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The Question of 'Montagnard' Autonomy  
in the Central Highlands of Vietnam

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## **Abstract**

The autochthonous ethnic groups in the Central Highlands have developed a pan-ethnic identity as 'Montagnards', and have since the Indochina wars claimed political and cultural control over their territory through various autonomy movements. In light of increasing ethnic tensions after demonstrations and uprisings in 2001, the policy response by the Vietnamese government will have far-reaching consequences to the region.

This paper addresses the question of Montagnard autonomy in the Central Highlands in a threefold manner: (1) assessing ethnic autonomy as a minority and indigenous right in international law and drawing comparative experiences from other socialist states; (2) the historical and regional circumstances in the Central Highlands and the Montagnards' basis for autonomy; and (3) the potential design of Montagnard autonomy at district and commune level in light of current central-local relations in Vietnam.

The paper concludes that the Montagnards should benefit from the rights of indigenous peoples, but that no operational legal right to autonomy currently exists under international law. However, would the Vietnamese government grant genuine Montagnard autonomy at district and commune levels, and resolve the identified multiple institutional challenges connected, this policy response could address underlying Montagnard grievances and ease ethnic tensions while fully preserving Vietnam's territorial integrity.

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# 1 Introduction

“In those regions where there is a concentration of national minorities, they may establish autonomous zones. The autonomous zones form an integral part of the Democratic Republic of Vietnam from which they are inseparable.”

*1960 Constitution of Vietnam (omitted in the 1981 Constitution)*

## 1.1 Overview

In February 2001 a well co-ordinated series of demonstrations and uprisings by Montagnard ethnic groups took place in the Central Highlands of Vietnam, to which the Vietnamese authorities reacted with force resulting in refugee flows to the bordering Cambodia. The discontent concerned Montagnard ownership and use of ancestral lands, limitations to exercise freedom of religion and aspirations for Montagnard independence or political autonomy. Fundamentally opposing views have been presented concerning the events and their aftermath. While international rights organisations report of escalating repression, persecution and continued refugee flows to Cambodia, Vietnamese authorities accuse foreign powers for conspiracy and fabricating stories to undermine national unity.<sup>1</sup> While entry restrictions to the region has made it difficult to form a clear apprehension of the present conditions, it is clear that the policy choices the Vietnamese leadership make will have consequences for the stability of the Central Highlands and beyond. Interviews with national observers state that if the situation is not adequately addressed, it could with time lead to violent uprising and civil war, that also could spread to other parts of the country.

The present situation for the Montagnards, a generic term of the pan-ethnic identity developed among the different autochthonous ethnic groups of the Central Highlands of Vietnam, has its origin in the Indochina wars, when part of the ethnic groups were recruited and trained by the French and

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<sup>1</sup> For the different views on the 2001 events and reports of the current situation in the Central Highlands, see Amnesty International, *No Sanctuary: The Plight of the Montagnard minority*, London, 2002, Human Rights Watch, *Repression of Montagnards*, New York, 2002 and subsequent briefing papers. The Vietnamese response to these reports can be viewed at [www.vietnamembassy-usa.org](http://www.vietnamembassy-usa.org) and [www.cpv.org.vn](http://www.cpv.org.vn).

American forces. During these armed conflicts the Montagnards in the Central Highlands were either granted or promised autonomous status by nearly all parties involved in order to gain their support. While the Montagnards constituted 95% of the population in the Central Highlands in 1945, an internal migration of persons from the majority ethnic group (Viet) to the area since 1975 has made the Montagnards absolute minorities in the four administrative provinces that today cover most of the Central Highlands. These developments have in practice negated the realistic possibility of an autonomous Montagnard homeland.

## **1.2 Research Question and Purpose**

The research question of this paper is *whether a territorial Montagnard autonomy arrangement at sub-provincial administrative levels in the Central Highlands could be a viable policy option for the Vietnamese government in addressing minority grievances while fully respecting Vietnam's territorial integrity?* This question is answered by assessing: autonomy as a minority/indigenous 'right' in international law and/or conflict prevention mechanism with comparative experiences from other socialist states (chapter 2); the historical and regional circumstances and the Montagnards' basis for autonomy claims (chapter 3); and the potential design and challenges of a potential Montagnard autonomy arrangements at district and commune levels, in light of current central-local relations in Vietnam (chapter 4).

The purpose of the paper is an attempt to address the increasingly tense situation in the Central Highlands of Vietnam and assess Montagnard sub-provincial autonomy as a policy option to be considered by the Vietnamese government. As several interviewed requested, the intention is to forward a constructive, not confrontational, contribution to the debate over the current situation in the Central Highlands.

### **1.3 Methodology and sources**

The challenges for a European Master student examining the question of Montagnard autonomy in Vietnam are numerous. Firstly, the author is aware of his limited in-depth understanding of the particular political and cultural context of Vietnam and the Central Highlands. Secondly, considering the political sensitivity of researching the topic in Vietnam together with lacking fluency in the Vietnamese language made access to primary sources difficult. Thirdly, the question is addressed from an interdisciplinary approach, involving aspects within the fields of international law, anthropology and political science (reflecting the broadening experience of completing the E.MA. in Human Rights and Democratization). While the author's legal background remains the basis, it soon became evident that this approach alone was insufficient in addressing the research question adequately.

Primary research for this paper was mainly conducted on the basis of publicly available printed documentation in English, accompanied by comments deriving from 15 interviews held in Hanoi, Vietnam, in March-April 2003. Travel restrictions to the Central Highlands negated the possibility of conducting primary research in the area. Persons interviewed included representatives from state organs at the central level, Vietnamese academics and staff from various Vietnamese and international agencies and organisations involved in development co-operation. Interviews were semi-structured and based on a set questionnaire, from which discussions flowed freely. A qualified Vietnamese interpreter familiar with the topic facilitated the interviews conducted in Vietnamese.

The research was complemented by interviews outside Vietnam with nine academics and professionals involved in development co-operation with Vietnam. Six interviews took place in The Hague, Copenhagen and Lund, and three were held over telephone to Gothenburg, Melbourne and Singapore. Regarding secondary sources referred to in the paper, it is noted that authors of a non-Vietnamese background unfortunately dominate the academic literature as well as the material from international organisations.

## 2 Theory on Autonomy

### 2.1 Defining Autonomy

There appears to be a worldwide trend of applying the principle of subsidiarity and decentralising powers to sub-central state, as well as non-state, organs and actors. Modern states are slowly leaving the traditional nation-state concept and are increasingly willing to experiment with territorial reorganisations of their administration, provided that their political and territorial integrity is not endangered. While distinctions of decentralisation can be made into fiscal, administrative and political elements, they all relate to, but only political decentralisation can be identical to the concept and contents of autonomy arrangements.<sup>2</sup> As with decentralisation, autonomy involves devolution of power from the centre to the periphery. All states have different levels of powers held at different administrative levels. However, the powers in a genuine autonomy arrangement varies from the regular central-local relations in some way, with a list of shared or exclusive powers which non-autonomous levels do not exercise. Another distinguishing factor is that powers are not merely delegated but transferred and may therefore not be revoked without the consultation of, or possibly even consent by, the autonomous entity.

There is no generally agreed definition of ‘autonomy’ in international law. For the purpose of this paper the essential element of an ‘ethnic autonomy’ is defined as the legally established power of ethnic or territorial communities to take public decisions and execute public policy independent of other sources of authority in the state, but subject to the overall state legal order.<sup>3</sup> Thus, autonomy is an arrangement allowing groups claiming a distinct identity to exercise direct control over affairs of special concern to

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<sup>2</sup> *Administrative* decentralisation refers to when government offices are established at the lower administrative levels and control over staffing passes to lower levels of government. *Fiscal* decentralisation occurs when financial resources are transferred to local authorities and these are granted tax-raising powers. *Political* decentralisation refers to when the political relations and responsibilities between central and local levels of government lead to an increase of executive or legislative powers in the lower-tier authorities. See International Council on Human Rights Policy, *Local Rule, Decentralisation and Human Rights*, Vernier, ATAR Roto Press SA, 2002, p. 6.

them, while allowing the larger entity to exercise those powers that cover common interests. Autonomy arrangements can be broadly distinguished as territorial or non-territorial. On the question of a potential legal definition of autonomy, Suksi discusses whether autonomy only should be equated with entities granted the highest normative powers. To qualify as a genuine autonomy arrangement the entity should in this case hold a special jurisdiction involving some exclusive legislative powers, preferably defined in the constitution of a state.<sup>4</sup> On the other hand, Suksi observes that a more open-ended application of the term autonomy would include cultural autonomis, which normally only have regulative or administrative powers.<sup>5</sup> The present author believes that the concept benefits from this ‘open-ended’ application, since the scope of an autonomous arrangement can be designed in various combinations of territorial and non-territorial arrangements, with great differences of the type of autonomous powers granted to suit a given context.

### **2.1.1 Territorial Autonomy**

Hannum defines a fully autonomous territory to possess most of the following characteristics: (1) a locally elected legislative body with some independent legislative authority; (2) a locally selected chief executive with responsibility for the administration and enforcement of state as well as local laws; (3) an independent local judiciary with full responsibility for interpreting local laws; and (4) areas of joint concern subject to power-sharing arrangements between autonomous and central governments.<sup>6</sup> As few existing so-called autonomy arrangements fill all these criteria, one can argue that it should include at least one or several of them. While the powers devolved and the institutional design may vary, a local authority can only be regarded as an ‘ethnic autonomy’ if it has some additional power(s)

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<sup>3</sup> Cf. M. Weller and S. Wolff (eds.), *Autonomy and Self-determination: Innovative Approaches to Institutional Design in Divided Societies*, (Draft version, on hold with author, forthcoming 2003).

<sup>4</sup> M. Suksi, *Concluding Remarks*, in M. Suksi, (ed.), *Autonomy: Applications and Implications*, The Hague, Kluwer, 1998, p. 360.

<sup>5</sup> Idem.

<sup>6</sup> H. Hannum, *Autonomy, Sovereignty, and Self-Determination. The Accommodation of Conflicting Rights*, Philadelphia, University of Pennsylvania Press, 1990, pp. 467-468.



compared with a parallel local authority in a non-autonomous arrangement. However, in a federal state structure the local entities can hold equal autonomy powers. Nevertheless, territorial autonomy often exists asymmetrically to particular region(s). The distinction between federalism and regional autonomy is that the federal arrangements are represented as entities also at the central level. Functions generally exercised by the central authorities include defence, foreign affairs, immigration and customs, macroeconomic policy, and monetary affairs.<sup>7</sup>

The centre should only interfere with the transferred powers in extreme cases, such as when national security is threatened or when the autonomous entity has exceeded its powers. In determining the later, it is necessary to have established legal avenues to avoid arbitrary intervention by the centre.

### **2.1.2 Non-Territorial Autonomy**

Although partly overlapping, non-territorial based autonomy arrangements can be distinguished as personal autonomy, cultural autonomy or functional autonomy.<sup>8</sup> Personal autonomy is a form of self-government granted to a group, with organs in the form of a legal person that exercises the transferred public powers of the autonomy towards its members. Thus, personal autonomy is not based on territory, but to all members of a minority. Churches are a modern example that personal based authority is still able to function today. Cultural autonomy has always been the core of personal autonomies, with the possibility to organise and run associations and institutions focused to maintain and develop the distinct group's cultural characteristics, for example within educational activities. These organs can also hold a consultative or co-decisional competence, often implying a de facto veto right on issues of particular importance for the preservation of their identity.<sup>9</sup> Developing notions of functional autonomy with corporate features imply transferring State functions and rights to private minority

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<sup>7</sup> Cf. OSCE High Commissioner on National Minorities, *Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note*, The Hague, The Foundation on Inter-Ethnic Relations, 1999, Article 15.

<sup>8</sup> H-J. Heintze, *On the Legal Understanding of Autonomy*, in M. Suksi, (ed.), *Autonomy: Applications and Implications*, The Hague, Kluwer, 1998, pp. 20-24.

group organisations. Common to all non-territorial autonomy arrangements is that they bypass the administrative state structure, which benefits ethnic groups that are spread out over several administrative boundaries.

### 2.1.3 Positive and Negative Aspects of Autonomy

Ghai observes that 30 years ago too much emphasis may have been placed on the ‘common’, and that we currently may be placing too much emphasis on the ‘particular’. In striking this balance, we should consider arrangements that stress the common bonds and construct the institutions that hold people together.<sup>10</sup> Leuprecht argues that “an obsession of questions of identity, could bring us back to aggressive nationalism and ethnocentrism”.<sup>11</sup> Autonomy should not be regarded as a panacea that, if correctly applied, can solve any ethnic conflict. Autonomy arrangements may lead to the disintegration of states, particularly if every ethnic group in a multi-ethnic state were to demand it. It can also be a risk that the state may feel less responsibility for the development of the autonomous entity. Autonomy may isolate minority groups and eventually lead to segregation.

However, there are considerable arguments in favour of autonomy arrangements. Granting autonomy can reduce ethnic tensions in a multi-ethnic state and accommodate minority needs and concerns within the existing state structure. It can play a constructive role in mediating relations between different communities in multi-ethnic states. One justification of autonomy is that absolute state neutrality in terms of religious, linguistic or cultural preferences is impossible, which renders equal treatment in effect impossible. Alfredsson argues that allowing self-control over its internal affairs is the most effective way to protect group dignity, identity and diverse customs and thus to place minorities on equal footing with other parts of society.<sup>12</sup> With a genuine autonomy arrangement, recognition and

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<sup>9</sup> P. Kovács, *Questions and Answers on Minority-Related Autonomy Issues*, in K. Gal, *Minority Governance in Europe*, Budapest, Open Society Institute, 2002, p. 346.

<sup>10</sup> Y. Ghai, *Ethnicity and Autonomy: A Framework for Analysis*, in Y. Ghai (ed.), *Autonomy and Ethnicity: Negotiating Claims in Multi-ethnic States*, Cambridge, Cambridge University Press, 2000, p. 25.

<sup>11</sup> P. Leuprecht, *Minority Rights Revisited: New Glimpses of an Old Issue*, in P. Alston, *Peoples' Rights*, Oxford, Oxford University Press, 2001, p. 118.

<sup>12</sup> G. Alfredsson, *Minority Rights: International Standards and Monitoring Procedures*, in «Latvian Human Rights Quarterly», No. 5/6, 1998, p. 20.

the rights of the groups in question can be secured, while stopping short of the centre's fear of secession. There is in fact little evidence to the fear that autonomy may lead in time to secession.<sup>13</sup>

Particular challenges in territorial autonomy arrangements include the situation of the 'internal minorities', meaning the members of the overall majority ethnic group that constitutes a minority in the sub-central autonomous arrangement. These internal minorities' rights must be secured from being suppressed by the regional majority. Coming to terms with this issue makes territorial self-government preserve the unity of States while increasing the level of participation and involvement of minorities by giving them a greater role in the existing sub-central levels of government, reflecting their population concentration.<sup>14</sup>

Non-territorial cultural autonomy may offer a less confrontational means of responding to a group's need to protect its identity. Cultural autonomy can appear less risky for the territorial integrity of the state than a territorial autonomy.<sup>15</sup> It should be noted, though, that land rights, often the most crucial issue for indigenous peoples and rural minorities, cannot be effectively addressed by a non-territorial autonomy, since land issues necessarily are linked to the administrative structures of a state. Challenges in non-territorial autonomy arrangements include the question of internal democracy within the minority entities and whether these can legitimately speak for and represent the minority. Also, if mandatory ethnic self-identification of every individual is necessary, this could be argued to conflict with other human rights, such as the right to privacy. On the other hand, if only registered members are included, those less conscious and less active members will be excluded. Also, while too restrictive membership criteria may exclude persons that objectively 'should' qualify as members, too general criteria may stimulate members of the majority to 'infiltrate' in order to take advantage of funds or privileges reserved for the minority.

