

CULTURAL GOVERNANCE AND DEVELOPMENT IN VIETNAM

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1. INTRODUCTION

In 2011 the United Nations Educational, Scientific and Cultural Organization (UNESCO) launched the Culture for Development Indicator Suite¹ (CDIS) program in Vietnam.² The goal of the CDIS initiative is to gather information about how culture impacts development by evaluating twenty sub-indicators³ across seven dimensions of civil society – economy, education, cultural heritage, communication, governance, social, and gender equality.⁴ While preliminary results from the Vietnam test program were made

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¹ “An indicator suite is a collection of indicators from different dimensions [of a policy area, here culture], which are brought together in a thematic way [here, in relation to the concept of culture and development] in order to better understand . . . [that] policy area . . .” UNESCO, CULTURE FOR DEVELOPMENT INDICATOR SUITE: ANALYTICAL FRAMEWORK 8 (2011) [hereinafter CDIS: AF], available at http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Conv2_005_CDindicators_Analytical_en.pdf.

² The program was developed in 2009, and the initial phase is set to run through 2012. See UNESCO, TOWARDS A UNESCO SUITE OF INDICATORS ON CULTURE AND DEVELOPMENT: LITERATURE REVIEW (2010), available at http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Conv2_005_CDindicators_Literature.pdf (reviewing main works on cultural indicators over past fifteen years). The program is also being run in Bosnia and Herzegovina, Colombia, Costa Rica, Ghana, and Uruguay. *Culture for Development Indicators: Country Tests of the Culture for Development Indicators*, UNESCO, <http://www.unesco.org/new/en/culture/themes/cultural-diversity/diversity-of-cultural-expressions/programmes/culture-for-development-indicators/country-tests/> (last visited Dec. 9, 2012).

³ For a list of indicators, see the table at *Culture for Development Indicators: Seven Connected Dimensions*, UNESCO, <http://www.unesco.org/new/en/culture/themes/cultural-diversity/diversity-of-cultural-expressions/programmes/culture-for-development-indicators/seven-dimensions/> (last visited Dec. 11, 2012).

⁴ CDIS: AF, *supra* note 1, at 9. See Section 2 for a discussion of the evolution of the development framework in international law and policy.

available in 2012,⁵ as of yet there is no mechanism in place with which to interpret this data.

To aid in this analytical effort, this paper will evaluate the relationship between cultural governance⁶ and development in Vietnam by providing an analysis of the country's cultural policy and legal framework and its successes and failures in promoting sustainable human development. Section 2 of this paper provides an overview of the international legal framework underlying the "culture for development" paradigm. Section 3 explains the evolution of cultural policy in Vietnam before outlining the current legal and policy landscape relevant to heritage and non-heritage based cultural sectors. Finally, Section 4 provides an evaluation of Vietnamese cultural law and policy as a means for promoting sustainable human development and offers suggestions for more effective policy making in the future.

2. CULTURE AND DEVELOPMENT: AN OVERVIEW OF THE INTERNATIONAL POLICY FRAMEWORK

Though the importance of culture in global relations⁷ and the right to cultural participation⁸ were formally recognized by the

⁵ Preliminary result presentations were made available in March of 2012. *Culture For Development Indicators*, UNESCO, <http://www.unesco.org/new/en/culture/themes/cultural-diversity/diversity-of-cultural-expressions/programmes/culture-for-development-indicators/> (last visited Dec. 9, 2012).

⁶ The governance dimension of the CDIS "encompasses normative and policy frameworks, institutional capacities and cultural infrastructures." UNESCO, UNESCO CULTURE FOR DEVELOPMENT INDICATOR SUITE: PRELIMINARY RESULTS OF THE TEST PHASE IN VIET NAM 44 (2012), available at http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Conv2_005_CDIS_test1_Vietnam2_PPTen.pdf.

⁷ The United Nations Educational, Scientific and Cultural Organization (UNESCO) was born November 16, 1945 to promote:

peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations.

UNESCO CONST. of 1945, art. 1(1) (2012), available at <http://unesdoc.unesco.org/images/0021/002161/216192e.pdf#page=7>.

⁸ The 1948 Universal Declaration of Human Rights includes the right of every individual to the "realization . . . of the . . . social and cultural rights indispensable for his dignity and the free development of his personality," as well as the right to "participate in the cultural life of the community." Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, arts. 22, 27 (1948), available

international community in the 1940s, it was not until the 1980s that a human-centric concept of development took hold in global discourse.⁹ In 1988, UNESCO launched the World Decade on Culture and Development, the objective of which was to encourage the international community to “acknowledg[e] the cultural dimension of development; affirm[] and enrich[] cultural identities; broaden[] participation in culture; [and] promot[e] international cultural co-operation”¹⁰ Over the course of that decade, the international community introduced a number of initiatives that explored the interrelation between economic and human growth,¹¹ the importance of protecting cultural diversity and promoting cultural industries, and the impact of globalization on the development process.¹²

In 2000, the United Nations (U.N.) General Assembly adopted the U.N. Millennium Declaration, which asserts the U.N.’s dedication to ensuring even and equitable development in a

at <http://www.un.org/en/documents/udhr/index.shtml>. Individual cultural rights were further protected in the International Covenant on Economic, Social and Cultural Rights adopted in 1966. See International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 (including the right to cultural participation as an universal cultural right).

⁹ UNESCO, THE POWER OF CULTURE FOR DEVELOPMENT 10 (2010) [hereinafter POWER OF CULTURE], available at <http://unesdoc.unesco.org/images/0018/001893/189382e.pdf>. At the UNESCO World Conference on Cultural Policies in 1982, the international community acknowledged that “[c]ulture constitutes a fundamental dimension of the development process . . . [t]he aim of [which] . . . is the continuing well-being and fulfilment [sic] of each and every individual.” UNESCO World Conference on Cultural Policies, Mexico City, Mex., July 26–Aug. 6, 1982, *Mexico City Declaration on Cultural Policies*, ¶ 10 (1982), available at http://portal.unesco.org/pv_obj_cache/pv_obj_id_A274FC8367592F6CEEDB92E91A93C7AC61740000/filename/mexico_en.pdf.

¹⁰ Proclamation of the World Decade for Cultural Development, U.N. Doc. A/RES/41/187, ¶ 2 (Dec. 8, 1986), available at <http://www.un.org/documents/ga/res/41/a41r187.htm>.

¹¹ See e.g., UNDP, HUMAN DEVELOPMENT REPORT 1990, iii, (1990), available at <http://hdr.undp.org/en/reports/global/hdr1990/chapters> (aiming to put people “at the centre of all development”). See also UNESCO–World Bank Intergovernmental Conference, Florence, It., Oct. 4–7, 1999, *Culture Counts: Financing Resources and the Economics of Culture in Sustainable Development* (Feb. 2000), available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2000/11/17/000094946_00110405591265/Rendered/PDF/multi_page.pdf (aiming to “promote the expansion of economic analysis in, and resources available for, culture in sustainable development programs”).

