

## Legal and Judicial Reforms in Vietnam

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The Socialist Republic of Vietnam has a population of 87, 74 million on an area of 331.690 square kilometres in Southeast Asia.

The Vietnamese originated from several tribes and factions since 2000 BC in the northern mountainous area of modern Viet Nam. The country was under Chinese occupation for more than ten centuries until 938 AD. Since then, Vietnam remained independent until the late 19th century. In 1859, Vietnam fell under French colonization and was then occupied by Japan during World War II.

The country declared its independence on September 2, 1945 under the name Democratic Republic of Vietnam. The country carried out the war against the French until 1954 when French forces were defeated in the famous Dien Bien Phu campaign. The Geneva Accord 1954 temporarily divided the country into two parts along the 17<sup>th</sup> parallel: the Democratic Republic of Vietnam in the north and the Republic of Viet Nam in the south. After twenty- one or more years of war between the north (supported by the communist countries) and the south, with deep military involvement of the U.S. Government including its widespread bombing of the north, in 1975 the north took over. The country was fully reunited and later renamed the Socialist Republic of Vietnam.

The country carried out economic reform, popularly known as *doi moi*, since 1986, under which the country diverted from the central planning economy to the market economy.

The centre of *doi moi* was the provision of rural land to the farmer families, liberalization of internal and external trade, recognition of individual property, and permission of foreign investment. *Doi moi* dramatically changed Vietnam's economy and significantly improved the living standard of its people. Poverty rate dropped from 58% in 1993 to 37% in 1998, 29% in 2002 and extremely decreased to 11, 5% in 2012. From a rice importer, Vietnam has become the world's second largest rice exporter. Even though Vietnam has been widely praised as a success story of reform, there are concerns about modest foreign direct investment inflows compared to other countries like China, poor rating on corruption and inefficient investment allocation.

The shift from a central planning economy where the State made every decision on the allocation of resources to a market economy makes the law indispensable. As a result, Vietnamese legislation development coincided with the development of the country's market economy and most of the legal documents applicable today were promulgated in the early 90s and later. Its legal system is still evolving rapidly and therefore fascinating to observe. However, this also raises concerns over its stability and predictability.

The country's adhesion to the World Trade Organisation on 11 January 2007 also puts the country under more pressure for transparency and legal reform.

### The Communist Party of Vietnam

Even though the Communist Party of Vietnam is a political organization and not part of the State's institutional system, it is essential to be discussed because of its critical role and deep involvement in the political and legal life of Vietnam.

Vietnam is a one-party State under the control of the Communist Party of Vietnam. Since the Constitution 1980, the Communist Party of Vietnam has been stated to be "the force leading the State and the society". Just as the wording, the Communist Party of Vietnam has a central role in shaping the country's policy and legal system and maintains a firm control over all the government and social system. Its structure is parallel to the government's structure and has close relation to the government. Its organization is also

established in line with the administrative apparatus from central level to provincial, city, district, and communal levels as well as with judicial bodies, schools, enterprises, political, social, professional organizations, army units and police forces. Its influence is reflected through the formation and election of the National Assembly, the operation of the administration, and the function of the judicial system. Article 41 of the Charter of the Communist Party of Vietnam states that “the Party leads the State by its political statements, its strategy, policy and direction, by ideological activities, and through organisation and staff management by supervision and inspection of performance.” It introduces people for election or appointment to State official positions and the majority of high-ranking State officials are Party members. The Party also maintains its influence at all levels of the society through its affiliated organizations: Vietnam Fatherland Front, Ho Chi Minh Communist Youth Union, Ho Chi Minh Young Volunteer Organization, Vietnam Woman Association, Vietnam Farmer Association just to name a few.

The highest authority of the Communist Party of Vietnam is its National Congress, which meets once in every 5 years. The most important overall policy of the Party, and thus the significant changes in the economic and social policy of the country, is set out in its Resolutions. The standing and more influential bodies of the Party are however its Central Committee and the Politburo.

The economic reform, *doi moi*, originates from the Resolution of the VI<sup>th</sup> National Congress in 1986, which recognized for the first time the “multi-sectoral economy.” This gave way to the new Constitution 1992, which stated that Vietnam would develop a “multi-component commodity economy functioning in accordance with market mechanisms under the management of the State and following a socialist orientation”. The recognition of multi-sectoral economy, more specifically of private ownership, was a significant change from the previous regime under the Constitution 1980, which recognized only ownership by the entire people and by collectives.

#### National Assembly

The Vietnamese government is not structurally based on the theory of the separation of powers. The National Assembly is constitutionally the body of highest power of Vietnam. It exercises the legislative power, determines the economic and social policies, domestic and international policies and financial and monetary policies of the country, approves the national budget, and supervises the activities of the Government, the People’s Court and the People’s Prosecutor.