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<sup>13</sup> Y. Ghai, *Public Participation and Minorities*, London, Minority Rights Group, 2001, p. 23.

<sup>14</sup> Foundation of Inter-Ethnic Relations, op. cit. note 7, Commentary, point 19.

<sup>15</sup> A. Eide, *Cultural Autonomy: Concept, Content, History and Role in the World Order*, in M. Suksi (ed.), *Autonomy: Application and Implications*, The Hague, Kluwer, 1998, p. 275.

## 2.2 Autonomy in International Law

There is yet no clear legal right to autonomy in international law, although there are legal arguments pointing in that direction.<sup>16</sup> The case of autonomy can be addressed through three major principles: minority rights, indigenous rights and the right to self-determination. The basis for autonomy in international standards is stronger for indigenous peoples than for minorities.<sup>17</sup> For any given situation, therefore, it is important to determine if the group can benefit from ‘minority’ and/or ‘indigenous’ standards.<sup>18</sup> Another question is whether the group constitutes a ‘people’ in the meaning of international law, thus triggering the connected, and controversial, right to self-determination under the common Article 1 of the two UN Covenants.<sup>19</sup> As will be elaborated upon below, Daes argues that only ‘indigenous peoples’ have a right to political identity and self-government with respect to ‘internal’ self-determination in international law, the right of a group to govern itself within a recognised geographical area without State interference.<sup>20</sup>

### 2.2.1 Attempts to Distinguish ‘Minorities’ from ‘Indigenous’ Peoples

When contemporary distinctions such as language, race, religion and colour cease to be mere means of social distinctions and become the basis of political identity and claims a specific role in the political process, ethnic distinctions are transformed into ethnicity.<sup>21</sup> Neither constant nor unchangeable, the rise and fall of ‘ethnicity’ and a group’s ‘culture’ are

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<sup>16</sup> H. Hannum, op. cit. note 6, pp. 473-474; H-J. Heintze, op. cit. note 8, pp. 13-15.

<sup>17</sup> G. Alfredsson, *Indigenous Peoples and Autonomy*, in M. Suksi (ed.), *Autonomy: Applications and Implications*, The Hague, Kluwer, 1998, p. 125. See also Erica-Irene Daes, *Working Paper on the relationship and distinction between the rights of persons belonging to minorities and those of indigenous peoples*, UN Doc. E/CN.4/Sub.2/2000/10, 2000, p. 9.

<sup>18</sup> Eide argues that the time may have come to review this practice of “dual track” protection, considering the significant over-lapping and difficulties of defining either minorities or indigenous peoples. A. Eide, *Working paper on the relationship and distinction between the right of persons belonging to minorities and those of indigenous peoples*, UN Doc. No. E/CN.4/Sub.2/2000/10, 2000, p. 5.

<sup>19</sup> Article 1 of the UN International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 1 of the UN International Covenant on Civil and Political Rights (ICCPR).

<sup>20</sup> E-I. Daes, op. cit. note 17, p. 9.

<sup>21</sup> Y. Ghai, op. cit. note 10, p. 4.

determined by various social and economic factors, including the design and orientation of the state structures itself.<sup>22</sup>

However, as with ‘autonomy’, there exists no generally agreed legal definition of ‘minority’ or ‘indigenouness’.<sup>23</sup> While the extensive academic writings on these topics have not produced straightforward answers, it appears clear that it cannot be entirely up to a state to determine the existence of a minority or an indigenous people within its borders.<sup>24</sup> Factors that repeatedly have been identified as characteristics of either minorities or indigenous peoples include: numerical inferiority; social isolation or persistent discrimination; cultural, linguistic or religious distinctiveness; geographical concentration (territoriality); and aboriginality (being autochthonous).<sup>25</sup> There appears to be emerging agreement that the necessary elements on both definitions would include ‘objective’ characteristics, such as national or ethnic origin, and ‘subjective’ characteristics, such as self-identification and a time element. For minorities, a numerical element applies, whereas an indigenous population can constitute the majority in a state. Alfredsson argues that the time element for a minority is about two to three generations.<sup>26</sup> Indigenous peoples on the other hand claim to be autochthonous. Disagreement continues concerning the question of citizenship, exactly which ‘facts’ are to be taken into account, and over the question of membership.<sup>27</sup>

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<sup>22</sup> Y Ghai, op. cit. note 10, p. 5.

<sup>23</sup> The probably most cited definitions of ‘indigenous peoples’ and ‘minority’ is, respectively, the ‘Cobo definition’ and the ‘Capotorti definition’. See J. M. Cobo, *Study on the Problem of Discrimination against Indigenous Populations*, UN Doc. No. E/CN.4/Sub.2/1986/Add.4. Capotorti proposed the following definition of a ‘minority’: “A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members -being nationals of the State- possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language”. See F. Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, UN Doc. E/CN.4/Sub.2/384/Rev.1, 1979, pp. 4-12.

<sup>24</sup> As early as 1935, the Permanent Court of International Justice held that “the existence of minorities is a question of fact, not of law”. Case *Minority Schools in Albania*, (1935) PCIJ Ser. A/B, No. 64, 17. This should be held for indigenous peoples as well.

<sup>25</sup> E-I Daes, op. cit. note 17, p. 6.

<sup>26</sup> Cf. G. Alfredsson, *Access to International Monitoring Procedures: Choices Between Self-determination and the Human Rights of Groups*, in M. C. Van dan Walt van Praag and O. Seroo (eds.), *The Implementation of the right to self-determination as a contribution to conflict prevention*, Barcelona, UNESCO, 1998, p. 203.

<sup>27</sup> The ILO Convention No. 169 states self-identification as a fundamental criterion for determining to which groups the Convention applies. Makkonen observes that “reciprocal self-identification based on membership is circular thinking, as the group cannot determine

Daes argues that the main difference is that indigenous peoples are aboriginal (autochthonous) to the territory where it resides today and chooses to perpetuate a distinct cultural identity and distinct collective social and political organisation within the territory.<sup>28</sup> Indigenousness has also become more and more defined in terms of victimisation and the will to become a self-determining entity to some extent.<sup>29</sup> There are however few ethnic minority groups with no experiences of past or present injustices, and which potentially could not want to be self-determining to some degree. In short, there are continued difficulties in defining indigenousness.<sup>30</sup> Clear is that an ethnic group simultaneously can constitute both a minority and an indigenous people, and therefore benefit from the protection from both set of standards.<sup>31</sup>

### **2.2.2 Autonomy for Indigenous Peoples through ‘internal’ Self-determination?**

Article 31 of the 1993 draft UN Declaration on the Rights of Indigenous Peoples is the first time a group is expressly considered as possessor of a right to autonomy. This is however no more than a non-binding draft and it appears as if an emerging consensus among states will act to water down the provision.

ILO Convention 169 (1989), which is the strongest worded international document on indigenous rights legally binding for ratifying states, does not explicitly use the term ‘autonomy’.<sup>32</sup> However, Alfredsson argues that its provisions in fact deals with group control over functions traditionally delegated to autonomous regions. Alfredsson argues that States ratifying the Convention have an obligation to recognise the existence or creation of

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its membership criteria before the group is assigned members”. See T. Makkonen, *Identity, Differences and Otherness: The Concepts of ‘People’, ‘Indigenous People’ and ‘Minority’ in International Law*, Helsinki, Publications of the Faculty of Law, 2000, p. 137.

<sup>28</sup> E-I. Daes, op. cit. note 17, p. 9.

<sup>29</sup> T. Makkonen, op. cit. note 27, p. 131.

<sup>30</sup> See K. Myntti, *The Beneficiaries of Autonomy Arrangements – With Special Reference to Indigenous Peoples in General and the Sami in Finland in Particular*, in M. Suksi (ed.), *Autonomy: Application and Implications*, The Hague, Kluwer, 1998, pp. 282-285.

<sup>31</sup> E-I. Daes, op. cit. note 17, p. 9.

<sup>32</sup> Article 1(3) of the ILO Convention 169 explicitly denies the link between the use of the term ‘peoples’ in the Convention from having the “implications as regards the rights which may attach to the term under international law”, i.e. the right to self-determination.

indigenous institutions that can carry out the assigned self-governing functions in a democratic and representative manner.<sup>33</sup>

Another avenue towards autonomy advocated by indigenous representatives is the attempt to equate ‘indigenous peoples’ with the meaning of ‘peoples’ under international law, in order to benefit from the ‘right to self-determination of peoples’, entitled to “freely determine their political status”.<sup>34</sup> State delegates often insist that indigenous groups are ‘populations’, and certainly not ‘peoples’. The cautious attitude from state representatives in equating ‘indigenous peoples’ with ‘peoples’ is illustrated in Article 1(3) of the ILO Convention 169, which denies the link between the use of the term ‘peoples’ in the Convention from having the “implications as regards the rights which may attach to the term under international law”, i.e. the right to self-determination. Traditionally, ‘peoples’ referred to those under colonial rule, but as Myntti argues, it would be a simplification of current interpretation of international law to state that the right to self-determination has only one component – the right of people under colonial rule organised in states to be free from external intervention and pressure.<sup>35</sup> This leads to the question whether the notion of ‘people’ has moved beyond the ‘salt-water rule’ of international law – which holds that there has to be an ocean between the metropolis and the colony for the de-colonisation principles to apply.<sup>36</sup> Why should indigenous peoples not be subject to decolonisation as well as overseas peoples? While the distinction between ‘internal’ and ‘external’ aspects of the right to self-determination started in academic circles in the early 1990s, this has found its way in international documents as well, such as the CERD General Comment No. 21.<sup>37</sup> Constitutional rulings in various legal systems appear to

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<sup>33</sup> Alfredsson gives weight to the argument that indigenous peoples are “entitled to and must have their own institutions” and that for “land, education and other functions upon which the preservation and development of identity depends, there is to be extensive self-control”. See G. Alfredsson, *op. cit.* note 17, p. 125.

<sup>34</sup> See *op. cit.* note 19.

<sup>35</sup> K. Myntti, *Minoriteter och Urfolks Politiska Rättigheter*, Rovaniemi, Juridica Lapponica, 1998, p. 97.

<sup>36</sup> T. Makkonen, *op. cit.* note 27, p. 135.

<sup>37</sup> General Recommendation No. 21, UN Committee on the Elimination of Racial Discrimination, UN Doc. No. CERD/48/Misc.7/Rev.3, 1996, para 5.

support this development.<sup>38</sup> This growing consensus also appears to hold that indigenous peoples cannot hold the right to self-determination in its ‘external’ aspect, implying a right to secession, but can hold the ‘internal’ element of the right, thus enabling them to determine their political status *inside* state borders. This way the indigenous group in question would exert part of the self-determination exercised by the whole state in regions where they constitute a considerable majority. The 1970 G.A. Resolution on Friendly Relations is another non-binding legal standard with categories of modes of implementing the right of self-determination by a people, including the “emergence into another political status”.<sup>39</sup> While this again belongs to constitutional considerations, the provisions support the creation of sub-state entities of different kinds as expressions of internal self-determination, which constitutes a share in the total self-determination of the State in question.

While an ‘internal’ aspect of the right to self-determination as a limited form of self-government is similar to a right to autonomy, it is too early to say that ‘internal self-determination’ is an accepted content of either international treaty or customary law, although support for such is gaining ground. Alfredsson on the other hand appears to oppose the notion of ‘internal’ self-determination, and argues that autonomy aspirations have a much better chance if presented under their proper names in international law, without “resort to the self-determination umbrella”.<sup>40</sup> Alfredsson argues that attention should be focused on the legitimate needs and rights of indigenous and minority groups instead of advancing their image by doubtful labelling.<sup>41</sup> In all, post-decolonisation interpretations of the content of self-determination is varied, but self-determination is no longer equated

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<sup>38</sup> Personal communication with Markku Suksi, Professor of International Law at Åbo Akademi University, Finland, 2002-06-15. Suksi pointed at two national and one regional ruling which arrived at similar conclusions in trying international law dimensions concerning self-determination and unilateral secession. See Canadian Supreme Court case concerning the *Secession of Quebec*, August 20, 1998; Russian Constitutional Court case concerning the independence of the *Republic of Tatarstan*, Decision No. 671 of 13 March 1992; and the case of *Katangese Peoples’ Congress v. Zaire*, African Commission of Human Rights and Peoples’ Rights, Comm. No. 75/92.

<sup>39</sup> 1970 UN Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, G.A. Res. 2625/XXV.

<sup>40</sup> G. Alfredsson, *op. cit.* note 26, p. 205.

<sup>41</sup> G. Alfredsson, *op. cit.* note 17, p. 137.



with independence, but rather with effective control over one's own community combined with effective participation in the state as a whole.<sup>42</sup>

### **2.2.3 Minority Autonomy through 'Effective Participation in Public Life'?**

Political participation and autonomy are generally considered different concepts in international law. In practice, the concept of self-government often concerns whether a group must be content with participation in the existing structures of decision-making of a State, or if it has the right to create its own decision-making organs, to control its own affairs.<sup>43</sup> Probably States have accepted a general right to participation more easily than autonomy mainly because of its integrating effect, as opposed to a commonly perceived separating effect of autonomy.

The right to political participation is enshrined in Article 25 of the ICCPR and Article 5(c) of the CERD. These provisions of 'taking part' in public life has moved beyond electoral rights and the crucial adjacent rights, such as the rights to freedom of speech, opinion, assembly and association, towards more autonomy-friendly interpretations for minorities. Through the 1992 UN Minority Declaration the right to political participation was extended to minorities with the strengthened standard of requiring an 'effective' political participation, particularly in questions that affect them or the regions they inhabit.<sup>44</sup> Although many minority rights activists were disappointed that the Declaration did not provide any explicit mentioning of autonomy, Alfredsson observes that a lot can be done from the notion of public participation and with dynamic interpretation, it may open the doors to autonomy or self-government.<sup>45</sup> Thornberry argues that in some

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<sup>42</sup> H. Hannum, *Documents on Autonomy and Minority Rights*, Dordrecht, Kluwer, 1993, p. xvii.

<sup>43</sup> K. Myntti, *National Minorities, Indigenous Peoples and Various Modes of Political Participation*, in Frank Horn (ed.) *Minorities and Their Right of Political Participation*, Rovaniemi, Juridica Lapponica, 1996, p. 15.

<sup>44</sup> See Articles 2(2) and 2(3) of United Nation 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, G.A. res. 47/135, UN GAOR Supp. (No. 49) at 210, UN Doc. A/47/49 (1992), adopted 18 December 1992. It should however be noted that UN General Assembly Declarations are non-binding on states.

<sup>45</sup> G. Alfredsson, *Minority Rights: A Summary of Existing Practice*, in A. Phillips and A. Rosas (eds.), *The UN Minority Rights Declaration*, Turku-London, Åbo Akademi University and Minority Rights Group, 1993, p. 81.

circumstances, it may be necessary to grant autonomy to minority groups through local and national organisations in order to achieve the standard of ‘effective’ participation in the Declaration.<sup>46</sup> Welangama states that the Declaration’s standards relates to no more than personal or cultural autonomy, that the standard of territorial autonomy is not envisioned in the Declaration.<sup>47</sup> Steiner argues that “only an autonomous regime could give the minority and its members the kind of fair or equitable political participation”.<sup>48</sup>

But how can these provisions be operationalised? Minority-centred application of the principle of equality can necessitate special measures to achieve material equality, instead of mere formal equality. Special rights go beyond equal rights by giving the minorities rights, which are different and more extensive than those of the majority. The Human Rights Committee clarifies though in the *Micmaq* case that Article 25 of the ICCPR cannot be “understood as meaning that any directly affected group, large or small, has the unconditional right to *choose* the modalities of such participation” (emphasis added).<sup>49</sup> States appear to be granted wide latitude of *how* to comply with the standards of the right to effective participation in public life.<sup>50</sup> Statistics are often applied as an objective tool to measure the effectiveness of participation, such as the percentage of ethnic minority deputies in the legislative branch of government, in the central government, at local levels of government and minority staff in the offices of government at the local levels. This author regards numerical representation as a necessary but not sufficient criteria in achieving the standard of adequate representation and effective participation. While formal representation may indicate ‘potential’ participation, a subjective tool to estimate participation

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<sup>46</sup> P. Thornberry, *The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: Background, Analysis and Observations*, in A. Phillips and A. Rosas (eds.), *The UN Minority Rights Declaration*, Turku-London, Åbo Akademi University and Minority Rights Group, 1993, pp. 42-43.