¹² UNESCO WORLD COMM’N ON CULTURE & DEV., REPORT OF THE WORLD COMMISSION ON CULTURE AND DEVELOPMENT: OUR CREATIVE DIVERSITY (1996), available at <http://unesdoc.unesco.org/images/0010/001055/105586e.pdf>.

globalizing world.¹³ In this Declaration, the international community committed to achieving eight Millennium Development Goals, a list from which culture was noticeably absent.¹⁴ The place for culture in this strategy, however, became apparent through a number of UNESCO Conventions and Declarations signed during the subsequent decade.

In 2001, the Universal Declaration on Cultural Diversity, adopted by all 185 UNESCO member states, recognized cultural diversity not only as one of the “roots of development”¹⁵ but as “the common heritage of humanity,”¹⁶ further expanding the idea of “world heritage” outlined in the 1972 Convention for the Protection of the World Cultural and Natural Heritage.¹⁷ It also broadened the definition of culture,¹⁸ reaffirmed the human right to cultural diversity, called for international cooperation and policymaking towards these ends, and outlined the role of UNESCO in the implementation of these mandates.¹⁹

The 2003 Convention for the Safeguarding of Intangible Cultural Heritage²⁰ recognized the cultural contributions of indigenous communities and the importance of intangible heritage,

¹³ United Nations Millennium Declaration, U.N. Doc. A/55/L.2 (Sept. 8, 2000), available at <http://www.un.org/millennium/declaration/ares552e.htm>.

¹⁴ CDIS: AF, *supra* note 1, at 6.

¹⁵ UNESCO Universal Declaration on Cultural Diversity, art. 3 (Nov. 2, 2001), available at http://portal.unesco.org/en/ev.php-URL_ID=13179&URL_DO=DO_TOPIC&URL_SECTION=201.html.

¹⁶ *Id.* at art. 1.

¹⁷ The 1972 UNESCO Convention considers that “parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole” UNESCO Convention for the Protection of the World Cultural and Natural Heritage, at pmbl. (Nov. 21, 1972), available at http://portal.unesco.org/en/ev.php-URL_ID=13055&URL_DO=DO_TOPIC&URL_SECTION=201.html. It is also the 1972 Convention that establishes the World Heritage Committee and World Heritage List.

¹⁸ The 2001 Convention defines culture as “the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs” UNESCO Universal Declaration on Cultural Diversity, *supra* note 15, at pmbl.

¹⁹ *Id.* at art. 1.

²⁰ The Convention went into effect in 2006, pursuant to the requirements set forth in Article 34. UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (Oct. 17, 2003) [hereinafter 2003 Convention], available at http://portal.unesco.org/en/ev.php-URL_ID=17716&URL_DO=DO_TOPIC&URL_SECTION=201.html.

thereby further reinforcing an ever-expanding notion of culture.²¹ Finally, the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions sought to reinforce the importance of culture to sustainable development as well as “ensure[] all citizens, especially artists, cultural professionals [and] creative practitioners that they can create, produce, disseminate [and] enjoy a diversity of cultural goods and services.”²²

The principles set forth in these Conventions have since been recognized and reinforced by numerous other U.N. bodies²³ and, together, these Conventions, resolutions, and reports serve as the basis for the current development framework. The consensus in the international community is that development practices must be more human-centric, employing culturally-aware solutions by local actors to the political, social, economic, and environmental issues that stand in the way of promoting the enrichment of human choice and capabilities.²⁴ The following section provides an analysis of Vietnam’s cultural law and policy in light of these principles.

3. THE CULTURAL POLICY FRAMEWORK IN VIETNAM

Vietnam’s involvement in the CDIS program is emblematic of the Nation’s efforts since the late 1990s to adopt culture-centric development policies.²⁵ While this shift of focus in cultural policy is relatively recent, the Vietnamese government has recognized the important role of culture in the social, political, and economic development of the Nation since before the unification of North and South Vietnam in 1976. Thus, in order to understand the current policy framework, it is necessary to consider how it

²¹ *Id.* at pmb1.

²² UNESCO CULTURE FOR DEVELOPMENT INDICATOR SUITE: PRELIMINARY RESULTS OF THE TEST PHASE IN VIET NAM (2012), available at http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Conv2005_CDIS_test1_Vietnam2_PPTen.pdf.

²³ CDIS: AF, *supra* note 1, at 7. See also *Culture for Development Indicators: Key Documents*, UNESCO, <http://www.unesco.org/new/en/culture/themes/cultural-diversity/diversity-of-cultural-expressions/programmes/culture-for-development-indicators/resources/key-documents/> (last visited Feb. 25, 2014) (listing other relevant U.N. documents).

²⁴ POWER OF CULTURE, *supra* note 9, at 9.

²⁵ See U.N. COUNTRY TEAM VIET NAM DISCUSSION PAPER NO. 4, CULTURE AND DEVELOPMENT IN VIET NAM (2003), available at http://www.undp.org/content/dam/vietnam/docs/Publications/4962_Culture_and_Development.pdf (arguing that culture is a key element in Vietnam’s quest for sustainable development).

evolved through the Nation's history. The following sections provide a brief history of cultural policy in Vietnam as well as an explanation of the current legal and policy framework governing the State's cultural sector.

3.1. Background

3.1.1. Establishment of Cultural Policy Infrastructure

In 1945, the Communist Party of Vietnam (CPV), under the control of Ho Chi Minh, established The Democratic Republic of Vietnam (DRV).²⁶ The following year the National Assembly adopted the Country's first constitution, which established the institutional foundation of the modern state.²⁷ The constitution pronounced "absolute equality before the law" for all people regardless of "race, gender, prosperity, class or religion."²⁸ It also enumerated rights of education, "expression, commerce, association, thought, and of movement both within the country and abroad" and established the ministerial and local administrative body system through which cultural policy would eventually be created and administered.²⁹

While the first constitution failed to mention cultural rights, the 1959 Constitution explicitly provided the right of all nationalities "to preserve or reform their own customs and habits, to use their spoken and written languages, and to develop their own national culture."³⁰ It also called for "the constant improvement of the material and cultural life of the people" and protected the "freedom to engage in . . . cultural pursuits."³¹ Thus, by 1959, the State had not only formally adopted a rights-based approach to

²⁶ The DRV is generally known as North Vietnam. Independence was not officially won, however, until the Geneva Accords were signed in 1954, ending both the First Indochina War as well as French colonial rule in the region. JAMES S. OLSON & RANDY ROBERTS, *WHERE THE DOMINO FELL: AMERICA AND VIETNAM 1945-1995* 44 (5th ed. 2008).

