International conventions; Rights of ethnic minorities.*

1. Legal provisions on the obligation to implement international human rights conventions

In the context of human rights recognized as a global concept and a common standard of achievements for nations and peoples, the International Human Rights Code stipulates, states are obliged to perform. international human rights conventions to which they are party by appropriate legislative, executive, judicial and other means. In legal nature, the obligation to implement international human rights conventions is binding on member states and applies

to all state organs at any level. This is an obligation in accordance with the general provisions of international law. Article 27 of the Vienna Convention on the Law of Treaties of 1969 states that any country cannot invoke the provisions of national law as a justification for not implementing treaties¹. This includes content and procedural obligations; obligation to measure and obligation to result; activeness and passiveness. States parties may impose measures that restrict some rights in the convention, but the restrictions must be subjects to the following conditions: i) The restrictive

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measures are specified in national law; ii) The restrictions must not be contrary to the nature of restricted rights; iii) The restrictions are for the purpose of promoting common well-being in a democratic, rule-of-law society (Article 4, International Covenant on Economic, Social and Cultural rights, 1966). States parties should refrain from violating the rights of the conventions and any restrictions on rights must also abide by the provisions of the convention. The Oversight Committee of the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD, 1965) explained: Article 5 of the Convention (providing for civil, political and economic, social and cultural rights) requires member states to ensure that the exercise of human rights and freedoms does not Be racist. In the event of a State party imposing limits on the rights provided for in Article 5 of the Convention, it shall ensure that the objective and the effect of such limitations are not inconsistent with the provisions of Article 1. of the Convention². In addition, countries need to take proactive and active measures to effectively ensure rights, not to invoke economic, cultural and social difficulties to deny the exercise of rights in the public. to wish. Several international human rights conventions require member states to use: all appropriate measures (International Covenant on Economic, Social and Cultural Rights,

1966), special measures (International Convention on the Elimination of All Forms of Racial Discrimination, 1965), Provisional Special Measures (Convention on the Elimination of All Forms of Discrimination Against Women, 1979) to implement the convention. However, not all countries are fully aware of the content and meaning of the above positive measures.

In order to fulfill obligations to implement international human rights conventions, general and common measures applied by states parties should include: amending and supplementing national laws to meet the standards recognized in conventions; developing a plan for the implementation of the conventions; establishing national bodies to support the implementation of the conventions; mainstreaming human rights in development policies and programs in order to achieve substantial results. Or, it is necessary to complete some procedures, such as: raising awareness of the convention through propaganda and education; make periodic reports on the implementation of the convention; respect for the international oversight mechanism of the competent authorities ... For ensuring the rights of minority groups, the United Nations has emphasized the need for more effective implementation of national human rights instruments. Health related to the rights of people of ethnic minorities to belong to ethnicity,



Equal rights to development between ethnic groups is a vivid expression of human rights in Vietnam. Source: vovworld.vn.

race, religion, or language. However, reality shows that the implementation of this obligation often appears difficulties and obstacles in terms of perception and concept. For example, some ICERD member countries have misconception that, a country is not required to comply with the ICERD because for them ethnic discrimination does not exist in their territory. Or, there was an inadequate awareness that, once integrated into the highest legal document (the Constitution), there was no need for any legislative action. In the ICERD Implementation Report, some countries focus only on legislative action, but ignore executive, judicial and other measures³ ... These phenomena all reflect emptiness. suitable in implementing measures to implement ICERD, as well as other international human rights conventions.

2. Measures to implement international conventions in ensuring the rights of ethnic minorities in Vietnam and the issues raised

Member of ICERD and most of the important human rights conventions related, such as: International Covenant on Civil and Political Rights 1966, (ICCPR); International Covenant on Economic, Social and Cultural Rights 1966, (ICESCR); 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) ... Vietnam has taken measures to comply with the requirements of the convention, such as: a) Promulgating the law on international treaties, including provisions on the organization of the implementation of international treaties to which Vietnam is a member (for example, Chapter VIII, International