<sup>47</sup> G. Welhengama, *The Legitimacy of Minorities’ Claim for Autonomy through the Right to Self-Determination*, in «Nordic Journal of International Law», no. 68, 2000, p. 429.

<sup>48</sup> H. Steiner, *Ideals and Counter Ideals in the Struggle over Autonomy Regimes for Minorities*, in «Notre Dam Law Review», no. 66, 1991, p. 1546.

<sup>49</sup> No. 205/1986, Views adopted on 4 November 1991. *Report of the Human Rights Committee*, UN Doc. A/47/40, par. 5.5.

<sup>50</sup> For an inventory of possible policy options for states to ensure effective minority participation in public life, see OSCE High Commissioner on National Minorities, op. cite. note 7.

‘in fact’ has yet to be identified. A subjective element of the right to participation should be identified, which if not satisfied could necessitate special measures to achieve equal enjoyment of political rights. This way state performance would be brought into assessment, and state repression of minorities’ political rights could perhaps in the future arguably trigger rights to autonomy arrangements.

#### **2.2.4 Is a Legal Right to Autonomy desirable?**

There seems to be general agreement that there does not exist a legal right to autonomy in current international law, neither through treaty law nor on the basis of international customary law.<sup>51</sup> There is no international instrument that could force states to establish autonomous bodies for the minorities or indigenous peoples inhabiting the territory of a state, although no rule prohibits their establishment either. An emerging right to autonomy is at this stage arguably more likely to develop as a rule of customary law, considering the increasingly numerous and positive state practices.<sup>52</sup> To maintain confidence in international law, it is important to distinguish how international law stands at present (*de lege lata*) from what is desirable (*de lege ferenda*). Too creative interpretations of existing international law do probably not stimulate a friendly notion of minority autonomy among states. It is still the state parties, which create international law through treaties or by state practice. Providing examples of autonomy applications, with their advantages and shortcomings, will continue being the strongest influence of inspiring states into considering autonomy arrangements as a policy choice.

Even if a potential ‘right to autonomy’ would emerge, the unclear content of such a right would be difficult to operationalise in practice. Is the lack of a right to autonomy and unclear definitions necessarily negative? Suksi observes that it may be better to avoid any positivisation of the term, taking advantage of the options the granting of autonomy enables in terms of political decision-making.<sup>53</sup> While principled responses to minority

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<sup>51</sup> H-J. Heintze, op cit. note 8, p. 13; B. Vizi, *Minority Groups and Autonomy from an International Political Perspective*, in K. Gal (ed.), *Minority Governance in Europe*, Budapest, Open Society Institute, 2002, p. 51.

<sup>52</sup> A number of constitutions now recognise an entitlement to self-government, including the Philippines, Spain, Papua New Guinea and Ethiopia.

<sup>53</sup> M. Suksi, op. cit. note 4, p. 357.

demands hold value in providing consistent application of law, the goal must be to accommodate competing interests in a sustainable way – not merely to determine whose rights are most worthy of protection.<sup>54</sup> Currently, the presence or absence of entitlement to autonomy in either international or national law mainly affects the relative negotiating power of groups, especially relevant in circumstances of international mediation.<sup>55</sup>

To this date, establishing autonomous arrangements is therefore up to the State in question, as long as the State has not assumed any specific obligation to consent to autonomous arrangements.<sup>56</sup> The fact that the decision is in the end political should stimulate more state-friendly views on autonomy, unbiased regarding it as a policy option to be considered.

### **2.3 Autonomy as Conflict Resolution and the Role of External Actors**

Autonomy has often been used as a tool of conflict management, negotiating self-determination claims by establishing territorial or non-territorial autonomy arrangements, or combinations thereof. Although there are several positive international examples of autonomy arrangements including Switzerland, Austria and Belgium, it should be noted that experiences of autonomous regimes do not solely comprise a list of success stories. Eritrea's autonomy from Ethiopia 1952-1962, the autonomy for the Basque in Spain in 1979 and the autonomy accord in Sri Lanka 1987 are all examples where autonomy arrangements have not lead to sustainable alleviation of tensions.<sup>57</sup> However, autonomy failures are often due to that meaningful autonomy has not been granted in practice, actual local self-rule has been denied. There is little agreement on what the ideal conditions for creating autonomy regimes are, in order to serve as sustainable instruments of conflict resolution. Nordquist argues that internal conditions, in particular if a state is democratic, are much more influential than external actors in determining whether or not autonomy is likely to resolve conflicts

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<sup>54</sup> Cf. H. Hannum, *op. cit.* note 42, p. xvii.

<sup>55</sup> Cf. Y. Ghai, *op. cit.* note 10, p. 3; H. Hannum, *op. cit.* note 6, p. 5.

<sup>56</sup> L. Hannikainen, *Self-determination and Autonomy in International Law*, in M. Suksi (ed.), *Autonomy: Applications and Implications*, The Hague, Kluwer, 1998, p. 87.

<sup>57</sup> For a comprehensive overview of the mentioned and other examples of autonomy arrangements in the 20<sup>th</sup> century and the contemporary debate among States, see G. Welhengama, *op. cit.* note 47, pp. 417-424.

successfully.<sup>58</sup> The timing of autonomy proposals also appears to be crucial. Once violence escalates, it may be too late for constructive autonomy arrangements to be established.

Autonomy regimes have often been the result of pressures from external actors. Would the state measures to protect minority interests in Central and Eastern Europe during the last decade, including establishing territorial and non-territorial autonomy arrangements, have occurred without the membership criteria set by the European inter-governmental institutions? Often the actions of international actors, inter-governmental organisations, kin-states or regional hegemonies are called upon and necessary in order to address autonomy claims. In this context, the international community commits an error if it deals only with open conflicts. It should not be necessary for minority groups to turn violent to attract international attention to take note of their legitimate concerns. Autonomy could therefore be considered also as a measure of conflict prevention, to be considered at an early stage before tensions escalate into violence.

Many intervenors falsely view 'autonomy' as if it would solve almost all ethnic conflicts if only applied appropriately. Ghai argues that one should be cautious of being "opportunistic in its use, over-ambitious in our expectations".<sup>59</sup> Many policy recommendations are excessively concerned with conflict management, and perhaps have been insufficiently focused on long-term consequences.<sup>60</sup> Autonomy can be one element of a successful conflict resolution, but it will need to be complemented with other components, including confidence-building measures, to be sustainable.

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<sup>58</sup> K.-Å. Nordquist, *Autonomy as a Conflict-Solving Mechanism – An Overview*, in M. Suksi (ed.), *Autonomy: Application and Implications*, The Hague, Kluwer, 1998, p. 73.

<sup>59</sup> Y. Ghai, op. cit. note 10, p. 4.

<sup>60</sup> Y. Ghai, op. cit. note 13, p. 25.

## **2.4 Socialist Experiences of Autonomy Arrangements**

### **2.4.1 Socialist Rejection of Non-Territorial Autonomy Arrangements**

In the Leninist and Stalinist concept of minority policy, autonomy is exclusively limited to territorial-based arrangements.<sup>61</sup> Cultural autonomy was considered as counter-revolutionary because it promoted bourgeois nationalism and hindered class solidarity of the proletariat.<sup>62</sup> Any attempt to divide the various nations in a single state permanently in cultural and educational matters was regarded as ‘reactionary’. While this rejection of non-territorial autonomy thus has been explained in ideological terms, Eide argues that it was for “purely tactical reasons” that Lenin and Stalin preferred territorial autonomy, which was considered to obtain the broadest possible revolutionary support.<sup>63</sup> However, one-party states wishing to maintain monopolising public powers tend to see ethnically based organisations, as in non-territorial autonomies exerting political powers over its members, outside the Communist party structure, as a threat.

### **2.4.2 Autonomy System in Former Soviet Union**

Many former socialist states had long traditions of territorial autonomies as a form of minority rights, including the federal arrangements in Soviet Union. Territorial autonomy was regarded as the solution to the nationality issue, with regional arrangements prescribed by Article 85 of the 1977 Constitution. While the autonomy rights were constitutionally protected, which also included a right to secession in Article 72, Eide observes that due to the centralised command of the Communist Party, the federal system was largely a fiction.<sup>64</sup> The rights were without content since no procedure was established for their execution, and all related decisions ultimately rested with the central Politburo.

In the former Soviet Union, ‘national villages’ and ‘national districts’ existed when a minority inhabited the respective administrative villages and

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<sup>61</sup> G. Brüner and H. Küpper, *European Options of Autonomy: A Typology of Autonomy Models of Minority Self-Governance*, in K. Gal (ed.), *Minority Governance in Europe*, Open Society Institute, Hungary, 2002, p. 21.

<sup>62</sup> V. I. Lenin, *Collected Works*, Moscow, Progress Publishers, vol. 48, 1964, p. 504.

<sup>63</sup> A. Eide, op. cit. note 15, pp. 270-271.

<sup>64</sup> Idem., p. 271; H. Hannum, op. cit. note 6, p. 367.

districts. However, ethnicity was entrenched under the dominance of titular minorities, where the cultural and political hegemony of the groups served to sharpen boundaries against outsiders.<sup>65</sup> Soviet policy of discouraging pan-Islamic identities in fact reinforced nationalist feelings rather than increasing solidarity with the larger Soviet society.<sup>66</sup> The territorial division had consequences once the power of the Communist Party diminished in former Soviet Union, with the country divided into the 15 states that previously constituted the union republics. Importantly though, Ghai points out that this break-up was not the result of autonomy, more likely partly due to the denial of meaningful autonomy.<sup>67</sup>

### 2.4.3 Current Chinese Autonomy System

The Vietnamese and Chinese minority policies are strikingly similar in many aspects, un-surprisingly since Vietnam draws heavily on Chinese experiences in most policies in the economical, political and legal fields. Considering this, it is interesting to note that Vietnam has not followed the Chinese ‘autonomy model’. When China, after the Cultural Revolution, re-introduced its autonomy model in the 1982 Constitution, Vietnam had abolished the northern ‘autonomous zones’ with the 1981 Vietnamese Constitution.<sup>68</sup>

The Chinese government claims that “the Chinese autonomy system gives people of ethnic minorities the possibility to become masters of their own areas and manage the internal affairs of their own regions”.<sup>69</sup> Autonomous Peoples Congresses in China are distinguished from other local People’s Congresses in two ways. Firstly, by granting law-making power to prefecture and county level (which otherwise stops at province level), special law-making power to enact regulations on the exercise of autonomy and separate regulations to modify the application of some otherwise generally applicable central legislation and regulation. Secondly,

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<sup>65</sup> Y. Ghai, op. cit. note 13, p. 21.

<sup>66</sup> H. Hannum, op. cit. note 6, p. 368.

<sup>67</sup> Y. Ghai, op. cit. note 13, p. 23.

<sup>68</sup> See section 4.2 *infra*.

<sup>69</sup> Information Office of the State Council of the PRC, *National Minorities Policy and its Practice in China*, Beijing, [http://english.peopledaily.com.cn/whitepaper/1\(3\).html](http://english.peopledaily.com.cn/whitepaper/1(3).html) [accessed 18 April 2003].

rules apply to increase the number of minority deputies and guaranteeing one or more of the leadership of the People's Congress Standing Committee.<sup>70</sup> Further, China is quite fiscally decentralised, with latitude in determining the expenditure of money allocated to the area by the state, and to allow larger exemptions from taxation than under state law.<sup>71</sup>

However, any autonomy power given by law can be negated through the directives or influence by the Communist Party. Although over-representation of minority deputies in political structures is common, key positions in autonomous areas are covered by the nomenclature.<sup>72</sup> No mechanism exists to challenge perceived arbitrary interventions from the centre.<sup>73</sup> Continued ambiguity concerning granting genuine autonomy powers can be seen by the vague legal language in the enabling act, the National Regional Autonomy Law, using concepts as 'national unity' to enable far-reaching interventions from the centre.

While particularly the contents of autonomy powers in Tibet and Xinjiang are highly questionable in practice, it should be noted that positive experiences of the Chinese Autonomy model have been identified at the most local levels in other provinces, exercising autonomy powers on issues such as land, education, and marriage.<sup>74</sup> Further, the Chinese system proves that granting autonomy asymmetrically is possible also in unitary states.

#### **2.4.4 Genuine Autonomy Arrangements in Communist State Structures?**

The comparisons of autonomy arrangements within socialist states provides a quite negative picture, with autonomy commonly used as a tool of control for the majority group in general, and the Communist Party in particular. Autonomous regions in socialist settings have in fact commonly held less autonomy than the non-autonomous regions. Can genuine autonomy arrangements function in a socialist state structure? How strong and

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<sup>70</sup> Chinese National Regional Autonomy Law, Articles 16 and 19-20.

<sup>71</sup> Cf. Article 117 of the 1992 Constitution, Articles 33 and 35 of the Autonomy Law.

<sup>72</sup> Y. Ghai, *Autonomy Regimes in China: Coping with Ethnic and Economic Diversity*, in Y. Ghai (ed.), *Autonomy and Ethnicity: Negotiating Claims in Multi-ethnic States*, Cambridge, Cambridge University Press, 2000, p. 85.

<sup>73</sup> Cf. idem.



necessary is the linkage between democracy, in a non-socialist sense, in exercising autonomy? In socialist systems it appears difficult to fulfil any of the criteria in the definition of a genuine ethnic autonomy as provided in section 2.1 above. For example, the criteria that the autonomy powers are executed independent of other sources of authority in the state, appears difficult to reconcile in states ruled by a Communist party, with structures running parallel to state structures. Ghai and Hannum argue that in the former Soviet Union and currently in China, the absolutist existence of the Communist Party and the application of the Leninist principle of democratic centralism have negated the autonomy systems.<sup>75</sup> The absence of ensured adjacent participatory rights, including the freedoms of expression, association and assembly, tend to make autonomy arrangements in communist states more fictions than facts. However, research pointing at positive experiences of exercising autonomy at the lower administrative levels in China may provide a valuable lesson in the Vietnamese context.

## 2.5 Conclusion

There is yet no legal right to autonomy in international law, and it does not appear to be forthcoming in positive international law in the immediate future. If anything, one can argue that the right is developing as based on state practice, thus international customary law. However, this practice is yet too varied to effectively contribute to establishing a 'right' to autonomy. Nevertheless, legal arguments supporting ethnic groups' autonomy claims are increasingly putting pressure on the internal constitutional systems of states. Arguments include indigenous peoples' rights under the 'internal' aspect of the right to self-determination, and the minority right to effective participation in public life. Whereas the 1992 UN Minority Declaration and other instruments concerning persons belonging to minorities aim at ensuring pluralism in togetherness, the instruments on indigenous peoples are intended to allow for a high degree of autonomous development.<sup>76</sup>

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<sup>74</sup> Cf. L. Stearns, *Chinese Autonomous People's Congresses: Conditions of Law-Making under the National Regional Autonomy Law*, Draft Paper presented at RWI Conference on Legal and Political Reforms in the PRC, Lund, 2002, p. 9 (unpublished).

<sup>75</sup> Y. Ghai, *op. cit.* note 72, p. 96; H. Hannum, *op. cit.* note 6, p. 426; H-J. Heintze, *op. cit.* note 8, p. 15.

<sup>76</sup> A. Eide, *op. cit.* note 18, p. 3.