²⁷ Stein Tønnesson, *Ho Chi Minh's First Constitution (1946)* 3 (1998) (unpublished manuscript), available at <http://www.clioste.in.com/documents/1998/98%20lec%20ho%20chi%20hanoi.pdf>.

²⁸ *Id.* at 3.

²⁹ *Id.* at 4.

³⁰ CONST. OF THE DEMOCRATIC REPUBLIC OF VIET., Dec. 31, 1959, art. 3.

³¹ *Id.* at pmb., art. 34. The 1959 constitution also outlined a more detailed framework for governance and a clear explanation of the relationship between State bodies.

cultural diversity, but it had also established a framework that supported the cooperation between national and local actors.

Aside from this treatment of culture in the constitution, the government passed a number of laws and policy initiatives relating to the management of culture in pre-unified Vietnam. In November 1945, the CPV passed Decree 65, forbidding “the destruction of temples, historical sites and documents relevant to the Nation’s history,” and providing for the establishment of a government body – the Vietnam Oriental Institute – responsible for protecting the Nation’s antiquities.³² The CPV further expanded the State’s cultural management infrastructure with the establishment of the Ministry of Culture and Information (MOCI)³³ in 1955 to oversee the management of culture and museums in Vietnam,³⁴ and the Vietnam Institute of Culture and Arts Studies in 1971, to aid in cultural research, education, and policy development.³⁵

For the Communist government, the State management of culture provided an opportunity not only to physically take back Vietnamese heritage, but also to present it in a way that reinforced a new nationalist identity and supported the revolutionary effort. Over the course of the Indochina Wars, the DRV government established a number of national museums throughout Northern Vietnam³⁶ that celebrated the struggle for national independence

³² Margaret Barnhill Bodemer, *Museums, Ethnology and the Politics of Culture in Contemporary Vietnam 65* (May 2010) (unpublished Ph.D. dissertation, University of Hawai’i), available at <http://www.anthropology.hawaii.edu/people/alumni/pdfs/2010-bodemer.pdf>.

³³ *Id.* at 66. The Department of Museums absorbed the Vietnam Oriental Institute upon its establishment. *Id.* MOCI still serves as the national governmental body that oversees the numerous cultural sectors in Vietnam today, though it has since been renamed the Ministry of Culture, Sports, and Tourism. *Id.* at 22, n.13.

³⁴ Incorporated into MOCI was a Division of Museums and Preservation charged with “transform[ing] museums into treasures of the state’ in order to serve the work of scientific research, educate the Vietnamese people about the revolutionary tradition, and introduce Vietnam to international countries.” *Id.* at 66–67 (internal citations omitted).

³⁵ *Vietnam Institute of Culture and Arts Studies (VICAS)*, DOCNET SOUTHEAST ASIA, <http://www.goethe.de/ins/id/lp/prj/dns/ppa/en9414957.htm> (last visited Feb. 25, 2014).

³⁶ In 1959, the DRV established the Museum of the Vietnamese Revolution and the People’s Army Museums in Hanoi, both of which presented a chronological telling of the story of the Vietnamese Revolution. Bodemer, *supra* note 32, at 69–70. In 1966, the Vietnam Fine Arts Museum opened, which also took a chronological approach to displaying Vietnamese artistic heritage. *Id.* at 70.

and local traditions as part of the same narrative.³⁷ However, while the State embraced the diverse cultural heritage of Vietnam, the cultures that were given attention were those of the people who supported the resistance effort.³⁸ This political fact is further demonstrated by the selective preservation policies discussed in the following section.

3.1.2. Cultural Policy and the End of the Subsidy Era

In 1976, North and South Vietnam were unified as the Socialist Republic of Vietnam (SRV) under control of the CPV. After decades of war and a decrease in foreign aid in the late 1970s, Vietnam suffered economic decline, the effects of which were exacerbated by the subsidy-based economic policy then in place.³⁹ Since the Government was the primary funding source for the arts and cultural sector,⁴⁰ Vietnam saw little progress in this area in the decade following unification, despite reaffirmation of national dedication to heritage protection in the 1980 constitution.⁴¹

One notable exception in this period of cultural policy stagnation was a joint effort between Vietnam and UNESCO to preserve the Hue Monument complex.⁴² In 1982 the Hue-UNESCO Working Group was formed,⁴³ despite the fact that Vietnam would not ratify the 1972 UNESCO World Heritage Convention until 1987.⁴⁴ As part of the project, MOCI⁴⁵ worked

³⁷ The aid of the Soviet Union, both financial and in terms of human capital, was essential in these efforts. *Id.* at 72.

³⁸ *Id.* at 67.

³⁹ Tran Van Binh, *Social and Cultural Changes in Vietnam With the New Market Economy*, 15 NATURE SOC'Y & THOUGHT 335, 336 (2002).

⁴⁰ Huong Le, *Economic Reforms, Cultural Policy: Opportunities and Challenges to the Arts and Culture in Vietnam in the Age of Globalization*, 38 J. ARTS MGMT. L. & SOC'Y. 5, 7 (2008).

⁴¹ The 1980 Constitution of the Socialist Republic of Vietnam mandates that "historical or revolutionary monuments, cultural relics, works of art and beauty-spots shall be maintained, restored, protected and their impact fostered" and that "[d]ue attention shall also be granted to preservation and museum work." HIÊN PHÁP [CONSTITUTION] Dec. 18, 1980, art. 34 (Viet.).

⁴² See LE VINH AN ET AL., COMPLEX OF HUE MONUMENTS, ITS INTRODUCTION, VALUE AND DIVERSITY 2 (2009), available at http://dspace.wul.waseda.ac.jp/dspace/bitstream/2065/34605/38/Honbun-5025_35.pdf (describing the historical process by which Hue Monument was protected).

⁴³ See *id.* at 2.

⁴⁴ See UNESCO, *State Parties: Ratification Status*, <http://whc.unesco.org/en/statesparties/> (last updated Sept. 19, 2012) (showing that Vietnam did not ratify the UNESCO World Heritage Convention until 1987).

with the Thua Thein Hue Provincial People's Committee to establish the Hue Monuments Conservation Centre (HMCC), which would serve as a local partner in restoration efforts.⁴⁶

The commencement of the Hue Monument preservation project—the site of which would be designated a UNESCO world heritage site in 1993—is illustrative of two key points in the evolution of Vietnam's cultural policy. First, it speaks to Vietnam's early recognition of the role of local actors in cultural matters. More importantly, however, the commencement foreshadowed a dedication to internationalism and heritage preservation that would become central to the country's Reform Era cultural agenda.