Treaty Law 2016); b) Internalizing the principles and regulations in international treaties on the rights of ethnic minorities. (Constitution 1992 and 2013 as well as many other legal documents recognized the rights of ethnic minorities in Vietnam in accordance with international human rights conventions); c) Apply special / specific measures to improve the EM rights indicators, especially economic, social and cultural rights, and for ethnic minorities with very few people, ethnic groups living in remote, isolated and extremely difficult areas; d) Implement Periodic National Report on Ethnic Minorities' Rights in accordance with the Charter or Convention mechanism (Vietnam has developed a National Report on the implementation of ICERD in 1993 (2-5 times).), 2000 (times 6-9), 2012 (times 10-14) and currently preparing a report 15-18. In addition, the rights of ethnic minorities are also reflected in the National Report according to Universal Periodic Review (UPR)); dd) Respect monitoring activities and implementing international recommendations on the rights of ethnic minorities; e) Conduct research, education, dissemination activities of ICERD and relevant international treaties; and perform a number of other procedures as required by the competent international committees. The suitability and effectiveness of the above measures in the doi moi period have been confirmed by many meaningful results

on ensuring the rights of ethnic minorities in Vietnam as specified in ICERD and some treaties. international human rights, both in the political and civil realm as well as in the economic, cultural and social fields.

However, the implementation of ICERD and international treaties related to ensuring the rights of ethnic minorities in Vietnam is posing a number of issues such as: *First*, international principles, standards, mechanisms for ensuring the rights of ethnic minorities; procedures related to the implementation of ICERD and a number of international human rights treaties have not been properly propagated and disseminated, especially the planning, implementation, and monitoring staff of officials and civil servants. policies and laws on ethnic groups at central and local levels. In addition, a number of political, social and professional organizations; Press agencies, media and ethnic minorities are also not aware of these issues; *Second*, the provisions on some EM rights in the current Vietnamese legal system are not fully compatible with international human rights treaties in terms of: i) content and standards of rights; ii) legal form; iii) and security measures; *Third*, the interpretation of the rights of ethnic minorities under international treaties is incomplete, slow to innovate, lack of specific standards, so it is difficult to design appropriate security measures; *Fourth*, confusion in

the process of applying measures to realize the rights of ethnic minorities in accordance with provisions in international conventions; the criteria for evaluating and monitoring the assurance of the rights of ethnic minorities are still very general and unreliable; *Fifthly*, in general, the National Report of Vietnam in accordance with Article 9, ICERD and the Report in accordance with Article 79 (Clause 6) and Article 81 (Clause 8), the Law of International Treaty 2016 does not yet meet the requirements of time, content and form; lack of necessary and basic information on the ways of the State to respect, exercise and protect the rights of ethnic minorities; lack of information on the extent of enjoyment or denial, violating the rights of Ethnic Minorities in all areas. It can be said that these reports still lack the comprehensiveness and essence, so they have not really contributed to the renewal process of implementing international treaties related to ensuring the rights of ethnic minorities in Vietnam.

3. Propose some solutions

To organize the effective implementation of international conventions in ensuring the rights of ethnic minorities in Vietnam, it is necessary to focus on some of the following basic solutions:

a) *Promote the interpretation of ICERD and relevant international human rights conventions*

Interpretation of a human rights convention is the authority of member states, it is not only important for raising awareness of those who are obliged to organize the implementation of the convention, but also also decides the correctness and feasibility of applicable legal documents on ensuring the rights in accordance with the convention. *In legal terms*, in the coming time, Vietnam needs to supplement provisions on interpretation of international treaties in the Law on International treaties 2016 to be consistent with the Vienna Convention on the Law of International Treaties in 1969 (Section 2, Articles 31-33 provide for the interpretation of treaties). On the other hand, it is necessary to concretize Article 159 of Vietnam's Law on Promulgation of Legal Documents in 2015. According to Clause 2, Article 159, Standing Committee of the National Assembly, on its own or at the request of agencies, organizations and the members of the National Assembly as prescribed in Clause 1 of this Article, decides the interpretation of the Constitution, Laws and Orders. The current problem is the lack of specific measures to develop official documents, issued by the Standing Committee of the National Assembly on interpretation of international human rights conventions to which Vietnam is a state party. *In the scientific sense*, the interpretation of the convention needs to satisfy the following principles: *First*, the treaty needs to be

interpreted in good faith in accordance with the usual meaning given for the treaty terms in the original and note. to the object and purpose of the treaty (Paragraph 1, Article 31, Vienna Convention on the Law of International treaties, 1969). *Second*, respect for the purpose of the convention as specified in Article 5 of both Conventions of 1966. For ethnic minorities, it is important to emphasize the purpose: **Ensuring the rights of ethnic minorities in accordance with the Constitution, international laws and national laws will positively contribute to socio-political stability, promote friendship and cooperation between country, nation.** *Third*, ensure the logic between the contents of the convention as well as the logic between human rights conventions. *Fourth*, explanations are based on context. It should be emphasized that ICERD as well as other human rights conventions are living documents that need to be understood and applied in the conditions of modern society, in order to turn static and immutable provisions into living terms. They are capable of coping and effectively impacting challenges that always arise on human rights. This approach is associated with the assessment of the impact of the convention on the improvement of the rights of ethnic minorities in specific national contexts.