While minorities have to satisfy with ‘effective’ participation in the society as a whole, the provisions concerning indigenous peoples aim to allocate authority enabling them to elements of self-rule. However, it has been argued that to reach the standard of ‘effective’ participation for minorities, autonomy arrangements may be necessary. It may become possible to argue that a minority that is suppressed by its government could benefit from an emerging ‘right to autonomy’. The actual operationalisation of these provisions is nevertheless still limited, and it is difficult to see how it would function in real cases.

What difference does it then make in practice whether a group is characterised as a ‘minority’ or ‘indigenous’ under international law? It certainly affects their legal basis for autonomy claims, and thus the extent of international support for their cause, which can be a powerful vehicle for change. But since granting autonomy is a political choice for a government to take, it can be questioned what good comes from solely arguing that an ethnic group should be characterised as an ‘indigenous people’ and eligible to benefit from the ‘internal’ aspect of the right to self-determination. A purely legal response to these issues is obviously not sufficient. The sustainable solution may not necessarily coincide with the legal obligations of a state. The goal must be to accommodate competing interests, not simply to decide whose ‘rights’ should prevail. In this context, political realities will often weigh more than international norms in finding sustainable solutions to autonomy claims, implying that an autonomy arrangement may go beyond the obligations of the states under international law.<sup>77</sup>

There is a risk that a state feels unable to limit autonomy powers once granted. On the one hand, the population concerned will this way yield a certain amount of control, a victory of seized rights and protection from arbitrary intervention from the centre. However, this may provide an argument for states to reject establishing autonomy arrangements in the first place. Also general central-local relations in states alter with time, there is a need of flexibility to re-arrange administrative arrangements to better face

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<sup>77</sup> Illustrative of this point is the quiet diplomacy performed by the OSCE High Commissioner on National Minorities when involved in the Crimea case in 1996. See J. Packer, *Autonomy Within the OSCE: The Case of Crimea*, in M. Suksi (ed.), *Autonomy: Application and Implications*, The Hague, Kluwer, 1998, pp. 306-311.

altered conditions. Similarly, it is necessary to provide the opportunity for changes in the granted powers to autonomy arrangements as well. In these circumstances, the population concerned should, at the very least, be consulted to such alterations.

Considering the escalation of internal violent conflicts, preventive measures should be viewed as matters of self-interest for states. Positive state practice of innovative use of territorial and non-territorial autonomies (or in combinations thereof), as means of meeting minority demands short of secession, probably holds a higher persuasive value to governments than solely pointing at international standards. Increasing use of ethnic autonomy will hopefully stimulate a more state-friendly notion of autonomy arrangements. However, it should be noted that experiences of existing autonomy arrangements in conflict management are varied. Autonomy should not be regarded as adequate or sufficient in providing the solution to all ethnic tensions.

In choosing between the abstract models of territorial or non-territorial autonomy arrangements, the historical and territorial background needs to be taken into account in order to suit the given context.<sup>78</sup> Autonomy arrangements in socialist systems have largely been fictions, commonly applied as subtle forms of control or isolation. Genuine autonomy powers have been negated by the role of the Communist party. However, recent research indicates that positive experiences of autonomy have been identified at the lowest administrative levels in China in issues such as land and education. This demonstrates that also autonomy arrangements in socialist systems can be a mutually beneficial policy option for the state and minority groups alike.

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<sup>78</sup> Cf. Article 35 of the Document of the Copenhagen Meeting on the Human Dimension of the CSCE, 1990.

### 3 Montagnards and Autonomy in the Central Highlands in Vietnam

“Political and military developments in the region since 1945 have created a situation in which Montagnards developed a common ethnic identity as *Dega*, who not only feel fundamentally different from the lowlanders in Indochina, but claim political and cultural control over their territory through various autonomy movements.”

*O. Salemink*<sup>79</sup>

#### 3.1 Ethnic Classification, the Central Highlands and the Montagnards

The current official classification from 1979 recognises 53 ‘ethnic minorities’ in Vietnam as distinct from the majority ethnic Viet.<sup>80</sup> The identification process was based on language, custom and self-identification, thus included objective and subjective elements.<sup>81</sup> The results of this process, however, remain contested.<sup>82</sup> According to the national census in 1999, the ethnic minorities count for over 10.5 million, about 14% of the total population of Vietnam.<sup>83</sup>

The Central Highlands is a mountainous area located between the 17<sup>th</sup> parallel to the north, the Annam Cordillera running along the South China Sea to the east, the Mekong Delta to the south, and the Valley of the Mekong river to the west.<sup>84</sup> Within the current four administrative provinces

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<sup>79</sup> O. Salemink, *The Ethnography of Vietnam’s Central Highlanders*, London, Routledge Curzon, 2003, p. 127.

<sup>80</sup> For an overview of the different characteristics of the ethnic minority groups, see D. N. Van et al, *Ethnic Minorities in Vietnam*, Hanoi, Thê Giói Publishers, 2000. Another common ethnonym for the majority ethnic group Viet is ‘Kinh’. For numerical data from the 1999 census of the different ethnic groups, see Supplement A.

<sup>81</sup> See D. N. Van, *Ethnological and Religious Problems in Vietnam*, Hanoi, Social Sciences Publishing House, 2001, pp 13-24. Cf. the four criteria Stalin applied for determining whether a group should be recognised as an ‘ethnic minority’ were common language, territory, economic life and culture. Cf. Y. Ghai, op. cit. note 72, p. 81.

<sup>82</sup> It is reported that some groups were forced to ‘merge’ into others. Disagreement exists among national observers of the number of groups lacking recognition, from none to ten.

<sup>83</sup> UNDP Vietnam, *Ethnic Minorities Populations in Vietnam 1979, 1989 and 1999*, [www.undp.org.vn/projects/vie96010/cemma/vie96010/populations.htm](http://www.undp.org.vn/projects/vie96010/cemma/vie96010/populations.htm) [accessed 20 February 2003].

<sup>84</sup> UNHCR Writenet Paper No. 05/2001, *Vietnam: Indigenous Minority Groups in the Central Highlands*, Geneva, UNHCR Centre for Documentation and Research, 2002, p. 2. For a map of the Central Highlands and the ethnic distribution in 1975, see Supplement B.

that make up the bulk of the Central Highlands, 20 officially recognised ethnic minorities count for about 1,6 million of a population of more than 4 million. A Minority Rights Group report state that these autochthonous groups were the oldest inhabitants of what was to become Vietnam, and thus the oldest inhabitants of the Central Highlands, while the ethnic Viet “originally were a minority in the South-East of China”.<sup>85</sup> The most numerous autochthonous groups in the Central Highlands are Jarai (320,000), Ede (257,000), which belong to the Austronesian language family and Bahnar (181,000), Sedang (128,000), Hre (124,000) and Koho (121,000), which belong to the Austro-Asiatic language family.<sup>86</sup>

The French gave the autochthonous groups in the Central Highlands the ethnonym ‘Montagnards’, which increasingly appears to be accepted as a neutral ethnonym by academics and international actors.<sup>87</sup> French policy during the colonial rule directly or indirectly reinforced pan-ethnic sentiments, particularly by establishing the area as an autonomous territory within the French Indochina federation.<sup>88</sup> Tefft observes that a genuine regional Montagnard pan-ethnic identity has evolved and that repressive policies during the former South Vietnamese regime and the current regime have reinforced highland ethno-nationalism. Tefft further observes that this pan-ethnicity is not a matter of identity consolidation but proliferation, where a new self-conscious group emerged without the ‘parenting’ ethnies losing their complete identity.<sup>89</sup> Salemink argues that French policy in effect resulted in the construction of a Montagnard ethnic identity as opposed to a Vietnamese identity in a process of ethnicisation, defining the population of

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<sup>85</sup> Minority Rights Group Report No. 18, *Minorities of Central Vietnam: Autochthonous Indochinese Peoples*, London, Minority Rights Group, 2<sup>nd</sup> Edition, 1980, pp. 6-7. It was in the 14<sup>th</sup> century that the Viet migration southwards from China reached Hué, which is situated just north of the Central Highlands.

<sup>86</sup> UNHCR Writenet Paper No. 05/2001, op. cit. note 84, p. 5. The Austronesian language family relates to Malays and Indonesians while the Austro-Asiatic language family relates to the Khmer.

<sup>87</sup> For an anthropological discussion on this issue, see the email discussion at Vietnam Studies Group, 1999, [www.lib.washington.edu/southeastasia/vsg/Elist](http://www.lib.washington.edu/southeastasia/vsg/Elist) [accessed 15 March 2003]. Other names used include ‘Highlanders’ or ‘Uplanders’. The ethnonym ‘Dega’ has previously mainly been associated with the Montagnard community in the United States. National observers state that ‘Dega’ increasingly is being used in Vietnam as synonymous with ‘Montagnard’, although ‘Dega’ bears much more politically sensitive connotations. In this paper, the ethnonym Montagnard is used.

<sup>88</sup> S. K. Tefft, *Perspectives on Panethnogenesis: The Case of the Montagnards*, in «Sociological Spectrum», vol. 19, issue 4, 1999, p. 388.

<sup>89</sup> *Idem.*, p. 391.

the Central Highlands in relation to the Vietnamese nation-state.<sup>90</sup> Whereas Hickey stresses the Montagnard development as the natural historical outcome of fundamental cultural unity, Salemink argues that Montagnard identity initially emerged as a construction on the part of outside powers.<sup>91</sup>

It should be stressed that local conditions have prevented anthropological studies, which could indicate the actual degree of self-identification as 'Montagnards' among the different groups. The attempt by the current Vietnamese regime to curb the ethnicisation process can be illustrated by reverting to the tribal distinctions for its classification of 'ethnic minorities' in the Vietnamese state, thus refusing to identify a generic term for the Montagnards.<sup>92</sup>

The autochthonous groups counted for 95% of the population in the Central Highlands in 1945, while in-migration of majority ethnic Viet since 1975 has made Montagnards absolute minorities in the four administrative provinces that cover their traditional lands.<sup>93</sup>

### **3.2 Autonomy Movements during the Indochina Wars**

The former Southern Vietnamese regime abolished the autonomy that the French in 1946 had granted the Montagnards in the Central Highlands. Montagnard traditional land rights were not recognised, the official use of, and teaching in, the Montagnard languages were prohibited and the customary law courts halted.<sup>94</sup> In response to these assimilation policies, the BAJARAKA autonomy movement was founded in 1958 with the aim to re-establish the Montagnard autonomy status. In July 1964 BAJARAKA and two other groupings merged into the FULRO movement, which engaged in armed rebellion against the Southern Vietnamese government. Pan-ethnic associations such as BAJARAKA and FULRO both had political agendas of gaining political autonomy for the Montagnards, recognition of clan land

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<sup>90</sup> O. Salemink, *Primitive Partisans: French Strategy and the Construction of a Montagnard Ethnic Identity in Indochina*, in H. Antlöv and S. Tønneson (eds.), *Imperial Policy and Southeast Asian Nationalism 1930-1957*, London, Curzon Press, 1995, p. 263.

<sup>91</sup> *Idem.*, p. 264.

<sup>92</sup> *Idem.*, p. 293.

<sup>93</sup> Until recently 'Montagnards' were in majority in the Kontum province.

<sup>94</sup> Minority Rights Group Report No. 18, *The Montagnards of South Vietnam*, London, Minority Rights Group, 1975, p. 9.

title and customary courts, use of local languages in schools and discontinued discrimination against the Montagnards in civil service.<sup>95</sup> It is unclear to what extent FULRO constituted a popular uprising, and it has been argued that the movement foremost did harm by making the ‘Montagnards’ suspect in the Vietnamese eyes.<sup>96</sup> However, most Montagnards are reported to have sided with the former Southern Vietnamese regime and the Americans.<sup>97</sup>

Meanwhile, in order to gain the support of the ethnic minorities in North and Northwestern Vietnam, the communist Viet Minh established around 1955 three ‘autonomous zones’ granting the ethnic minorities in Northern Vietnam a certain amount of self-government.<sup>98</sup> Viet Minh reportedly promised a similar autonomy arrangement for the Montagnards of the Central Highlands, and as a consequence, a Montagnard autonomy movement developed supporting the Viet Minh National Liberation Front. Following the reunification of Vietnam in 1975, Viet Minh withdrew its promise of autonomy to the Montagnards and started a ‘colonisation scheme’ in the Central Highlands.<sup>99</sup> Viet Minh cracked down on FULRO supporters, but the FULRO movement reconstituted and continued a low-level guerrilla war, this time directed towards the regime in Hanoi for not delivering its promise of autonomy. The last remnants of the FULRO movement surrendered to the UN Transitional Authority in Cambodia in 1992 and were granted asylum in the United States. In the United States a diaspora Montagnard community has grown to 3,000 persons since 1992, which have been continuing to advocate for an independent Montagnard homeland in the Central Highlands.<sup>100</sup>

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<sup>95</sup> Minority Rights Group, op. cit. note 94, pp. 10-11.

<sup>96</sup> Cf. Minority Rights Group, op. cit. note 85, p. 10.

<sup>97</sup> Minority Rights Group, op. cit. note 94, p. 3. This conflicts with the official Vietnamese version, which constantly states the national unity and the importance of the various ethnic groups in Vietnam played when the State was “faced with the constant threat of foreign invasions by imperialistic and feudal forces”. See Dang Nghiem Van et al, op. cit. note 80, p. 9.

<sup>98</sup> See section 4.2 *infra*.

<sup>99</sup> Cf. O. Salemink, op. cit. note 90, p. 293.

<sup>100</sup> This paragraph builds largely on information from UNHCR Writenet Paper, op. cit. note 84, pp. 7-8. For information about and from the diaspora Montagnard community in the United States, see the websites of the Montagnard Foundation, [www.montagnard-](http://www.montagnard-)

### 3.3 State Ethnic Policies in the Central Highlands after 1975

“The Socialist Republic of Vietnam is the unified State of all nationalities living on the territory of Vietnam. The State carries out a policy of equality, solidarity and mutual assistance among all nationalities, and forbids all acts of ethnic discrimination and division. Every nationality has the right to use its own language and writing, to preserve its national identity, and to promote its own customs, habits, traditions and culture. The State pursues a policy of comprehensive development and progressively promotes the material and spiritual life of all ethnic minorities.”

*Article 5, 1992 Constitution of the Socialist Republic of Vietnam*

The Government’s reform program known as *doi moi* (renovation) was officially launched in 1986, after which Vietnam has been carrying out extensive economic, legal and public administration reforms to facilitate the development of a socialist-oriented market economy, an enhanced socialist democracy and a governance in accordance with the rule of law.<sup>101</sup>

The section quoted above from the Constitution appears to largely reflect international standards as enshrined in the 1992 UN Minority Declaration. Constitutionally enshrined, and national policies of, preferential treatment exists in areas of education and health services directed towards ethnic minorities.<sup>102</sup> Thus, Vietnam has been willing to adopt special measures to address some of the existing inequalities between its various ethnic groups.

However, extensive discrepancies exist between the provisions of law and their implementation in fact. While Vietnam is investing considerable

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foundation.org; Save the Montagnard People, [www.montagnards.org](http://www.montagnards.org); Montagnard Dega Association, [www.angelfire.com/mo/mdadega/index.html](http://www.angelfire.com/mo/mdadega/index.html).

<sup>101</sup> A progressive freeing of Vietnam’s centrally planned economy began as early as 1979, but the official renovation policy is normally traced to the 6<sup>th</sup> Conference, 8<sup>th</sup> Plenum of the Communist Party of Vietnam in 1986. Five years later, in 1991, the Seventh Communist Party Congress expanded *doi moi* to encompass legal reform. See C. V. Rose, *The “New” Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study*, in «Law & Society Review», vol. 32, no. 1, 1998, pp. 95-99.