3.1.3. Cultural Policy and the Reform Era

In December 1986, the Sixth Party Congress officially implemented a set of *doi moi* reforms aimed at restructuring the Vietnamese economy by shifting from ideologically driven communist policies towards a market-based economy.⁴⁷ The reforms marked the end of the “subsidy era” and ushered in a period of socialization, increased privatization, and economic diversification.⁴⁸ Restrictions on private enterprise were relaxed; barriers for foreign investment and trade were lowered; and international investment and globalization became part of the country's long-term socio-economic plans.⁴⁹

Unfortunately, the sectors and populations that depended on state support and were unable to capitalize on “free market” opportunities were effectively abandoned.⁵⁰ As a result, development through this period was largely uneven; a fact that is exemplified by the evolution of cultural policy in that era. After

⁴⁵ The Ministry of Culture and Information has since been renamed the Ministry of Culture, Sports, & Tourism.

⁴⁶ ARCH. PHUNG PHU, HUE MONUMENTS CONSERVATION CENTRE, DEVELOPMENTAL STRATEGIES AND KEY POLICY AGENDAS IN ASIA 4 (2009).

⁴⁷ *Doi Moi* translates to “renovation.” Bodemer, *supra* note 32, at 22.

⁴⁸ Le, *supra* note 40, at 2.

⁴⁹ Interestingly, Western scholarship (and travel literature) seems almost universally to attribute the rebound of the Vietnamese economy in the 1980s to the nation's adoption of free market policies, despite the fact that the economy's highest growth rates in that decade occurred before the official implementation of *doi moi*. SCOTT LADERMAN, TOURS OF VIETNAM: WAR, TRAVEL GUIDES, AND MEMORY 127-29 (2009).

⁵⁰ The post-*doi moi* period saw a good deal of advancements in education, scientific, and technological development in the country. Van Binh, *supra* note 39, at 343.

the *doi moi* reforms, it was the Nation's traditional cultural heritage, rather than its contemporary cultural sector, that was of greatest interest to the State. Consequently, it was heritage concerns that shaped the State's cultural and development policy. To illustrate the disparate treatment of heritage and non-heritage based cultural law and policy, the two issues are discussed separately in the following sections.

3.2. Cultural Heritage Policy and Culture for Development

Beginning in the 1990s, the growth of the tourist industry and the development of cultural heritage policy in Vietnam became deeply intertwined. The government saw tourism, and heritage tourism specifically, as a powerful economic and diplomatic tool; consequently heritage preservation received a great deal of attention relative to other cultural endeavors during the period.⁵¹ In turn, the influx of tourists into the country and the increased involvement of the international community in heritage preservation efforts influenced the trajectory of heritage policy. This section provides an outline of the evolution of cultural heritage policy in Vietnam as well as an explanation of how the circumstances of this evolution have informed, and have been informed by, culture-sensitive development ideals.

3.2.1. Re-Birth of Heritage Tourism

Having embraced an open-door policy during the Reform Era, the Vietnamese government began to envision tourism as a major contributor to national economic development.⁵² Toward this end, the government passed two decrees in 1992 that established both the Department of Tourism under MOCI, as well as the Vietnam Administration of Tourism (VNAT) to oversee the development of

⁵¹ Compare discussion of the government's focus on heritage-related policy development during that period, *infra* Section 3.2, to the discussion of Vietnam's non-heritage cultural policy during that time, *infra* Section 3.3.1.

⁵² In 1960, the government passed Decree No. 26, which established the Vietnam Tourism Company under the Ministry of Foreign Trade. Nguyen Thanh Vuong, *45-Year Journey to Develop Vietnam Tourism*, TOURISM INFO. CTR. (July 18, 2005), <http://vietnamtourism.gov.vn/index.php/items/572>. However, the government did not take an interest in its full development until the late 1980s. ASIAN TOUR EUROPEAN-ASIAN INTEGRATION IN SUSTAINABLE TOURISM MANAGEMENT, ANALYSIS OF THE STATE OF THE ART OF THE TOURISM SECTOR IN THE THAI NGUYEN PROVINCE OF VIETNAM 9 (2008) [hereinafter ANALYSIS OF THE STATE OF THE ART], available at http://asiantour.progetti.informest.it/market_analysis/vietnam.pdf.

tourism in the country.⁵³ In 1995, VNAT drafted its first Tourism Master Plan for 1995-2010,⁵⁴ which aimed “to develop the tourism industry into a spearhead economic sector of the country.”⁵⁵ Recognizing the economic potential of the Nation’s heritage,⁵⁶ the plan placed a particular emphasis on the development of cultural and ecotourism.⁵⁷ The development of cultural tourism remains a top priority of the Vietnamese government,⁵⁸ and consequently so has the preservation of the Nation’s traditional heritage.

3.2.2. UNESCO’s Involvement in Vietnam and the Designation of Hue as a World Heritage Site

UNESCO’s relationship with the modern State of Vietnam began in 1975 when the Nation submitted⁵⁹ to become an official member of the organization.⁶⁰ However, it was the 1993

⁵³ See Thanh Vuong, *supra* note 52 (outlining the development of the legal framework for tourism in Vietnam).

⁵⁴ The plan was revised in 2000, when the Prime Minister approved the 2000-2010 Vietnamese Tourism Development Strategy. ANALYSIS OF THE STATE OF THE ART, *supra* note 52, at 16.

⁵⁵ *Id.*

⁵⁶ As a result of past invasions by the Chinese, French, and Japanese, Vietnam is home to numerous natural and cultural sites that differ in their ethnic and historical origin. Further, the heritage of Vietnam has a uniquely global resonance given the recentness of the Indochina Wars. Jo Vu & Quynh-Du Ton-That, *World Heritage Listing and Implications for Tourism – The Case of Hue, Vietnam*, in STRATEGIES FOR TOURISM INDUSTRY—MICRO AND MACRO PERSPECTIVES 233, 233 (Murat Kasimoglu ed., 2012); Joan C. Henderson, *War as a Tourist Attraction: the Case of Vietnam*, 2 INT’L J. TOURISM RESEARCH 269, 271 (2000).

⁵⁷ ANALYSIS OF THE STATE OF THE ART, *supra* note 52, at 16.

⁵⁸ VIET. NAT’L ADMIN. OF TOURISM, COUNTRY PRESENTATION: VIETNAM TOURISM MASTER PLAN TO 2020, 10 (2012).

⁵⁹ Vietnam submitted for UNESCO membership in 1951 while still under French colonial rule. South Vietnam maintained this status through the Second Indochina War. PHUNG PHU, *supra* note 46, at 1.