b) Continue to fully internalize the provisions of ICERD and related

conventions on ensuring the rights of ethnic minorities

Currently, Vietnam lacks a highly effective and comprehensive legal document on popularizing ethnic minority rights and special rights both in the civil, political, economic, social and literary fields. (The 2013 Constitution only provides for the general principles and some specific rights of ethnic minorities). If the internal legislation is limited to Government documents, or is dispersed in some other laws, it will not meet the requirements of ensuring the rights of ethnic minorities under the obligations of ICERD and related conventions. Prospects and feasibility of internal legislation and establishment of a sustainable legal framework for comprehensive assurance of the rights of ethnic minorities in Vietnam today can be addressed by passing the Law on Ethnic Minorities. Therefore, it is necessary to include this content in the next working term of the National Assembly. In the time when the Law on Ethnic Minorities has not been built, the issue of internal law should be integrated, amended and supplemented into existing laws to specify the responsibilities of ministries, central agencies and localities. ethnic group, ethnic work, ethnic policy. At the same time, there is a need to ensure consistency between the enactment of laws, policies and implementation guidance documents; as well as the consistency

between legal documents related to ensuring the rights of ethnic minorities in accordance with the provisions of ICERD and related conventions.

c) Attaching importance to developing quality national reports on the situation of ensuring the rights of ethnic minorities

National reporting is a mandatory legal procedure in cooperation with the Charter and Convention mechanisms on human rights. Under the provisions of Article 9, ICERD: States Parties undertake to submit to the Secretary-General of the United Nations a report on legislative, administrative, judicial and other measures to implement the provisions of this Convention for the Committee to review: a) Within one year of the entry into force of this Convention for that Contracting State; b) After two years and whenever requested by the Commission. The Commission may also request other information from the member states⁴. In order to implement these commitments, first of all, the competent authority needs to understand the significance and importance of developing a National Report on ICERD implementation. Fix the situation of submitting reports slowly compared to regulations. On the other hand, emphasis should be placed on improving the quality of reporting on the implementation of the rights of ethnic minorities, including reporting procedures and processes. According to the guidance of

the ICERD Monitoring Committee, the Report must contain main contents such as: General information about the State, the general framework for the protection and promotion of human rights, general information on non-discrimination and equality, measures to comply with the instructions. Request updates on the actual implementation of the Convention, progress achieved, indicators for the realization of human rights; respond to concerns raised by the Convention Committee in its conclusions, recommendations, and mechanisms at national level and social participation. The report should follow the recommendations of the ICERD Supervisory Commission. In addition, activities such as consultation with agencies, social organizations, and non-governmental organizations need to be followed during the reporting process. Currently, through cooperation with UN agencies or regional organizations, Vietnam can help improve the quality of national reports on the implementation of international conventions on ensuring the rights of ethnic minorities.

d) Implementation of Recommendations of the Commission on Conventions and of the Council of Human Rights

Recommendations of the Convention Committees or the Human Rights Council are of particular importance, both as a function of extending the practical significance of

international human rights conventions, and as a guiding function, supervise the implementation of these conventions in specific national contexts. General recommendations and specific recommendations for each country form part of the Convention, it brings laws to life, has a strong impact on the improvement of human rights indicators. In Vietnam, in order to effectively implement the conventions in ensuring the rights of ethnic minorities, the Committee for Ethnic Minorities and the competent authorities in EM issues need to attach importance to the implementation of the Committee's recommendations. Conventions, in particular the ICERD and Recommendations of the Human Rights Council (HRC) under the UPR Mechanism. In order to effectively implement this solution, it is necessary to carry out the following works: *Firstly*, make statistics and classify recommendations approved by the Government of Vietnam related to ensuring the rights of ethnic minorities in all fields, including governance, civil as well as economic, social and cultural. For example, the Human Rights Council's recommendation for UPR, cycle 3 (2019), as: How the rights of ethnic minorities who do not speak common language are disseminated to them and how is the justice protected in Vietnam; Strengthening vocational education through access to finance for ethnic minorities; Supporting ethnic minority