<sup>102</sup> Article 36 of the 1992 Constitution. Preferential policies in education include ethnic minority boarding schools and different entry requirements to university studies.



resources in the provision of social services in mountainous areas,<sup>103</sup> the benefits of the ‘renovation policy’ have been highly uneven and widespread discrimination exists against the Montagnards in education, health and provision of other social services.<sup>104</sup> Although education in mother tongue is guaranteed in Article 5 of the Constitution, bilingual primary education has not moved beyond the level of pilot projects, only partly due to the limited human resources of bilingual teachers. The figures of public servants with ethnic minority background remain very low in many areas. While the central socio-economic 10-year plan for 2001-2010 promotes an increase of use of minority languages and employment of ethnic minorities in public structures closer to the population distribution, it is unclear whether the concerted political effort is forthcoming for its realisation at local levels.

Following reunification in 1975, initially Government-supported and during the 1990s voluntary, internal migration of mainly majority ethnic Viet to the Central Highlands was stimulated by the establishment of New Economic Zones and profitable coffee plantations. The powerful movement of free migration in the 1980s and 1990s established a population of ethnic Viet loyal to the regime in an area of recent ethnic insurgency.<sup>105</sup> The increased population density sparked the ‘sedentarisation’ policy, forcing Montagnards to resettlements and requiring them to abandon their traditional practice of shifting cultivation, which had been environmentally sustainable for centuries. Whereas the Montagnards were previously blamed for increased deforestation, current more balanced views attribute this to the extensive logging by state enterprises and co-operatives, slash-and-burn practices by new immigrants and the steep increase in population density due to in-migration with resulting land scarcity and land conflicts.<sup>106</sup> Failed

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<sup>103</sup> For example the National Hunger Eradication and Poverty Reduction Program and the 135-program directing support to the 1700 poorest communes. See World Bank, *Voices of the Poor*, Hanoi, 1999, p. 33.

<sup>104</sup> Cf. D. Van de Walle and D. Gunewardena, *Sources of Ethnic Inequality in Viet Nam*, in «Journal of Development Economics», vol. 65, June 2001, pp. 180-183; N. L. Jamieson et al, *The Development Crisis in Vietnam's Mountains*, East-West Center Special Reports, Hawaii, Number 6, November 1998, pp. 3-4.

<sup>105</sup> A. Hardy, *Red Hills – Migrants and the State in the Highlands of Vietnam*, Copenhagen, NIAS Press, 2003, p. 279.

<sup>106</sup> UNDP Vietnam, *Promoting Ethnic Minority Development in Vietnam*, [www.undp.org.vn/undp/docs/2002/vdg/ethnic2002.pdf](http://www.undp.org.vn/undp/docs/2002/vdg/ethnic2002.pdf) [accessed 15 February 2003], June 2002, p. 9; O. Salemink, *The King of Fire and Vietnamese Ethnic Policy in the Central*

policies of agricultural co-operatives imposed on the Montagnard population and non-recognition of Montagnard land rights was only partly addressed through *doi moi* reforms from 1986 and the adoption of the Land Law in 1993. Allocating agricultural and particularly forest land to households has been slow in the Central Highlands for Montagnards, who are rejected allocation of communal land ownership, which they often aspire. Acknowledging policy failure, the late 1990s brought cautious experiments of delegating management authority and decision-making authority to communities culturally alien to Viet concepts.<sup>107</sup> General policy has however been driven by integration with mainstream society, rather than special treatment that may enable ethnic minorities to develop their own institutions.<sup>108</sup>

While religious freedom is constitutionally protected, the government is at unease with an increasing conversion to evangelical Christianity.<sup>109</sup> There seems to be an intertwining of politics and religion in the Central Highlands, with a particular type of Christianity practised called ‘Dega protestantism’, bringing together aspirations for independence, cultural pride and evangelism.<sup>110</sup> Salemink observes that Protestantism provides an “organisational and ideological autonomy which allows space for a separate Montagnard (Jarai, Edê) ethnic identity in a context of increasing discipline, surveillance and governmentalization”.<sup>111</sup> Human Rights Watch reports that a Vietnamese party directive outlines the government’s campaign to organise the people to struggle against the ‘Dega Nation’ urging everybody to “understand clearly that ‘Dega Protestantism’ is a reactionary political organisation posing as a religion created to organise the people for the purpose of struggling for the creation of an ‘Independent Dega Nation’” and

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*Highlands*, in D. McCaskill and K. Kampe (eds.), *Development or Domestication?: Indigenous Peoples of Southeast Asia*, Chiang Mai, Silkworm Books, 1997, p. 504.

<sup>107</sup> UNHCR Writenet Paper, op. cit. note 84, pp. 15-16.

<sup>108</sup> Asian Development Bank, *Indigenous Peoples/Ethnic Minorities and Poverty Reduction – Vietnam*, Manila, Asian Development Bank, 2002, p. 16.

<sup>109</sup> The Vietnamese government only recognises religious organisations that have been approved by the Vietnamese Fatherlands Front, i.e. the approval of the Communist Party.

<sup>110</sup> Human Rights Watch, op. cit. note 1, p. 8.

<sup>111</sup> O. Salemink, op. cit. note 105, p. 523.

“exploiting the issues of religious freedom and land rights”.<sup>112</sup> In communication procedures under the ICCPR and ICERD, the Committees have been concerned at the abundance of information regarding the treatment, and measures taken to ensure the rights, of the Montagnards and in regards to religious freedoms.<sup>113</sup> While Protestantism thus potentially redraws ethnic boundaries along religious lines and is the fastest growing religion in the country, it should be noted that estimations imply that, as of yet, less than half of the Central Highlands Montagnard population has converted.<sup>114</sup>

Vietnamese ethnic policy has been characterised as a ‘civilising project’ with ‘selective preservation’ of the ‘fine’ traditions aiming explicitly at eradicating ‘backward cultures’ and ‘superstition’.<sup>115</sup> The process of ‘selective preservation’ of cultural attributes has clear assimilationist elements and can be illustrated by the policy of ‘cultural villages’, which symbolically awards villages that adopt and abide by a ‘village convention’. This process aims at incorporating the traditional orally transmitted local regulations into the formal legal framework. The ambiguity of the official attitude towards local customary laws can be seen in the Prime Minister Directive no. 24/1998/CT-TTg. While it supports the incorporation of customary laws into the formal legal framework and endorses the revival of customary law, the directive criticises largely much of its contents.<sup>116</sup> ‘Fine customs’ should be preserved while superstition and ‘bad customs’ should be ridded of. Defining which practices belong to ‘fine’ or ‘bad’ customs rests entirely with the interpretation made by the Vietnamese authorities. Although the Governmental Decree 29 (1998) has been interpreted as providing elements of control for the villagers to preserve their local

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<sup>112</sup> Human Rights Watch, *New Assaults on rights in Vietnam’s Central Highlands: Crackdown On Indigenous Montagnards Intensifies*, New York, Human Rights Watch, 2003, p. 5.

<sup>113</sup> See Concluding Observations of the Human Rights Committee on Vietnam’s second periodic report of 27/07/2002, CCPR/CO/75/VNM, par. 16 and 19. For Vietnam’s comment asking the Committee to “refrain conscientiously from taking position in regard to biased information or distorted allegations”, see CCPR/CO/75/VNM/Add.1, par. 4. See also the findings of the UN Special Rapporteur on Religious Intolerance, E/CN.4/1999/58/Add.2 and the Vietnamese response included.

<sup>114</sup> Human Rights Watch, *op. cit.* note 1, p. 10.

<sup>115</sup> See O. Salemk, *op. cit.* note 106, pp. 516-517.

<sup>116</sup> T. Vasavakul, *Rebuilding Authority Relations: Public Administration Reform in the Era of Doi Moi*, Hanoi, Asian Development Bank, 2002, p. 47.

customs in the process of establishing village conventions, the similarity between existing village conventions makes it appear as if these are essentially centrally drafted, leaving very limited scope for local input. While villagers on a yearly basis gather and make suggestions for alterations in the existing conventions, the district authorities must approve any amendments.<sup>117</sup>

### **3.4 The 2001 Events and Current Autonomy Claims**

In February 2001 a well co-ordinated series of demonstrations and uprisings took place, with estimated 10,000 Montagnards protesting before provincial Party and Government headquarters in the Central Highlands. Representatives of political agencies were chased and some violent encounters with riot police occurred in what otherwise was a peaceful demonstration on the issues of land, religion and political autonomy. What appears to have surprised the Vietnamese authorities was the degree of apparent co-ordination between localities far apart and that the organisation had been hidden from the view of local authorities and intelligence forces. Security forces reacted with force and reports of torture and excessive violence come from the thousands of refugees, which crossed the border to Cambodia. Telephone communications were cut and the entire region barred to foreigners. Vietnamese authorities responded to international inquiries with reference to national sovereignty and territorial integrity.<sup>118</sup>

Amnesty International and Human Rights Watch report of increased repression by the Vietnamese authorities following the demonstrations and uprisings in 2001, with widespread torture to elicit confessions, arbitrary detention and official confiscation of Montagnard land without adequate compensation or prior notice. 300 churches are reported to having been destroyed, religious leaders put in arbitrary detention and ceremonies imposed where persons have been forced to publicly denounce their faith.<sup>119</sup>

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<sup>117</sup> Decree 29/1998/ND-CP on the Regulation of the Exercise of Democracy in Communes, Chapter 3 and Article 16.

<sup>118</sup> This paragraph builds on information from UNHCR Writenet Report, op. cit. note 84, pp. 19-20.

<sup>119</sup> This paragraph builds on information from reports by Human Rights Watch, op. cit. note 112, p. 5.

Considering continued travel restrictions to parts of, and the current tense situation in, the Central Highlands, it is impossible to verify the extent and claims of the current autonomy movement in the Central Highlands. National observers say that the claims include a separate ‘Montagnard’ nation in the Central Highlands, recognition of customarily owned land for the autochthonous ethnic groups and the return of the in-migrated Viet population. One national observer states that since government threatened the persons involved in the movement by using force, the people in the movement are working silently in small groups in order to spread the message. The movement is reportedly most widespread in the Gia Rai and Dak Lak provinces.

### **3.5 The Basis for Montagnard Autonomy in the Central Highlands**

This paper does not question the legitimacy of Vietnam’s sovereignty over the Central Highlands, which previously has been challenged on the issue whether there was any Vietnamese political or cultural influence over the Central Highlands before the establishment of a French missionary presence there.<sup>120</sup> A 1975 Minority Rights Group report states that while an independent Montagnard state would not be viable, the Montagnards “must be given a special status and a special autonomy in the Highland regions”.<sup>121</sup> The sequel 1980 Minority Rights Group report asks the question why the Montagnards should not be entitled “to their own particular regime, a certain autonomy in order to solve their own problems along their own cultural lines”.<sup>122</sup>

#### **3.5.1 Internal Legal Obligations**

Past constitutional provisions enabling minority autonomies to be established were abolished in 1982, see section 4.2 below. Members of the ethnic minorities are considered full citizens of the Vietnamese State with the equal right to participate in public life. No current statutory provisions exist enabling special measures on ethnic basis in political rights, other than

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<sup>120</sup> UNHCR Writenet Paper, op. cit. note 84, p. 6.

<sup>121</sup> Minority Rights Group Report, op. cit. note 94, p. 21.

provisions in the electoral law to ensure numerical representation of ethnic minority deputies in the central legislature.<sup>123</sup>

Two domestic legal documents have been referred to in order to legitimise Montagnard claims for autonomy in the Central Highlands, a Federal Ordinance enacted in 1946 and an edict signed by Emperor Bao Dai in 1951 establishing a special status of the Central Highlands. However, these documents hold no legal value today.

### **3.5.2 International Legal Obligations**

Vietnam has ratified five of the six core UN human rights instruments, including the two UN Covenants with their common Article 1 on the right of peoples to self-determination. Further, no reservation was made in regards to the right to political participation (Article 25) or the freedom of association (Article 19) of the ICCPR.<sup>124</sup> While Vietnam is state party to 15 ILO Conventions, this does not include ILO Convention No. 169, which standards therefore do not apply. Vietnam has also accepted the international instruments concerning minorities' right to effective participation in public life.

### **3.5.3 Minority and/or Indigenous Standards?**

Chapter 2 above discussed the different standards that apply to minority and indigenous populations, as well as pointing at the challenges of their operationalisation. Categorisation of a group as minority or indigenous does, at the very least, serve as a starting point for the international community to recognise the basic legitimacy of a group's desire for political recognition.

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<sup>122</sup> Minority Rights Group, op. cit. note 85, p. 16.

<sup>123</sup> Article 10 of the Law on the Election of the Deputies to the National Assembly states that "an appropriate number of minority deputies" should be elected.

<sup>124</sup> It can be discussed whether Vietnam lives up to the obligations under the various components of Article 25 of the ICCPR, particularly concerning 'genuine elections'. Steiner argues that the language used in Article 25 of the ICCPR was sufficiently abstract to permit democratic and non-democratic states to assert that they satisfied the norms. Although discussion on whether the existence of single-party states are compatible with the Covenant's provision was discussed in the drafting process and repeatedly has been addressed by the Human Rights Committee when considering the periodic state reports, the fact that most socialist State parties did not make reservations to Article 25 indicates that they did not consider themselves being in instant violation upon ratification. See H. Steiner, *Political Participation as a Human Right*, in «Harvard Human Rights Yearbook», vol. 1, 1988, pp. 84-85.

Drawing on the distinction by Daes stated in section 2.2.1 between indigenoussness and minorities, a threefold test can be constructed. Indigenous peoples are (1) aboriginal (autochthonous) to the territory where it resides today; (2) chooses to perpetuate a distinct cultural identity; and (3) chooses to perpetuate distinct collective social and political organisation within the territory.<sup>125</sup> Applying this to the Montagnards, they clearly appear to fill the first and second criteria. Firstly, as stated in section 3.1 *supra*, the Minority Rights Group recognises them as autochthonous to the region, at a time when the now majority ethnic Viet still were located in the Southeast of China. The Montagnards also largely remains residing in their homeland today, albeit many have been forced to move within the region due to resettlement policies following the in-migration of the ethnic Viet. Nevertheless, the Montagnards have maintained a link with their ancestral lands. Concerning the second criterion, the Montagnards appear to continue to perpetuate a distinct cultural identity, and remain clearly distinct from the majority Viet ethnically, culturally and linguistically.

The third criterion, whether the Montagnards “choose to perpetuate a collective social and political organisation within the territory”, is more complex. Some groups did have loose connections such as the Jörai with clans embodied powers touching neighbouring groups and a representative to deal with diplomatic relations with the Vietnamese authorities and cross-border contacts.<sup>126</sup> Each village constituted a unity and the different ethnic groups had its own social structures of clans and elders. Interethnic relations included institutionalised regular commercial exchanges, and small wars occurred along linguistic lines. They also had their own mediation and settlements system, applying customary law, which to this date continue to play a significant role. It appears as if the autochthonous groups never had a political organisation or a central power in the Western sense of the expression. However, the pan-ethnic autonomy movements indicate a ‘will’ to perpetuate a collective social and political organisation within the territory, although impossible to determine the actual popular support of past or present autonomy movements. This indicates a crucial issue, since

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<sup>125</sup> Cf. E-I. Daes, *op. cit.* note 17, p. 9.

<sup>126</sup> Minority Rights Group, *op. cit.* note 85, p. 6.

the criterion is to “choose”. The political situation during the colonising French, Southern Vietnamese and currently Communist regime have never enabled the Montagnards the opportunity to ‘choose’. In all, there are strong indications that the Montagnards would choose to perpetuate a collective social and political organisation, if they ‘could’.