⁶⁰ Subsequently, in 1977, the government established the Vietnam National Commission for UNESCO under the Ministry of Foreign Affairs to “implement the duties and rights as a state party.” *Id.* Further, since becoming a member of UNESCO, Vietnam has ratified the 2001 Convention on the Protection of Underwater Cultural Heritage, the 2003 Convention for the Safeguarding of Intangible Cultural Heritage, and the 2004 Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Vietnam ratified the 2001 and 2003 Conventions in 2005, and the 2004 Convention in 2007. Subsequently, in 1977, the government established the Vietnam National Commission for UNESCO under the Ministry of Foreign Affairs to “implement the duties and rights as a state party.” *Id.* For a complete list of UNESCO treaties ratified by Vietnam, see *Ratified Conventions: Vietnam UNESCO*, <http://www.unesco.org/eri/la/>

designation of the Hue Monument⁶¹ complex as a World Heritage site⁶² that marked the beginning of a period of increased engagement with UNESCO and served as a turning point in the Nation's heritage management.

During the early years of the Republic, the government's mediation of the Nation's historical narrative and the presentation of its heritage toward that end were deeply political.⁶³ Heritage that did not serve the socialist agenda was problematic, and often fell victim to "selective cultural preservation"⁶⁴ on this basis. In other cases, the contentious issue was not which heritage to preserve, but which history; a question made more complex by "war tourism".⁶⁵ For example, the Hue Monument complex played a significant role in the pre-war and wartime history of the country and therefore embodied multiple historical narratives. Initially, the site's preservation was pervaded by politics. After the war, the CPV largely neglected the site because it served as a

conventions_by_country.asp?language=E&contr=VN&typeconv=1 (last visited Jan. 28, 2014).

⁶¹ For a discussion of UNESCO's initiation of a preservation partnership with Vietnam at Hue in 1982, see *infra* p. 113.

⁶² *World Heritage List: Complex of Hué Monuments*, UNESCO, <http://whc.unesco.org/en/list/678> (last visited Dec. 12, 2012). Since 1993, Vietnam has had four cultural properties and two natural properties designated as World Heritage sites. There are also seven properties currently on the Tentative List. For a list of all of the properties and information about each see *The States Parties: Viet Nam*, UNESCO, <http://whc.unesco.org/en/statesparties/vn> (last visited Dec. 10, 2012).

⁶³ See *supra* pp. 107-108 (discussing the government's use of national museums in support of a socialist agenda).

⁶⁴ After unification, the government instituted a policy of selective preservation, which called for the eradication of minority cultural practices believed to "pose a threat to the socialist progress of the country." JEAN MICHAUD, *HISTORICAL DICTIONARY OF THE PEOPLES OF THE SOUTHEAST ASIAN MASSIF* 211 (2006). Unfortunately, this policy was never officially revoked and some have criticized the government for allegedly using this policy to preserve only the cultural practices that would appeal to tourists. *Id.* For a discussion of the use of selective preservation policies against Vietnam's Central Highlanders, see OSCAR SALEMINK, *THE ETHNOGRAPHY OF VIETNAM'S CENTRAL HIGHLANDERS: A HISTORICAL CONTEXTUALIZATION, 1850-1900*, at 257-87 (2003).

⁶⁵ Henderson, *supra* note 56, at 276 (quoting the Director of the Tourism Department of Da Nang, "war tourism is big business." (internal citation omitted)). While sometimes the aim of wartime heritage preservation was to reinforce the perseverance of the people during the Indochina Wars, other times these sites were managed to meet the expectations of tourists. This inevitably affected the stories the site told. See *id.* (describing the transformation of the Cu Chi Tunnel complex into something akin to an amusement park).

reminder of the Nation's feudal past;⁶⁶ conversely, the 1981 UNESCO preservation effort paid a great deal of attention to the site's wartime history.⁶⁷

After designation as a World Heritage site in 1993, however, the political dimension of the site's preservation began to dissipate. In a 1995 UNESCO working party document, "war damage" was mentioned only after a two and a half page discussion of natural causes of "deterioration," and there was no specific mention of the Vietnam War.⁶⁸ Even the politics of Hue's colonial connections were brushed over by placing the focus on the aesthetic beauty of the monuments and on the location's creative and artistic value.⁶⁹ Once the site became "world heritage" – the preservation of which was meant to foster "international peace and . . . common welfare"⁷⁰ – its presentation was depoliticized in order to appeal to a wider global audience.⁷¹

UNESCO's early involvement in Hue's management reinforced the connection between cultural preservation and tourism in more ways than by just globalizing the site's appeal. International interest in Vietnamese heritage and Vietnamese efforts to exploit this interest created an influx of tourists.⁷² On one hand, this was exactly what the government wanted. Tourism drove new foreign direct investment, contributed to local economies, and created new service industry jobs.⁷³ On the other hand, an increase in the flow

⁶⁶ Vu & Ton-That, *supra* note 56, at 235.

⁶⁷ The primary destructive force recognized by the UNESCO Director General was the Vietnam War, which he described as "one of the cruelest wars in history." Mark Johnson, *Renovating Hue (Vietnam): Authenticating Destruction, Reconstructing Authenticity*, in *DESTRUCTION AND CONSERVATION OF CULTURAL PROPERTY* 75, 86 (Robert Layton et al. eds., 2001) (quoting a speech given by the UNESCO Director General on Nov. 25, 1981 in Hanoi). American Veterans visiting the site also associated Hue with the war, since it served as the site for the 1968 Tet Offensive. *See id.* at 75 ("As they [a group of Vietnam veterans] walked around the site, they all kept repeating to her: 'Did we do this?' 'What did we do?'").

⁶⁸ *Id.* at 87 (citing section 2.2 of the 1995 progress report on the UNESCO International Campaign).

⁶⁹ Vu & Ton-That, *supra* note 56, at 236.

⁷⁰ UNESCO CONST., *supra* note 7, at pmb1.

⁷¹ Vu & Ton-That, *supra* note 56, at 236.

⁷² *See id.* at 233 (noting "the impact of the [World Heritage] listing on the prominence of Hue as a tourist destination").

⁷³ *See generally, e.g.*, UNESCO, THE EFFECTS OF TOURISM ON CULTURE AND THE ENVIRONMENT IN ASIA AND THE PACIFIC: CULTURAL TOURISM AND HERITAGE MANAGEMENT IN THE WORLD HERITAGE SITE OF THE ANCIENT TOWN OF HOI AN, VIET

of tourists⁷⁴ began to exert pressure on the heritage sites and the communities surrounding them.⁷⁵ Consequently, the framing of the relationship between tourism, economic growth, and heritage began to shift, and with it the focus of Vietnam on policies that reflected international principles of culture-centricity and sustainability.