women to access vocational education and financial resources; Legal support for ethnic minorities. *Secondly*, the Committee for Ethnic Minorities is assigned as the lead agency, on that basis, to coordinate with relevant ministries, branches and localities to implement the recommendations. For example, the implementation of recommendations No. 207, 208, 209, 210, 211, 212, 213, 217, 219 (UPR, cycle 2) is related to the rights of ethnic minorities, as assigned by the Prime Minister. The lead agency is the Committee for Ethnic Minorities; The coordinating agency is the Ministry of Justice, the Ministry of Education and Training, and concerned ministries and branches at the request of the host agency. However, this assignment needs to be improved; overcome the overlap when implementing recommendations in practice; *Third*, monitor and evaluate the implementation of recommendations. This activity also needs a specific assignment (possibly Ethnic Council). This task requires collecting objective and appropriate information and having periodic assessments, in accordance with human rights standards, serving to complement and improve policies and mechanisms to ensure the rights of Ethnic minorities in Vietnam today.

d) Application of special / special measures

Characteristics of culture, language, beliefs, religion, vulnerability

and inequity in the enjoyment of human rights require states, when the situation requires. For settlement, special and specific measures will have to be applied to help the ethnic minority groups enjoy equal rights and fundamental freedoms under the law. Special measures are bound under Article 1, Clause 4; Article 2, Clause 2 and Article 7, ICERD. According to the ICERD Monitoring Committee, the concept of "special measures" includes measures that some countries describe as "specific policies" or "firm measures", "firm action. determination ", for the purpose of expressing the meaning of the type of measure adopted to limit the objective, eliminate existing inequalities and prevent further inequality from arising. "Special measures" show a context-based approach, attaching importance to specific analysis methods for each specific situation and encouraging countries to apply common principles and standards on EM rights. specific political, economic, social and cultural circumstances of the country or nation. The application of special measures is a mandatory legal obligation of ICERD member states. Currently, Vietnam needs to continue to add mechanisms and policies specific to some ethnic minority groups, especially ethnic minority groups with very few people, ethnic groups living in remote and border areas, regions with special difficulties aim to create conditions for ethnic minority

groups to be treated equally, improve their lives, and preserve their cultural characteristics and traditions. In general, the rights of ethnic minorities are often associated with resolute action by the Government, ministries and local authorities at all levels. The Government, ministries and sectors can take special measures to mobilize long-term investment resources for ethnic minority and mountainous areas, with a clear orientation to increase the enjoyment of equal rights. equality of ethnic minorities. Meeting this requirement needs to create a sustainable "legal framework", by clearly defined in the Law on Ethnic Minorities, to facilitate state agencies such as the Government, ministries, branches and local governments to implement. Specific policies and measures based on the real situation of regions, regions and localities in order to promote a creative and effective response in ensuring the rights of ethnic minorities in Vietnam.

e) Strengthening international cooperation in research, communication and education on ICERD and related conventions to ensuring the rights of ethnic minorities

In our country today, the issue of research, propaganda and education about these conventions continues to have many challenges and limitations in method and experience; adequate resources have not been mobilized; the nature of the interdisciplinary and multi-

branch has not been given adequate attention; The research results have not provided really scientific justifications and reasonable recommendations for the amendment and supplementation of laws and policies; and has not yet built up specific criteria for monitoring, evaluation, and inspection of ensuring the rights of ethnic minorities in accordance with the conventions. Responsible agencies at central and local levels, cadres, civil servants and public employees in the field of ethnic affairs do not fully understand the provisions of international conventions on ensuring the rights of Ethnic minorities; Besides, many ethnic minority groups, especially groups in areas with extreme difficulties, geographically isolated, less fluent in Mandarin, lack of understanding of the rights recognized by international conventions ... Therefore, the current requirement is through partnerships with a number of UN agencies, regional organizations, countries or non-governmental organizations to improve research capacity. Completion of laws, policies and institutions to ensure the rights of ethnic minorities. International cooperation in propaganda and education should include: Dissemination and introduction of ICERD and relevant international human rights instruments; general comments and recommendations of the Committee overseeing the Convention; recommendations of international mechanisms. Towards a

long-term vision and is in line with the EM region development strategy, the Ethnic Council of the National Assembly, the Government Committee for Ethnic Minorities, research institutes, schools need to develop and implement projects. international cooperation in the field of research, propaganda and education on ICERD as well as related conventions for people in national ethnic law and policy makers and enforcement; political, social and professional organizations; military forces, police; judicial officers; officials and employees of the health and education sectors; press agencies, media and ethnic minorities.■

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