This leads to the conclusion that the autochthonous groups in the Central Highlands do fill the criteria of ‘indigenoussness’. However, the Montagnards face the same challenges as other indigenous groups in Asia and Africa, whether they should be recognised as ‘indigenous peoples’ under international law, and thereby able to benefit from the ‘internal’ aspect of the right to self-determination. This author does not see any principled objection to why they should not be regarded as indigenous peoples in international legal discourse, when for example the autochthonous populations in South America are. It should be acknowledged, however, that no authoritative classification has given the Montagnards the status of ‘indigenous peoples’. It is probably for this reason that international rights organisations have adopted the, for purposes of international law, ambiguous term ‘indigenous minorities’ in their reports.<sup>127</sup> In all cases, it is clear that the Montagnards fill the criteria as ‘minorities’, and are recognised as such by the Vietnamese government. Thus, they should be able to benefit from both indigenous and minority standards.

An unsolved aspect concerns the ‘collectiveness’ in perpetuating a social or political organisation. Which identity is the ‘right-holder’ of applicable indigenous and minority standards, the Montagnard or the autochthonous? This is linked to the fundamental issue of self-identification, which will be elaborated upon below.

#### **3.5.4 Rights-holder under Montagnard or Traditional Identity?**

When the autochthonous groups developed a common Montagnard identity during the 20<sup>th</sup> Century, does this affect the classification as minority or indigenous? Is it the identity that has to be autochthonous? Just as cultures

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<sup>127</sup> Amnesty International, op. cit. note 1, p. 3; Human Rights Watch, op. cit. note 1, p. 1.



change over time, so do identities. The cultural distinctiveness remains and it is the population, not their identity that needs to be autochthonous for indigenous standards to apply. If for example two native American tribes over time would ‘merge’ into a different common identity, the persons in the two tribes would not be regarded as less autochthonous, or indigenous, than before.

Since it is argued that the autochthonous groups in the Central Highlands can benefit from ‘indigenous’ standards, they should be eligible to benefit from these standards under the pan-ethnic Montagnard identity, or the separate traditional identity. This should be their choice.

### **3.6 Potential for Non-territorial or Territorial Autonomy Arrangements**

It has been argued that the autochthonous groups in the Central Highlands should benefit from the standards as indigenous peoples, and that it should be left for them to choose whether they want to exercise these rights under their traditional ethnonym or under the pan-ethnic Montagnard identity. The self-identification element as Montagnard or not would therefore not affect the ‘indigenesness’ and can therefore be neglected in determining whether the groups are indigenous. It merely matters in regards to whether the connected rights would be claimed under the original identity or through the pan-ethnic Montagnard identity. In practice this concerns whether an autonomy arrangement would be based along the Montagnard or the traditional identity lines.

However, as concluded in the previous chapter, a purely legal approach to autonomy claims is insufficient. Granting autonomy to the Montagnards in the Central Highlands is in the end a political decision to be taken by the Vietnamese government. Various autonomy arrangements could therefore be contemplated, territorial, non-territorial or combinations thereof.

Considering that the Montagnards are spread over different administrative provinces and in these constitute absolute minorities, a non-territorial autonomy arrangement would theoretically be suitable. However, purely non-territorial autonomy arrangement could not address what appears to be the main Montagnard grievance, access to and use of their traditional

lands. A non-territorial autonomy would also run into, what appears at this stage, insurmountable challenges in the one-party state of Vietnam.<sup>128</sup> Current distrust from the Vietnamese authorities and an unease with non-state associations in general will probably act to prevent the likelihood of granting cultural autonomies, allowing Montagnards to organise outside party and state structures. This can be illustrated by the official unease with the growth of religious organisations, as described *supra* in section 3.3, and by the lengthy process of drafting a Law on Associations. This drafting process has been ongoing since the mid-1990s, aiming to comprehensively regulate the establishment and activities of the domestic NGOs. One of the remaining challenges in the drafting process is allegedly precisely how to reduce the ‘risk’ of granting legal status to minority associations that in the future could develop a political agenda. While officially estimated to be enacted by 2003,<sup>129</sup> there appears to be agreement among international and national observers alike that a Law on Associations, if enacted, will not enable minority associations to be legally recognised if they appear to hold political ambitions.

Turning to potential territorial-based autonomy arrangements, this is complicated by the fact that internal migration has made Montagnards absolute minorities in the Central Highlands. If one then accepts that the previously advocated Montagnard autonomy encompassing the entire Central Highlands region is, in practice, not a realistic option anymore, then other ‘less threatening’ territorial sub-provincial autonomy arrangements can be envisioned. While every situation is by necessity different, reflecting its particular historical and territorial circumstances, the Chinese territorial autonomy model could probably provide the, in this context, most realistic source of inspiration for the Vietnamese government. Considering the Vietnamese attentiveness towards Chinese policy in general, the Chinese ‘autonomy model’, with its recognised benefits and shortcomings, is

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<sup>128</sup> The Human Rights Committee noted in July 2002, in their Concluding Observations to Vietnam’s second periodic report under the ICCPR, its concern at reported obstacles imposed on the registration and free operation of non-governmental human rights organisations and political parties. Concluding Observations of the Human Rights Committee, UN Doc. CCPR/CO/75/VNM, 26 July 2002, para 20.

<sup>129</sup> See Inter-Agency Steering Committee, *Comprehensive Needs Assessment for the Development of Vietnam’s Legal System to 2010*, Draft 9, Hanoi, 30 March 2002, p. 71, [www.jopso.org.vn/html/team5\\_report1.doc](http://www.jopso.org.vn/html/team5_report1.doc) [accessed 15 February 2003].

probably the most elaborate autonomy model that Vietnam would consider adopting to the Vietnamese context. Other more elaborated autonomy regimes, as seen during the last decade in South America, and in Central and Eastern Europe, could also lend inspiration, although the context of socialist territorial autonomy differ fundamentally considering the institutional challenges that would face any potential autonomy arrangement in the Central Highlands.

Arguments supporting the likeliness of Vietnamese policy-makers to consider designing some kind of territorial autonomy arrangements include that the previous military strategic role of the Central Highlands has diminished significantly since 1975. Further, there has been an increased willingness from the centre to elaborate on institutional mechanisms to enhance local participation in public life. This has recently been exemplified through the policy of ‘grassroots democracy’, which in 1998 introduced a legal framework of direct participation in local public decision-making procedures.<sup>130</sup> While the timing for introducing autonomy arrangements can be crucial for its success, maybe there currently is a window of opportunity for the Vietnamese government to take a fresh look at the question of territorial autonomy. The following chapter therefore looks at one possible autonomy design, along Chinese lines, the granting of additional powers to sub-provincial administrative levels in the Central Highlands, applicable to areas where Montagnards form local majorities.

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<sup>130</sup> Decree 29/1998/ND-CP on the Regulation of the Exercise of Democracy in Communes identifies issues that should be informed about, discussed upon and supervised directly by the people. It also provides for elections of the village head and the elaboration of the above mentioned ‘village conventions’. See N. Van Sau et al, *Vietnam Village-Commune Community Today*, National Political Publishing House, Hanoi, 2001, 2001, p. 19. Research implies however, an uneven implementation with mainly increased consultation taking place in regards to local infrastructure projects. Steiner observes that the programs of mass involvement in the formulation and implementation of policy can themselves become intrusive strategies for keeping a check on the population. Steiner also argues that the primary function of much of directed local participation is to maintain the legitimacy of a regime which, despite its apparent deference to the people’s views, continues to repress independent political groups and organised dissent. See H. Steiner, *Political Participation as a Human Right*, op. cit. note 124, p. 124.

## 4 Sub-provincial Territorial Autonomy Arrangements in the Central Highlands?

### 4.1 Previous Autonomy Arrangements in Vietnam

“Each nationality will have the right of self-determination... free to choose... between adherence to the Union of Indochinese Soviet Republics and the proclamation of a separate state... In addition, each nationality within the Union will have the right to autonomy.”<sup>131</sup>

This was the policy adopted at the first national congress of the Communist Party in 1935, to be materialised once the colonial powers in Indochina were over-thrown. In the later 1960 Vietnamese Constitution, however, the policy on minorities, self-determination and autonomy was limited to stating that in “those regions where there is a concentration of national minorities, they may establish autonomous zones”, to be regarded as integral and inseparable from the Vietnamese state.<sup>132</sup>

In 1955, Ho Chi Minh announced national autonomy for regions inhabited by ethnic minorities as the keystone of the government’s minority policy.<sup>133</sup> In 1955-1957 three autonomous zones were established in the North and Northwest of Vietnam. In 1956, Ho Chi Minh stated that autonomy would be progressively applied to other areas, while “within the bloc of solidarity with Vietnam”.<sup>134</sup> A decree enabled the creation of autonomous units within the autonomous zones, which were subdivided into provinces, districts and villages. For example, in the Thai-Meo Autonomous Zone, the Meo-populated areas of Tua Cua and Mu Cang Chai were made autonomous districts.<sup>135</sup> All administrative organs in the autonomous regions theoretically had greater discretionary powers than elsewhere in North Vietnam, they could promulgate special ordinances, but these were subject to the approval by the Standing Committee of the

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<sup>131</sup> Extract from the text adopted at the first national congress of the Communist Party of Vietnam in 1935. See *Minority Rights Group*, op. cit. note 85, p. 11.

<sup>132</sup> Extract from the previous 1960 Constitution of Vietnam. *Idem*.

<sup>133</sup> J. L. Schrock et al (eds.), *Minority Groups in North Vietnam*, Ethnographic Study Series, Washington, U.S. GPO, 1972, p. 7.

<sup>134</sup> *Idem*.

<sup>135</sup> *Idem.*, p. 8.

National Assembly before becoming law. Within the autonomous regions, wherever the Tai, Nung, Tho and Meo were living, their respective local language was considered to be official, and the aim was to use their scripts in lower educational and professional schools, as well as in all official documents or papers issued by government bodies.<sup>136</sup> Substantial economic powers were granted, which however were carefully restricted in practice, leaving in fact little or no managerial control to the zonal administration.

The three autonomous zones were formally abolished by the enactment of the 1981 Constitution. Observers tend to agree that the major policy target with the autonomous zones was to integrate the northern ethnic minorities into the socialist economic and political system of the Vietnamese state and enable the North Vietnamese government to exert actual political and military control of the geographical areas.<sup>137</sup>

## 4.2 Central-Local Relations in Transition?

In order to assess the context of potential territorial devolution of control to district and commune levels in the Central Highlands, this section is a synopsis of current status of central-local relations in Vietnam.

Vietnam is a unitary state guided by the Leninist doctrine of ‘democratic centralism’, which is the principle governing the organisation and activity of all state bodies,<sup>138</sup> which in effect gives the main powers to the central leaders of the ruling Vietnamese Communist party. Despite being a unitary state, conflicts of interests between the central and local governments have historically been a notable phenomenon of the development of Vietnam’s administrative system.<sup>139</sup> While Vietnam has limited experience of formally endorsing asymmetrical central-local arrangements, a major exception was the previously mentioned formation of ‘autonomy zones’ in northern Vietnam between 1955-1981. Local governments do not have

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<sup>136</sup> J. L. Schrock et al (eds.), op. cit. note 133, p. 15.

<sup>137</sup> Cf. Save the Children UK, *Working with Ethnic Minorities in Vietnam*, Hanoi, 1993, p. 11 (unpublished); J. L. Schrock et al (eds.), op.cit. note 133, p. 9; O. Saleminck, op. cit. note 79, p. 149.

<sup>138</sup> Article 6 of the Vietnamese Constitution states that “democratic centralism is the principle governing the organisation and activity of the National Assembly, the People’s Councils, and all other State organs”.

constitutionally mandated resources, responsibilities or legal status. They merely exist as deconcentrated agents of the central government. The 1989 Law on Local Administration, revised in 1994, leave unclear many aspects of central-local relationship. Interestingly, academics and practitioners claim that Vietnam is not as centralised as commonly assumed, with the 61 provinces in fact often ‘taking’, as opposed to having been legally granted, wide discretion in re-interpreting or modifying directives from the centre to suit the local conditions.<sup>140</sup> Localities have even been issuing legal documents ‘freely’ and even contradicting central government laws.<sup>141</sup> Instead of being granted powers from the central level, it has been argued that it is the local administrations that issues a number of decentralisation measures.<sup>142</sup> This, in fact, decentralised system has also been argued as a legacy of the guerrilla traditions of the Vietnamese revolution and need for wartime improvisation.<sup>143</sup>

Vietnam combines the principles of management by sector and management by territory. Throughout the administrative system state power is disproportionately vested in the ‘executive branch’, i.e. People’s Committees at the administrative provincial, district and commune levels, although steps have recently been made to enhance the role of the directly elected representative ‘legislative’ People’s Councils, particularly at provincial level.<sup>144</sup> Revision of the Law on the Organisation of the Government in 2001 expedites the delegation of power to the locality, especially in the areas of budget and the organisation of personnel, so that the sub-central People’s Committees have the right to set up the apparatus and decide on personnel issues according to local needs and budgets.<sup>145</sup>

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<sup>139</sup> SIDA and Vietnam’s Ministry of Internal Affairs, *A study on the Implementation of Grass-root Democracy*, Hanoi, 1999, p. 11 (unpublished).

<sup>140</sup> See S. Fritzen, *The ‘foundation of public administration’? Decentralization and its discontents in transitional Vietnam*, Singapore, Faculty Working Paper Series PPP-23-02, [www.fas.nus.edu.sg/ppp/wp/wp23.pdf](http://www.fas.nus.edu.sg/ppp/wp/wp23.pdf) [accessed 18 February 2003], December 2002, p. 9.

<sup>141</sup> T. Vasavakul, op. cit. note 116, p. 21.

<sup>142</sup> B. G. Thinh, *Social Sector Decentralization: The Case of Vietnam*, Hanoi, National Institute for Educational Science Office, 1997, p. 4.

<sup>143</sup> W. S. Turley, *Vietnamese Communism in Comparative Perspective*, Colorado, Westview Press, 1980, pp. 206-207.

<sup>144</sup> Cf. UNDP Vietnam, *Strengthening of the capacity of people’s elected bodies project*, Hanoi, project document, <http://www.undp.org.vn/undp/prog/profile/eng/gov/vie02007.htm> [accessed 18 February 2003].

## FISCAL AND ADMINISTRATIVE DECENTRALISATION

Fritzen argues that a cautious fiscal and administrative decentralisation recently has taken place in Vietnam, mainly to provincial level.<sup>146</sup> Albeit short of political decentralisation, one should not regard administrative decentralisation as a fixed process, central governments can rarely unilaterally control the outcomes of initiated administrative decentralisation processes. In regards to fiscal decentralisation, the State Budget Law of 1996 introduced a more stable framework for fiscal transfers from the central level and increased the boundaries of what provincial governments can do, notably in the management and regulation of infrastructure and the work of Socio-economic Development Plans.<sup>147</sup> But the budget share does not necessarily indicate how much discretion and meaningful control is actually held by the sub-central levels. The actual province discretion in financial spending is limited, since a large portion of the budget formally assigned to the provincial level is based on inflexible, and often unrealistic, budgetary ‘norms’ with ear-marked funds for implementation of specific programs. Further, the financial set-up leaves the system ‘centralised’ at the provincial level, especially in the poorer mountainous provinces, since districts and communes have limited scope for supplements from its own level, thus further limiting the administrative discretion in carrying out programs and policies.<sup>148</sup>

The governmental line ministries, which deliver national service and hold sub-offices down to district level, are key institutional actors. Line ministries widely maintain a strong command-and-control and interventionist approach, traditionally based on interests in controlling revenues via state-owned enterprises attached to them.<sup>149</sup> The central government has been argued to continue exerting direct local control through these line ministries.<sup>150</sup>

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<sup>145</sup> T. Vasavakul, op. cit. note 116, p. 28.

<sup>146</sup> S. Fritzen, op. cit. note 140, p. 25. See also B. T. Sinh, *Civil Society and NGOs in Vietnam: Some Initial Thoughts on Developments and Obstacles*, Hanoi, [www.un.org.vn/donor/civil/CS\\_andNGOs%20in%20Vietnam.rtf](http://www.un.org.vn/donor/civil/CS_andNGOs%20in%20Vietnam.rtf) [accessed 20 February 2003], 2001, p. 4.