3.2.3. Culture-Sensitive Development Strategy in the 21st Century

As early as 1995, the potential negative impact of the new wave of tourists in Vietnam was being realized.⁷⁶ However, it was not until the late 1990s and early 2000s that these issues started to be addressed in law, policy, and the preservation plans of specific sites. In 2001, Vietnam passed the Cultural Heritage Law⁷⁷ that establishes the modern legal framework for heritage preservation. The Law covers natural and cultural heritage, both tangible and intangible,⁷⁸ and dedicates full chapters to the rights and responsibilities of the people and the government in the preservation and protection of each. In 2009, the Law was amended to incorporate an expanded treatment of intangible cultural heritage, as well as a revised definition of intangible

NAM (2008) [hereinafter THE EFFECTS OF TOURISM] (outlining how tourism has effected the economy and income and employment levels in Hoi An). Tourism became one of the primary motivations for urban development in Hu. Kelly Shannon, *Evolving Tourist Topographies: The Case of Hue, Vietnam*, in TRAVEL, SPACE, ARCHITECTURE 230, 237 (Jilly Traganou & Miodrag Mitrasinovic eds., 2009).

⁷⁴ In 1995, Vietnam received 1.3 million foreign visitors, generating nearly \$540 million dollars in tourism-derived revenue. Bee Chin NG, *Tourism & Economic Development in Vietnam 2* (June 2008) (unpublished MPhil dissertation, University of Birmingham), available at etheses.bham.ac.uk/1783/1/Ng08MPhil.pdf. In 2006, Vietnam received 3.6 million foreign visitors and, “[a]ccording to the Euromonitor International (2007), ‘Vietnam is predicted to be among the top ten major tourist destinations in the world in the next ten years by the World Travel and Tourism Council (WTTC).’” ANALYSIS OF THE STATE OF THE ART, *supra* note 52, at 9–10.

⁷⁵ THE EFFECTS OF TOURISM, *supra* note 73, at 61–62 (outlining the negative effects of tourism on cost of living, traffic, and waste management amongst other things in Hoi An).

⁷⁶ Johnson, *supra* note 67, at 88 (quoting a UNESCO consultant for Hue as saying that, “‘in addition to sloppy and inappropriate restoration, the pressures of tourism bring additional, and perhaps even more serious dangers—the tourists themselves!’”).

⁷⁷ Law on Cultural Heritage, Law No. 28/2001/QH10 (July 12, 2001) (Viet.) (prior to 2009 amendment), available at http://www.accu.or.jp/ich/en/training/national_law_pdf/national_law_vietnam_01.pdf.

⁷⁸ *Id.* at art. 1.

cultural heritage more in line with the one provided in the 2003 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage.⁷⁹

Aside from outlining the treatment of different categories of protected heritage, the Law ensures the “unified management of the people’s cultural heritage,” the recognition of “collective, community and private ownership of cultural heritage,”⁸⁰ and the protection of *all* heritage in compliance with international standards and practices.⁸¹ The Law asserts further that all policies relating to the protection and preservation of heritage must “contribute to the economic and social development of the country,”⁸² and devotes an entire section to the allocation of State resources.⁸³ Since 2001, the government has passed regulations that supplement and implement specific articles of the Law,⁸⁴ and has adopted a number of National Target Programs devoting State resources to cultural heritage management pursuant to the Law.⁸⁵

This devotion to the responsible management of Vietnam’s heritage is further reflected in tourism related laws and policies passed during the past fifteen years. The 2005 Law on Tourism mandates the use of tourism resources to ensure “sustainable

⁷⁹ VIET NAM DEPARTMENT OF CULTURAL HERITAGE, MINISTRY OF CULTURE, SPORTS AND TOURISM, ANNEX 1: QUESTIONNAIRE ON RAISING AWARENESS ABOUT INTANGIBLE CULTURAL HERITAGE 2 (2009), available at <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CDAQFjAA&url=http%3A%2F%2Fwww.unesco.org%2Fculture%2Fich%2Fdoc%2Fsrc%2F01402-EN.doc&ei=w0nGUKsd48DQAa-sgfAG&usg=AFQjCNEdx8qPFitsp7SFbKRjmZZOSCDzQg&sig2=TKlgJKAWRYhpXUhoNougeA>.

⁸⁰ Law on Cultural Heritage, *supra* note 77, at art. 5.

⁸¹ *Id.* at art. 8. See also *id.* at ch. V, § 3 (outlining the State’s dedication to international cooperation).

⁸² *Id.* at art. 9, §1.

⁸³ *Id.* at arts. 57–62.

⁸⁴ See, e.g., LE THI MINH LY, ASIA/PACIFIC CULTURAL CTR. FOR UNESCO (ACCU), COUNTRY REPORT: VIET NAM: GOVERNMENTAL MECHANISM AND THE ROLE OF THE CENTRAL GOVERNMENT FOR THE SAFEGUARDING OF INTANGIBLE CULTURAL HERITAGE (ICH) (2008), available at http://www.accu.or.jp/ich/en/training/country_report_pdf/country_report_vietnam.pdf (describing programs aimed at protecting cultural heritage).

⁸⁵ In September 2012, the Prime Minister approved a program for the 2012–2015 fiscal year that is set to receive VND 7399 billion. “VND3,231 billion will come from the State Budget, VND2,116 billion from local budgets, and VND2,052 billion from other sources.” Ven, *VND7,399 Billion for National Target Program on Culture*, TALKVIETNAM (Sept. 17, 2012), <http://talkvietnam.com/2012/09/vnd7399-billion-for-national-target-program-on-culture/#.UMZNSpPjnqs>. This amount is equivalent to roughly \$355,038 USD as of December 2012.

tourism development”⁸⁶ and to ensure that tourism “conserve[s], embellish[es] and promote[s] the values of tourism resources.”⁸⁷ Further, the law calls for the participation of local cultural communities in sustainable development,⁸⁸ and in the “preserv[ation] . . . [of] their traditional cultural values;”⁸⁹ and requires that communities that support tourism industries,⁹⁰ tourism development plans,⁹¹ international business enterprises,⁹² and tourists themselves⁹³ respect and help to preserve the cultural identities and customs of the Vietnamese people. Toward these ends, the Vietnam Tourism Master Plan for 2020 emphasizes sustainability and local participation in the development of the cultural tourism sector as a “driving force to foster socio-economic development.”⁹⁴

Finally, even outside of the heritage and tourism policy framework, the National Assembly has recognized the importance of culture in the Nation’s development plans in the areas of poverty reduction, public health, and sustainable urbanization.⁹⁵ Thus, the combination of these legal and policy initiatives seems to support the realization of the goal that “culture should progress side-by-side with economic and social development and environmental protection in Viet Nam.”⁹⁶

3.2.4. Conclusion

By tracing the development of the current legal framework, it is apparent that the importance of heritage tourism to the Vietnamese economy helped to ensure that heritage protection and preservation received adequate legal and policy support from the

⁸⁶ Law on Tourism, No. 44/2005/QH11 art. 15, § 1 (2005) (Viet.), available at http://www.moj.gov.vn/vbpq/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=6832.

⁸⁷ *Id.* at art. 5, § 1.

⁸⁸ *Id.* at art. 4, § 19.

⁸⁹ *Id.* at art. 4, § 20.

⁹⁰ *Id.* at art. 7, § 1.

⁹¹ *Id.* at art. 18, § 3.

⁹² *Id.* at art. 50, § 1(c).

⁹³ *Id.* at art. 45, § 3.

⁹⁴ VIET. NAT’L ADMIN. OF TOURISM, *supra* note 58, at 10.

⁹⁵ See generally CULTURE AND DEVELOPMENT IN VIET NAM, *supra* note 25, at 8–16 (describing the various roles of cultural policy in Vietnam’s national development plans).

⁹⁶ *Id.* at i.

State and regional administrative bodies. The importance of heritage to the country's economic growth also facilitated a natural transition to a more culture-inclusive development plan that, at least formally, recognizes the preservation of cultural diversity as important in and of itself. Further, since heritage serves as a bridge between Vietnam and the international community—not only by bringing foreign tourists, but also foreign investment—the State has been motivated to comply with evolving international standards of sustainability and human development. Thus, while heritage management in Vietnam may be further improved, the administrative interest and current legal framework suggests a strong dedication to sustainable cultural development in the country.

3.3. *The Arts Sector and Non-Heritage Cultural Industries*

Just as the development of the current policy framework governing heritage was informed by the social and economic policy changes of the 1980s, so too was the policy landscape for the arts and other cultural industries. The outcome, however, was markedly different. This section traces the development of, and policy support for, non-heritage cultural sectors since the Reform Era in order to explain the divergence in the management and treatment of different cultural industries in Vietnam.

3.3.1. *The Effect of Doi Moi on State Funding of Arts and Culture*

Prior to the *Doi Moi* reforms, the national government provided the main source of funding for arts and cultural institutions and projects in Vietnam.⁹⁷ Through the 1990s, however, there was a sharp decrease in State funding of the arts. This is attributable in part to the State's socialization policy, which promoted privatization and encouraged the cultural sector to diversify its funding by taking advantage of the market economy.⁹⁸ Another contributing factor was the Asian economic crisis that occurred in the late 1990s, which negatively impacted the transitional Vietnamese economy during that time.⁹⁹ Thus, since the government did not recognize the same economic potential in the contemporary arts and cultural industries as it did in heritage

⁹⁷ Le, *supra* note 40, at 9.

⁹⁸ *Id.*

⁹⁹ *Id.* at 10.

tourism,¹⁰⁰ funding in these sectors was cut significantly. In fact, a majority of the already limited State funding for the arts was reserved for the preservation and dissemination of traditional arts, rather than the development of new artistic endeavors.¹⁰¹

It is, however, worth noting some positive developments in the arts and cultural sectors during this time. For example, while there was a dramatic decrease in the number of arts organizations, there was actually an increase in performances, arts programs, and revenue for major arts organizations.¹⁰² Also, while the number of full-time artists and employees in the cultural sector decreased, socialization policy provided the artists and organizations that could survive with more autonomy as to the management and commercialization of the sector.¹⁰³ Unfortunately, as will be explained in the following sections, this autonomy was far from complete.

3.3.2. Cultural Industry and the Current Legal Framework

The effects of globalization led to increased interest in popular culture and cultural consumption in Vietnam in the 1990s,¹⁰⁴ which in turn helped to create a market for products beyond that which already existed for heritage. There has not, however, been the same level of legal or policy support for the development of other cultural industries as there has been for heritage tourism, though some progress has been made. For example, the 2005 amendments to the Commercial Law and the 2006 revised Civil Code provide a regulatory framework for the contract relationships between artists, museums, and dealers.¹⁰⁵ This, however, has yet to lead to the standardization of the practice of entering into formal contractual relationships in the arts community, where the history

¹⁰⁰ *Id.* at 9–10 (“The business dimension of artistic activities and the role of the entertainment industry in social life was not given prominence.”).

¹⁰¹ *Id.* at 10, 13. The goal of the government’s art funding policy was “to optimize the value of existing government subsidy.” *Id.* at 10 (internal citation omitted). The plan to prioritize the traditional arts was formalized in 1997 when the 8th Party Congress passed a decree that further outlined the “[o]rientation[] and direction[] for socialization policy” in the arts. *Id.*

¹⁰² *Id.* at 12.

¹⁰³ Annette Van den Bosch, *Professional Artists in Vietnam: Intellectual Property Rights, Economic and Cultural Sustainability*, 39 J. ARTS MGMT., L. & SOC’Y 221, 226 (2009).

¹⁰⁴ *Le, supra* note 40, at 13.

¹⁰⁵ Van den Bosch, *supra* note 103, at 226.

of informal mechanisms of operation has led to widespread abuse of an unregulated system.¹⁰⁶ The 2004 Competition Law may provide protection for artists if bans on anti-competitive behavior can be found to encompass the sale of forgeries and fake art pieces.¹⁰⁷ Finally, the amended 2009 Intellectual Property Law¹⁰⁸ establishes moral rights for artists and outlines standards for intellectual property right protection consistent with relevant international agreements to which the State is party.¹⁰⁹

The actual protection that these legal instruments afford artists and those working in cultural industries, however, is questionable. In many cases, the laws themselves are inadequate in their coverage and in the recourse they provide for rights holders.¹¹⁰ Also, a lack of respect for intellectual property protection and the concept of individual economic rights, coupled with ineffective and underutilized dispute resolution mechanisms, has led to poor and uneven enforcement of many of these rights.¹¹¹ Finally, while these laws provide a legal framework for activities that are integral to the operation of cultural industries, there is very little specific regulation to aid in the management of the arts sector. Without such standards and regulations, it has been difficult to maintain stability with regard to income and art market pricing in Vietnam.¹¹² As such, the State has largely failed to provide a policy

¹⁰⁶ *Id.* at 225.

¹⁰⁷ *Id.* at 226.

¹⁰⁸ Amending and Supplementing a Number of Articles of the Law on Intellectual Property, Law No. 36/2009/QH12 (June 19, 2009), available at http://www.wipo.int/wipolex/en/text.jsp?file_id=182541.

¹⁰⁹ *Id.* Vietnam is party to the Berne Convention as well as many other WIPO-administered treaties. Vietnam is also party to a number of other multilateral, bi-lateral, and regional IP-related treaties. For a full list, see *Vietnam: Treaty Membership*, WIPO, <http://www.wipo.int/wipolex/en/profile.jsp?code=VN> (last updated July 1, 2013). Further, as a member of the WTO—to which the country was admitted in 2006—Vietnam must abide by the rules set forth in the TRIPS agreements.

¹¹⁰ See Van den Bosch, *supra* note 103, at 228 (discussing both how the amended Civil Code fails to provide a procedure for copyright registrations and limited rights of artists more generally). For a more in-depth discussion of content-related issues, see *id.* at 227 (discussing the weak enforcement and blatant disregard of Vietnam's existing commercial and IP laws, resulting in Vietnam becoming a "haven for copyright pirates").