<sup>147</sup> S. Fritzen, op.cit. note 140, p. 4.

<sup>148</sup> Idem., p. 5.

<sup>149</sup> S. Fritzen, op.cit. note 140, p. 17.

<sup>150</sup> T. Vasavakul, op. cit. note 116, p. 57.

## POLITICAL DECENTRALISATION

It is unclear whether a genuine political decentralisation is currently on the policy agenda. Internal party discussions have been held on an ‘over-arching’ Law on Decentralisation with defined devolved powers, but this has yet not resulted in any tangible outcome. Some observers explain this in terms of institutional constraints, meaning that there are institutional players who do not desire clarifications of central-local competencies, since this would diminish their ability to intervene when desired. In Vietnamese scholarly writing, mainstream political analysts appear to perceive “sharing of power and the emergence of autonomous actors leading in the extreme to a potential loss of unity in areas such as national defence, internal security and foreign affairs”.<sup>151</sup> Fritzen identifies however, in his words, two conceptually related elements of political decentralisation. Firstly, the initiation of the ‘grassroots democracy’ policy mentioned in section 3.6 above, which in addition to enabling greater local participation, also aims to strengthen the political accountability of the governance system at the grassroots level. Secondly, the strengthening of the legislative functions of the governance system, from the National Assembly to the People’s Councils of sub-central levels.<sup>152</sup>

## DISCUSSION

The approach to decentralisation in social sectors adopted by Vietnam is not to differentiate, but to harmonise the relationship between the central and local levels.<sup>153</sup> The public administration reform in fact prioritises the centralisation of all regulation-making functions while decentralising economic and social decision-making for local authorities.<sup>154</sup> The current process can be seen as an attempt to re-establish administrative hierarchies that were lost following Vietnam’s move away from central planning in the

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<sup>151</sup> N. D. Khoi, *Kinh Nghiem Cua Cac Choung Trinh Quoc Gia*, Hanoi, 2000, as referred to by S. Fritzen, op. cit. note 140, p. 9.

<sup>152</sup> Idem., p. 7.

<sup>153</sup> B. G. Thinh, op. cit. note 142, p. 6.

<sup>154</sup> E. V. Santiago, Vietnam, *Decentralization for Better Local Governance*, in Brillantes, A. B. and Cuachon, N. G. (eds.), *Decentralization and Power Shift: An Imperative for Good Governance (A Sourcebook on Decentralization in Asia)*, Volume I, Manila, Asian Resource Centre for Decentralization, 2002, p. 155.



1980s, when the administrative and economic authority relations that had developed during the socialist planning period disintegrated.<sup>155</sup> During the late 1990s, the central government tried to work more closely with the provinces and municipalities in order to strengthen its presence.<sup>156</sup> As Manor argues, when deconcentration and fiscal decentralisation without simultaneous political decentralisation occurs and upward accountability remains stronger than downwards, this enables central authority more effective control without actually giving up any political powers.<sup>157</sup> Such situations tend in practice to constitute centralisation.

The wide policy-implementation gap can perhaps be viewed as beneficial for Montagnard localities if it enables them to re-interpret central law and policy in a manner taking local concerns into matter. A positive example of this is when communal land ownership has been enabled in some places, including the Central Highlands, although this is not recognised in state law and contravenes current central policy of individual land allocation by household.

If the roles of local governments in relation to the centre would be clarified with autonomous arrangements vested with additional powers to issue regulations, mechanisms of safeguards from arbitrary intervention from above would be needed. This constitutes the basis for autonomy, that an autonomous unit holds some, albeit limited, reserved power, which cannot be overruled by the centre. However, without clear forms of regulation, decentralisation can produce bureaucratized and corrupt local elites instead of promoting popular control.<sup>158</sup> If prejudice against ethnic minorities is more widespread at the local levels, the result can be increased difficulties in accessing land and other resources.<sup>159</sup>

There exists a widely different degree of decentralisation between, and within, provinces. For example, in the years following the 2001 demonstrations in the Central Highlands, Gia Lai province has been less open to experimentation and reform than the Dac Lac province. When it

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<sup>155</sup> T. Vasavakul, op. cit. note 116, p. 8.

<sup>156</sup> Idem., p. 19.

<sup>157</sup> J. Manor, *The Political Economy of Democratic Decentralization*, Washington, World Bank, 1999, p. 5.

<sup>158</sup> International Council on Human Rights Policy, op. cit. note 2, p. 24.

<sup>159</sup> International Council on Human Rights Policy, op. cit. note 2, p. 25.

comes to implementation of administrative and fiscal decentralisation in Vietnam, as well as the implementation of 'grassroots democracy', observers argue that these measures are taking place to a lesser degree in the Central Highlands as compared to other regions. Under all circumstances, it is clear that the traditional system of authority ranking in minority cultures is different from that advocated by the public administration reform and that traditional minority administrative structures will have difficulties to develop and run parallel along official state structures.<sup>160</sup>

### **4.3 Territorial Autonomy Arrangement at District and Commune Level?**

At the lowest levels of administration one could expect a more direct experience of, and concern for, minority needs. Vietnam could consider a constitutional amendment with the return of the provisions on autonomy from the 1960 Constitution. This would open for an 'enabling act', an Autonomy Law, drawing on the lessons from the Chinese National Regional Autonomy Law. Such a 'Vietnamese Autonomy Law' could provide the list of devolved powers and tasks that would constitute the autonomy powers. Districts and communes with a local Montagnard majority would then be able to apply, if they so desired, for autonomous status in order to benefit from the provisions.

This section will address four sets of questions. Firstly, which additional powers could be granted to Montagnard districts and communes? Secondly, which institutional constraints in the central-local relations would need to be addressed in order to achieve genuine local autonomy? Thirdly, should autonomy be granted along Montagnard identity or along traditional ethnic identity? Fourthly, would such an arrangement be applied asymmetrically only to the Central Highlands and the Montagnards, or would similar arrangements apply to the mountainous provinces in Northern Vietnam?

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<sup>160</sup> T. Vasavakul, *op. cit.* note 116, p. 53.

#### 4.3.1 Additional powers for Autonomous Districts and Communes

A territorial autonomy can be equipped with functions from all three state powers: legislation, government and administration, and court jurisdiction. It can even include policing and military jurisdiction. The powers transferred must be followed by a corresponding financial regime to provide the autonomous entity with the necessary means to implement economic policy, thus a right to levy taxes and a constitutional guarantee of an appropriate allocation of the central state's financial resources.

Similar to the Chinese autonomy model as described above in section 2.4.3, autonomy powers could be two-folded. Firstly, granting autonomous districts and communes the ability to adapt state laws and policies to local circumstances by modifying or ceasing to implement them. Secondly, local state organs should be enabled to enact separate legislation on issues of particular concern for maintaining their identity. Concerning the first part, a practical example could enable Montagnard districts to speed up the land allocation process, and to grant communal land ownership, which is more in line with traditional Montagnard customs. Communal land ownership is not recognised in the current 1993 Land Law. As stated above, local adaptation to this effect has occasionally already occurred *de facto* in Vietnam today. As observed in the previous section, the localities have taken, as opposed to having been granted, a wide margin of discretion with resulting 're-interpretation' of regulations coming from the centre to suit the local conditions. However, the public administrative reform and the centralisation of regulatory powers have limited this scope of manoeuvre. Wide *de facto* discretion is not adequate for a country moving towards governance by the rule of law. Central-local relations should be stipulated with legal clarity, granting the power of Montagnard localities to amend national legislation to suit local conditions.

Secondly, local People's Councils should be enabled to enact separate legislation, exerting primary or significant authority over schooling, cultural affairs, use of minority language, environment, local planning, natural resources, economic development, housing, health, and other social

services.<sup>161</sup> This could include recognising local customary law and reviving the use of customary courts, while subject to the over-all legal order of the state. Minority languages could be granted official status and be used in contacts with authorities and delivery of education.

#### **4.3.2 Institutional Constraints**

Packer observes that a defensive attitude on behalf of governments in assessing autonomy as a policy option is more likely in the absence of democratic experience or entrenched institutions to defend legitimate interests.<sup>162</sup> Autonomy arrangements are also most likely to succeed in states with established traditions of democracy and the rule of law. Continued lack of popular-based democracy in Vietnam with adjacent political rights is probably the most serious structural challenge of enabling a genuine autonomy arrangement in Vietnam today. Short of altering this, any autonomy arrangement in the state structures would need simultaneous devolution of the parallel party structures, since both institutions are involved in the decision-making processes. Resistance to this is foreseeable since there is a fear that internal party dissident will bring down the party.<sup>163</sup> Further, Vasavakul argues that the government continues to exert local control and to intervene in concrete tasks by delegating tasks 'illegally' to local line ministry sub-offices at district level without going through relevant People's Councils and People's Committees.<sup>164</sup> The central government's influence through the local levels of the line ministries would also need to be adjusted in order to enable genuine autonomy.

Any autonomous power should be legally entrenched with a clearly demarcated scope of power, supported by procedures where disputes concerning the extent of the granted self-governing authority can be objectively determined. Even if a clear unambiguous devolution of powers would take place to sub-provincial levels, one challenge would be to further improve the hierarchy of norms and judicial mechanisms in Vietnam to

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<sup>161</sup> Cf. Lund Recommendations, op. cit. note 7, Article 20.

<sup>162</sup> J. Packer, op. cit. note 77, p. 316.

<sup>163</sup> Z. Abuza, *Renovating Politics in Contemporary Vietnam*, Colorado, Lynne Rienner Publishers, 2001, pp. 211-212.

<sup>164</sup> T. Vasavakul, op. cit. note 116, p. 57.

effectively safeguard the autonomy elements, as well as state interests when autonomy powers are exceeded. This would be crucial in mitigating the risk of the centre using phrases of ‘unity’ and primacy of national law to constrain in unpredictable ways the grant of independent decision-making power and law-making authority. Legal avenues should be able to settle conflicts both between the autonomy and the centre, and within the autonomy entity. The independence of the relevant dispute settlement mechanism is essential for the long-term success of the autonomy arrangement. The lack of a Constitutional Court means that the recently established Administrative Court system probably would be the best currently available option.

### **4.3.3 Adequate Representation**

The question of which persons hold the positions from which the autonomous powers can be exerted, is obviously crucial. If these positions are held by persons of the majority Viet ethnicity also in Montagnard areas, there would be no enhanced mode of local Montagnard self-governance. Official national statistics available indicate an over-representation of ethnic minority deputies in the local People’s Councils and People’s Committees. With ethnic minorities constituting 14% of the population in Vietnam, they hold on a national average between 14-18% of the elected state positions at the provincial level, 17-19% at the district level and 19-23% at the commune level.<sup>165</sup> However, these figures do not reflect the distribution between regions, the distribution between the People’s Councils and People’s Committees or the distribution of key positions. By established custom, it appears as if in minority areas, either the Chairman of the People’s Council or the Chairman of the People’s Committee comes from the dominant minority group. Similar ethnic distribution is ensured for one of the two top party positions in such areas, although ethnic minorities are reportedly generally under-represented in party membership. Although the numbers of ethnic minority party members have been rising during the

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<sup>165</sup> See T. Q. Nhiep, *Implementation of Democracy at Commune – some issues*, in «Communist Journal», no. 10-5, 1999, p. 41; Van, D. N., *Vietnamese Ethnic Groups in 20<sup>th</sup> Century*, Hanoi, National Publishing House, 2001.

1990s, they still count for less than 10% of total party members, thus lower than their share of the population.<sup>166</sup> Concerning ethnic distribution of public servants, which appears to be less reflective of the ethnic composition in localities, the Government is reported to be actively increasing the numbers of ethnic minority personnel at all levels.<sup>167</sup> This point is crucial considering the significant influence of line ministry staff from central to district level.

Further, it appears as if minority representation in state structures does not always mirror the ethnic composition of a locality. Minority groups with higher literacy levels such as the Tay and Nung, are generally well represented in local authorities relative to their share in the population, while minority groups such as Hmong tend to be under-represented in the local administration.<sup>168</sup> Salemink observed in the early 1990s that those holding key positions within the state and party structures in the Central Highlands were mainly Viet from the northern Nghê An and Hà Tĩnh provinces, and that ‘Vietnamised’ minority persons constitute the ethnic minority element at the higher administrative level.<sup>169</sup>

As discussed in section 2.2.3 above, numerical representation is a necessary but not sufficient criterion in ensuring adequate representation and effective participation. The nomination procedure for elections works as a level of control to restrain deputies from forwarding minority interests in directions that might conflict with Party policy.<sup>170</sup> Minority leaders in the Party and government have traditionally tended to get their positions by adopting the official view, although this has been changing somewhat lately.<sup>171</sup> Steiner argues that intra-party debate and contest could to some extent substitute for the arranged character of elections.<sup>172</sup>

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<sup>166</sup> Comment by a national observer, 2003-04-06. The percentage of ethnic minorities holding party membership during the 1990s were 7.9% (1991), 8.6% (1995), 9.9% (1998) and 9.6% (2001).

<sup>167</sup> UNDP Vietnam, *op. cit.* note 106, p. 19.

<sup>168</sup> *Idem.*, p. 31.

<sup>169</sup> O. Salemink, *op. cit.* note 106, pp. 496-499.

<sup>170</sup> The final and official list of candidates for the elections is drawn up by the Standing Board of the Fatherland Front “on basis of the list of the self-nominated and nominated candidates and the results of the voters’ conference”. Article 33 Law on the Election of the members of the People’s Councils (1994). This in effect gives the Communist Party a decisive role in the nomination procedure.

<sup>171</sup> UNHCR Writenet Paper, *op. cit.* note 84, p. 27.

<sup>172</sup> H. Steiner, *op. cit.* note 124, p. 121.

The issue of internal minorities arises in any territorial autonomy arrangement. Accordingly a relevant, but not exaggerated, ‘fear’ of persons belonging to the Viet ethnicity coming under autonomous powers territorially granted to Montagnards would need to be addressed. This could include guaranteed representation of ethnic Viet in political structures in Montagnard autonomy arrangements.<sup>173</sup>

#### **4.3.4 Autonomy along Montagnard or Traditional Identity?**

It was concluded in section 3.5.4 above that it should be up to the Montagnards to choose whether they wish to exert potentially granted autonomy rights under their Montagnard or their traditional identity. To consider the implications in practice, if a Montagnard district was empowered to decide which language(s) should be regarded as official in dealing with public authorities and in primary education delivery, which language(s) would be used? How would this be resolved in a district with a clear majority of Montagnards, but where the Montagnard groups stem from the different linguistic families? While similar challenges obviously will exist whether basing autonomy on the Montagnard identity or not, it should be regarded as positive that these issues would be brought into the formal political structure to be worked out by the population inhabiting the area. It should also be noted that the most numerous autochthonous groups in the Central Highlands can be associated with different provinces. Most Bahnar and Sedang are located in Kontum province, the Ede and Mnong are concentrated in Dac Lac province and the Jarai in Gia Lai province.<sup>174</sup> When the geographical scale of an autonomy arrangement is small, such as districts and communes, the prospect of more homogenous populations along traditional ethnic lines is greater. In all, it should be up to the population of the locality in question to decide whether they (1) wish to exert autonomy powers, and if so, (2) whether they want to exercise it under their Montagnard or traditional identity.

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<sup>173</sup> Non-Montagnards must also be able to challenge the use of autonomy powers, if they consider its application excessive, for example resulting in discrimination against them.

<sup>174</sup> UNHCR Writenet Paper, op. cit. note 84, p. 5.