¹¹¹ For a more in-depth discussion of enforcement related issues, see *id.* at 225–27 (discussing the restrictive nature of Vietnam's contract laws and its failure to protect artists' IP rights).

¹¹² See Van den Bosch, *supra* note 103, at 224 ("Due to lack of government regulation and professional peer group standards, producers in the creative and

or legal infrastructure that would allow this sector to develop. Interestingly, the hands-off approach the government has taken with regard to development of cultural industries is not consistent with the State's management of culture generally, which remains deeply political and tightly tied to the CPV's nationalist agenda.¹¹³

3.3.3. State-Controlled Culture

Though the State embraced an open-door economic policy in the mid-1980s, there was also a fear at the time that globalization might threaten the CPV's political dominance. The government was concerned that outside forces would dilute the nationalist Vietnamese identity it had worked to protect, and would foster a culture of consumerism that would lead to the prioritization of individual wealth over national economic development.¹¹⁴ Thus, in an effort to contain this threat, the CPV employed culture to justify its restrictive policies regarding the infiltration of foreign influences in Vietnamese society. By claiming that Vietnamese culture was under outside attack—a narrative that reflects and plays into the Nation's historic antagonism towards foreign aggressors—the State could use cultural policy to assert social control.¹¹⁵

Toward this end, the national government instituted a program in the late 1990s to rid the country of imported “social evils” in the name of protecting traditional Vietnamese culture.¹¹⁶ In some cases, the government used this policy to affirm the external origin of immoral social behaviors, such as drug use and gambling, thereby lending support to the idea that foreign influences were degrading society.¹¹⁷ In other instances, the policy was used to

heritage industries cannot be assured of a viable income”); Le, *supra* note 40, at 11 (“[Government] funding . . . remains quite limited and does not cover artists’ living costs or maintain the viability and the quality of artistic activities.”).

¹¹³ See *id.* at 10 (analyzing how the transformation of museums can reinforce revolutionary narratives and nationalist identity).

¹¹⁴ Jamie Gillen, *A Battle Worth Winning: The Service of Culture to the Communist Party of Vietnam in the Contemporary Era*, 30 POL. GEOGRAPHY 272, 275 (2011).

¹¹⁵ See *id.* at 279 (“[T]he ways in which the CPV develops and uses Vietnamese culture as a tool in Party-led nation building and an expedient weapon against foreign aggressors.”).

¹¹⁶ *Id.* at 276.

¹¹⁷ *Id.* at 275–76.

control the flow of foreign thoughts and culture¹¹⁸ into Vietnamese society. Ultimately, however, the program allows the State to control the development of culture by giving the government the power to determine what is and is not “Vietnamese culture,”¹¹⁹ and in turn what will and will not be tolerated.

The power that the government wields over culture is particularly salient with regard to the arts, since the lack of infrastructure that would support a private market has left control of artistic production and distribution in the hands of the State.¹²⁰ As such, the autonomous development of modern art in Vietnam has been thwarted by the State’s adherence to the idea that “[a]rt is permissible only if it is cultural; that is, if it depicts revolution or serenity.”¹²¹

3.3.4. Conclusion

While there are laws in place to govern certain aspects of arts and cultural industries, the legal and policy framework in Vietnam is too incomplete and non-specific to allow for the successful development of these sectors. Further, the lack of political will to support non-heritage based cultural industries has also hindered both economic and creative development in this sector.

4. CONCLUSION

The effectiveness of Vietnam’s cultural laws and policies in supporting the Nation’s sustainable development differs greatly depending on the nature of the culture that it purports to support. In the field of heritage protection and preservation, Vietnam has shown formal dedication in the form of law and policy, as well as practical dedication, to the sustainable management of these resources via specific preservation initiatives. Further, the State has succeeded in tying heritage to economic development through the building of the tourism sector. The State has not, however, made the same commitment to the development of non-traditional and non-heritage-based arts and culture. The legal and policy

¹¹⁸ See *id.* at 276 (discussing how some “culturally deviant materials” that could be found on the list of social hazards include “Coca-Cola, Madonna, and Hollywood” and how, in the digital era, the list now includes social media outlets like Facebook and democratic activists blogger sites) (internal citation omitted).

¹¹⁹ *Id.* at 276.

¹²⁰ *Id.* at 277.

¹²¹ *Id.* at 278.

framework that governs these sectors is far less developed, a fact of which the State not only seems to be aware but also may consciously condone. Finally, the promotion of *new* arts and culture has not explicitly been prioritized as part of the Nation's socio-economic plan.

In part, the difference in the treatment of these two categories of policy can be attributed to the State's early recognition of the economic potential of the Nation's heritage, which it did not see in other cultural industries. This cannot, however, explain why the State has failed to invest in the development of non-heritage cultural industries in more recent years, as the economic potential of these industries is now widely recognized.¹²² Rather, it seems the issue is that, despite formally subscribing to the notion of sustainable human development, this remains a means rather than an end for the Vietnamese government.

In the field of heritage preservation, political and economic objectives coincide with sustainable human development principles, at least formally. The government has an interest in the sustainable preservation of heritage and cooperation with the international community toward these ends because of the State's interest in tourism and foreign investment. At the same time, the promotion of the Nation's traditional heritage does not threaten CPV nationalist identity politics. In fact, heritage preservation allows the State to actively mediate the Nation's traditional cultural narrative.

This is not necessarily true with regard to other cultural industries. If the State's concerns were purely economic, then perhaps recognition of the economic potential of cultural industries would have aligned State interests with human development concerns. The real source of dissonance, however, seems to be political. Despite the State's embrace of globalization and liberalization with regard to economic policies, Vietnam is still a one-party communist state. Thus, a development plan that is motivated by the expansion of social choice and personal freedom is somewhat at odds with the CPV's desire to maintain a level of social control.

¹²² See, e.g., Tuoi Tre, *Vietnam's Cultural Industry: Lack of Money, Abundance of Conflicts*, LOOK AT VIETNAM (Sept. 5, 2009), <http://www.lookatvietnam.com/2009/09/vietnams-cultural-industry-lack-of-money-abundance-of-conflicts.html> (discussing how cultural industries have helped the economies of other countries and expressing frustration that they have not been leveraged in the same way by Vietnam).

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It seems that Vietnam's cultural policy will not effectively support sustainable human development until cultural development becomes the State's true goal, which will only be possible once culture has been depoliticized or when the free development of culture aligns with State politics. When this alignment will occur, and the extent to which it will be driven by domestic versus international pressure, remains to be seen. In the meantime, however, understanding the political and historical considerations underpinning Vietnam's legal and policy framework should help to elucidate the relationship between cultural governance and the furtherance of sustainable human development goals in the country.