#### 4.3.5 Asymmetrical or Symmetrical Autonomy?

Should autonomy provisions be granted specifically to the Montagnards in the Central Highlands or should it apply symmetrically to all territories with ethnic minority concentration, i.e. the ethnic minorities in the mountainous areas in northern Vietnam as well? In numerical considerations, a stronger case for autonomy arrangements can be made for the northern parts of Vietnam, with ethnic minority groups constituting majorities in 9 provinces and count for more than 80% in 5 provinces.<sup>175</sup> However, it should be noted that a similar pan-ethnic identity does not appear to have developed between the ethnic minorities in the north.<sup>176</sup> Further, several of the ethnic minority groups in the north are, more or less, recently in-migrated, therefore not autochthonous and would thereby hardly fill the criteria of 'indigenoussness'. On the other hand, single minority groups often constitutes clear majorities at district level, there are for example districts with more than 95% ethnic Hmong. These areas in the north, especially the mentioned Hmong areas bordering China, also bear historical connotations triggering the Vietnamese concern of territorial integrity and national security.

Another issue is the question of Ho Chi Minh City desiring special treatment from the centre, while not for ethnic reasons. This was partly already granted in 2002 with provisions granting some management functions from the central level to Ho Chi Minh City,<sup>177</sup> but the calls for increased devolved powers could grow stronger if Hanoi would embark on an asymmetrical devolution policy.

These considerations point in different directions. Autonomy arrangements should not necessarily be conflict-driven, but regarded as a potential arrangement to ensure the ethnic minorities in Vietnam their rights to maintain and develop their identities and respective cultures. In this case, the ethnic minorities in northern Vietnam should also be able to benefit from having the choice to establish local autonomy arrangements if they so desire. On the other hand, it must be possible to apply territorial autonomy

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<sup>175</sup> Asian Development Bank, op. cit. note 108, p. 22.

<sup>176</sup> Cf. J. Michaud, *A Historical Panorama of the Montagnards in Northern Vietnam under French Rule*, in J. Michaud (ed.), *Turbulent Times and Enduring Peoples: Mountain Minorities in the Southeast Asian Massif*, Richmond, Curzon Press, 2000, pp. 51-78.



asymmetrically. Concerns of granting autonomy to the Hmong in the border areas to China should not prevent the establishment of Montagnard autonomy in the Central Highlands. In this regard, the Chinese example may again lend inspiration, demonstrating that also unitary states can apply central-local relations asymmetrically.<sup>178</sup> It should be recognised, however, that asymmetry can be difficult to manage administratively and politically. A state that has to deal with different degrees of devolution and different institutional structures would be a challenge for an already bureaucratic state as Vietnam.

#### 4.4 External Actors and Political Reality

“There is an enormous amount of official suspicion against what is considered foreign – especially American – interference in internal affairs, as is clear from such concepts as ‘peaceful evolution’ used to denote ‘imperialist’ designs to undermine stability and socialist rule by peaceful means.”

UNHCR Writenet Report<sup>179</sup>

The civil-based war within living memory makes many aspects of minority and regional policies remain socio-politically sensitive. Saleminck observes that the very reference to autonomy threatens the carefully maintained edifice of ‘ethnic solidarity’, which is the official keyword for legitimising Vietnamese policy in the Central Highlands.<sup>180</sup> By not recognising an emerged pan-ethnic Montagnard identity the response by the Vietnamese government currently appears to be less to engage in constitutional engineering than to combat the perceived manipulation through political and military means.

What room is there for international actors to engage in a constructive dialogue with Vietnam over the Montagnard issue in the Central Highlands? Few countries have experienced the degree of external interventions in

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<sup>177</sup> Decree 93/CP. See Ministry of Home Affairs and UNDP Vietnam, *From Step by Step to A Leap Forward*, Hanoi, UNDP Vietnam, 2002, p. 7.

<sup>178</sup> Y. Ghai, op. cit. note 72, p. 95.

<sup>179</sup> UNHCR Writenet Paper, op. cit. note 84, p. 9.

<sup>180</sup> O. Saleminck, op. cit. note 106, p. 530.

modern times as Vietnam. While the Vietnamese government acknowledges policy failures to some extent, it also perceives growing discontent among Montagnards as caused by outside conspiracy against the regime 'using' the issues of land and religion. Current attention to the situation seems to come mainly from some bilateral sources, particularly United States, Australia and France and international NGOs rather than multilateral institutions.<sup>181</sup> The critical report by the UN Special Rapporteur on Religious Intolerance in 1998 made the Vietnamese government announce that it would no longer admit international inspectors or human rights monitors into the country. The role and advocacy of the diaspora Montagnard community in the United States adds to the Vietnamese concerns which together with the increasing conversion to Christianity have rendered the situation in the Central Highlands an issue of national security first and foremost.

On the positive side, Vietnam has in recent years increasingly, albeit cautiously, been willing to engage in dialogue with international partners also in sensitive issues, as long as it is based on the respect of Vietnamese territorial integrity.<sup>182</sup> Vietnam is too dependent on foreign development assistance and direct investment to shut out the international community completely. While the Vietnamese government rejects foreign criticism of its human rights records, the regime is vulnerable to foreign pressure and does respond.<sup>183</sup> The international community commits an error if it deals only with open conflicts, or if it does not engage in serious dialogue for reasons of 'historical guilt' towards Vietnam. It should not be necessary for the Montagnard to turn violent to attract attention for their legitimate concerns. Vietnam is currently struggling to determine its policy ahead in response to the 2001 events. Perhaps there is currently a window of opportunity to forward minority rights in Vietnam, considering its increasing incentives of positive recognition in the international community,

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<sup>181</sup> Z. Abuza, *op. cit.* note 163, p. 226. As an illustration, UNDP's non-vocal role was displayed when UNDP in 2001-2002 prepared a background paper on minority policy before a conference with Vietnamese authorities. A small section of the draft version mentioned that one could consider setting up consultative Provincial Minority Councils. This section did not enter the final version of the background paper since it allegedly was deemed too 'vocal'.

<sup>182</sup> UNHCR Writenet Paper, *op. cit.* note 84, p. 9.

<sup>183</sup> Z. Abuza, *op. cit.* note 163, p. 212.

by applying for membership to the WTO and normalising trade relations with the United States.

The limits of international law in solving these issues are again displayed. Is it constructive in the current situation to argue that the Montagnards should benefit from the internal element of the right to self-determination? This alone is not likely to effect the policy of the Vietnamese government. Exogenous actors pointing fingers will probably continue to be more of an annoyance to the regime than a force for change. Suggestions of a fresh look at autonomy arrangements would probably have to come from within the party itself. A constructive engagement based on co-operative dialogue (as opposed to confrontational), with study visits learning about various existing autonomy models, would be more likely to inspire the Vietnamese government to consider establishing an autonomy arrangement that would suit the historical and regional context of the Central Highlands.

## 5 Conclusion

The 2001 events display that if the Vietnamese government does not enable institutional mechanisms addressing underlying Montagnard grievances in the Central Highlands, continued and enhanced rural unrest cannot be excluded. Increased repression by the Vietnamese authorities will probably merely work to sharpen ethnic division and feed the current Montagnard autonomy movement in the Central Highlands. Often the timing of a proposed autonomy arrangement is decisive for its success. Establishing enhanced modes of Montagnard local self-governance, which could have eased tensions, may no longer constitute a viable policy option if the current tensions would turn violent.

The autochthonous groups in the Central Highlands have developed a pan-ethnic identity as Montagnards, claiming political and cultural control over their local issues through various autonomy movements since the time of the Indochina wars. The legal basis for Montagnard autonomy is non-existing in internal legislation, but can be found in international documents. Although the Montagnard identity is not recognised by the Vietnamese government, which refers to the autochthonous groups as ethnic minorities, this paper argues that Montagnards fill the criteria of 'indigenity' and should therefore benefit from the standards of indigenous peoples in international law. This includes the 'internal' aspect of the right to self-determination, thus the right to determine their political status within the Vietnamese state. Also benefiting from minority standards, the Montagnards should be ensured effective participation in public life in Vietnam, a standard that may necessitate autonomy arrangements. However, since there is yet no legal right to autonomy in international law, the granting of Montagnard autonomy is in the end a political decision to be taken by the Vietnamese government. There is limited scope and interest of external actors to involve constructively in the situation in the Central Highlands. To the extent international partners seek to inspire Vietnamese policy-makers into considering establishing Montagnard autonomy arrangements, this is more likely done by exposing the advantages and disadvantages of

autonomy arrangements elsewhere, than merely pointing out applicable international legal standards.

Obviously, the establishment of any successful and sustainable Montagnard autonomy arrangement would need to be elaborated in dialogue between the Montagnards and the Vietnamese government and reflect the historical and regional circumstances of the Vietnamese context. Despite their recognised short-comings in practice, inspiration could be drawn from the current Chinese autonomy model, and the previous autonomy arrangements in Vietnam between 1955-1981. This is a realistic basis for establishing sub-provincial Montagnard autonomy arrangements in the Central Highlands, by giving statutory rights providing Montagnard areas greater control over local issues that affect them. In practical terms it would constitute a return to the autonomy provisions in the former 1960 Constitution of Vietnam, accompanied with an Autonomy Law specifying the additional powers to be held by the Montagnard autonomous districts and communes, if they so desire. These powers could include the legally entrenched right to alter the application of national law and to enact separate regulations to suit the local conditions of Montagnard concern in issues such as land, language, education and culture. As a practical example, this could enable allocation of communal land ownership, which would be a local modification of the Land Law, to comply with the local Montagnard customs.

Multiple identified challenges would need to be addressed if genuine territorial sub-provincial autonomy were to be effectively exercised. Firstly, institutional constraints to sub-provincial autonomy would include the continued central influence of line ministries down to district level. Short of popular-based democracy, any meaningful devolution of state powers would need to be accompanied by a similar devolution within the Communist party. However, it should be expected that ladders in legality would not automatically alter traditional ladders of hierarchy and up-wards approval. Also, judicial mechanisms would need to guarantee the impartial and consistent settlement of conflicts on the exercise of local autonomy regulations between the central and local authorities. Secondly, the issue of representation in the district and commune political and administrative

organs would need to be addressed, particularly increasing the ethnic ratio in government staff and key positions in state and party organs mirroring the ethnic distribution in the localities. Thirdly, whether autonomy rights would be exercised along the Montagnard identity or along traditional identity lines should be the choice of any given Montagnard locality. Obviously, autochthonous groups belonging to different linguistic families may encounter difficulties in agreeing on, for example, language policy. But it would be beneficial if these issues enter the political organs to be worked out at the local level. Also, since the largest autochthonous groups dominate different provinces, it is likely that district and commune arrangements would nevertheless be rather homogenous along traditional ethnic lines. Fourthly, the question whether sub-provincial autonomy arrangements should apply asymmetrically solely to the Montagnards in the Central Highlands would need consideration. While minority autonomy also could be envisioned in northern Vietnam, and while autonomy should not be viewed solely as a mechanism for conflict resolution, it should be possible to apply autonomy powers asymmetrically only to the Montagnards in the Central Highlands.

Territorial autonomy should not be viewed as providing the entire solution to the list of Montagnard concerns. Addressing Montagnard grievances by adequately recognising their traditional land rights, respecting religious freedoms and ensuring cultural rights would probably go a long way, and probably weaken autonomy sentiments. It could well be argued that sub-provincial territorial autonomy is not the single most important policy response currently in minority-majority relations in the Central Highlands, considering the substantial institutional challenges. There is a real risk that, even if Vietnam would embark on re-establishing minority autonomy in its state structure, it would merely be an autonomy on paper, and that those areas claiming autonomy powers would in fact be less autonomous than those which do not. However, providing genuine territorial autonomy at district and commune levels to the Montagnards by effectively resolving the identified institutional and other challenges, would address vital parts of Montagnard concerns, be likely to alleviate ethnic tensions while fully preserving Vietnamese unity and territorial integrity.

## Supplement A – Ethnic groups in Vietnam

Official name	Language group	Language family	Approximate population size(1999)
1. Kinh (Viet)	Viet-Muong	Austro-Asiatic	65,795,718
2. Tay	Tay-Thai	Austro-Asiatic	1,477,514
3. Thai	Tay-Thai	Austro-Asiatic	1,328,725
4. Muong	Viet- Muong	Austro-Asiatic	1,137,515
5. Khmer	Môn-Khmer	Austro-Asiatic	1,055,174
6. Hoa	Sinitic/ Han	Sino-Tibetan	862,371
7. Nung	Tay-Thai	Austro-Asiatic	856,412
8. Hmong	Hmong-Dao	Austro-Asiatic	787,604
9. Dao	Hmong-Dao	Austro-Asiatic	620,538
10. Gia-rai	Malayo-Polynesian	Austronesian	317,557
11. Ê-dê	Malayo-Polynesian	Austronesian	270,348
12. Ba-na	Môn-Khmer	Austro-Asiatic	174,456
13. Sán Chay	Tay-Thai	Austronesian	147,315
14. Cham	Malayo-Polynesian	Austronesian	132,873
15. Co-ho	Môn-Khmer	Austro-Asiatic	128,723
16. Xo-dang	Môn-Khmer	Austro-Asiatic	127,148
17. San Diu	Sinitic/ Han	Sino-Tibetan	126,237
18. Hrê	Môn-Khmer	Austro-Asiatic	113,111
19. Ra-glai	Malayo-Polynesian	Austronesian	96,931
20. Mnông	Môn-Khmer	Austro-Asiatic	92,451
21. Thô	Viet-Muong	Austro-Asiatic	68,394
22. Xiêng	Môn-Khmer	Austro-Asiatic	66,788
23. Kho-mú	Môn-Khmer	Austro-Asiatic	56,542
24. Bru-Vân Kieu	Môn-Khmer	Austro-Asiatic	55,559
25. Co-tu	Môn-Khmer	Austro-Asiatic	50,458
26. Giáy	Tay-Thai	Austro-Asiatic	49,098
27. Ta-ôi	Môn-Khmer	Austro-Asiatic	34,960
28. Ma	Môn-Khmer	Austro-Asiatic	33,338
29. Gié-triêng	Môn-Khmer	Austro-Asiatic	30,243
30. Co	Môn-Khmer	Austro-Asiatic	27,766
31. Cho-ro	Môn-Khmer	Austro-Asiatic	22,567
32. Xinh-mun	Môn-Khmer	Austro-Asiatic	18,018
33. Hà Nhì	Tibeto-Burman	Sino-Tibetan	17,535
34. Chu-ru	Malayo-Polynesian	Austronesian	14,978
35. Lào	Tay-Thai	Austro-Asiatic	11,611
36. La Chí	Kadai (Co Lao)	Austro-Asiatic	10,765
37. Kháng	Môn-Khmer	Austro-Asiatic	10,272
38. Phù Lá	Tibeto-Burman	Sino-Tibetan	9,046
39. La Hu	Tibeto-Burman	Sino-Tibetan	6,874
40. La Ha	Kadai (Co Lao)	Austro-Asiatic	5,686
41. Pà Then	Hmong-Dao	Austro-Asiatic	5,569
42. Lù	Tay-Thai	Austro-Asiatic	4,964
43. Ngái	Sinitic/ Han	Sino-Tibetan	4,841
44. Chút	Viet-Muong	Austro-Asiatic	3,829
45. Lo Lo	Tibeto-Burman	Sino-Tibetan	3,307
46. Mang	Môn-Khmer	Austro-Asiatic	2,663
47. Cô Lao	Kadai (Co Lao)	Austro-Asiatic	1,865
48. Bó Y	Tay-Thai	Austro-Asiatic	1,864
49. Cống	Tibeto-Burman	Sino-Tibetan	1,676
50. Sĩ La	Tibeto-Burman	Sino-Tibetan	840
51. Pu Péo	Kadai (Co Lao)	Austro-Asiatic	705
52. Ro-mam	Môn-Khmer	Austro-Asiatic	352
53. Brâu	Môn-Khmer	Austro-Asiatic	313
54. O-đu	Môn-Khmer	Austro-Asiatic	301
55. Overseas origin			39,532
56. Unidentified			1,333
<b>Total</b>			<b>76,323,173</b>

sources: Dang Nghiem Van *et al.* (2000); GSO, census 1/4/1999

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