The National Assembly elects, releases from duty, removes from office its Chairman, the Vice-Chairmen and members of the Standing Committee, the President, Vice President, Prime Minister, and the Chief Justice of the Supreme People’s Court and the Head of the Supreme People’s Prosecutor. It approves the cabinet at the suggestion by the Prime Minister.

The National Assembly’s organizational structure is composed of the Chairman, Vice-Chairmen, Standing Committee, Nationality Council and Commissions. It is organized and operates according to the principle of democratic centralism, works according to the conference regime and makes decisions by majority. The term of each legislature is five years,

Although having very large constitutional powers, the National Assembly of Vietnam is not necessarily so powerful in practice, nor is its capability up to the requirements to assume such a centralized power. The majority of the deputies of the National Assembly are part-time deputies (of the current 500 deputies, only 33% are full-time deputies) who gather to discuss the business of the National Assembly during only two 30-day sessions a year.

Between these sessions, the Standing Committee of the National Assembly supervises the activities of the Government, the People's Court and the People's Prosecutor to ensure their conformity to the Constitution and the laws.

## Administration

### **The central government**

The Vietnamese Government is the executive body of the National Assembly, and is the highest State administrative agency. The Government exercises the unified management of the performance of the State's political, socio-economic, defense, security and external relation tasks; ensure the effectiveness of the State apparatus from the central to grassroots level; ensure the respect for, and the observance of, the Constitution and laws; promote the people's mastery in the cause of building and defending the Fatherland, thus ensuring stability and improving the people's material and spiritual lives.

The Government's organizational structure is composed of the Ministries and the Ministry-equivalent bodies, which are established by the decision of the National Assembly at the suggestion of the Prime Minister.

The Government is composed of the Prime Minister, the Deputy Prime Ministers, the Ministers and the Heads of the Ministry-equivalent bodies. The term of the Government corresponds to the term of the National Assembly is five years.

A comprehensive list of Ministries and Ministry-equivalent authorities is available on the website of the Vietnamese government.

Partly due to the limited capacity of the National Assembly, the Ministries have important influence on Vietnamese legislation. See the section on Legal System.

### **Local government**

Vietnam is organized into 63 provinces, which are subdivided into districts. Below districts are communes. A list of the 63 provinces with links to the website of each provincial government is available on the website of the Vietnamese government.

Each of these three geographic levels (provinces, districts and communes) has their own local government consisting of a representative body elected by the local people every five years named the People's Council and the administrative body named the People's Committee, whose members are elected by the People's Council.

## Judicial System

### **Court system**

Vietnam has a two-tier court system, including courts of first instances and courts of appeal. The judgments are then susceptible to further reviews under special circumstances. The court system consists of the Supreme People's Court, the local People's Courts (include the provincial People's Courts and the district People's Courts), the Military Courts and other law-prescribed courts.

There are specialised courts at the Supreme People's Court and at the provincial level. These include the Criminal Court, Civil Court, Economic Court, Administrative Court and Labour Court.

The Chief Justice of the Supreme People's Court is elected by the National Assembly, and has the term corresponding to the term of the National Assembly and can be re-elected. Other Justices of the Supreme People's Court are appointed and removable by the President and have the term of 5 years. The Chief Justice of the Supreme People's Court appoints and removes judges of the inferior courts.

Under the law, Vietnamese courts render their judgments independently. However, there are still many concerns on the independence of the courts.

The tribunal panels at the first instance are composed of both judges and *people's jurors* (usually one judge and two people's jurors). People's jurors at each level are lay people elected by the People's Council of the same level at the recommendation of the Vietnam Fatherland Front and could be re-elected. The participation of these jurors who are not qualified legal experts and who are elected, re-elected and removable by the local governments raises questions on their capability and on the influence of the local governments on the court's activities.

The Law in 2002 centralized the power to appoint judges to the Chief Justice of the Supreme Court instead of the local People's Council (as previously the case). The budget of the local courts, previously decided by the provincial Departments of Justice, is now decided by the National Assembly. This intends to make the local courts more independent from the local government.

Another factor leading to the concerns on the independence of the courts is the unwritten practice of local courts requesting for opinions from the superior courts in complex cases.

Judgments in Vietnam are not publicly published and it is difficult to get access to past judgments.

The government is carrying out a judicial reform program, which hopes to improve the operation of the courts. [[19]] The country is also pressed for changes under the commitments made in its adhesion to the World Trade Organisation.

### **People's Prosecutor**

The People's Prosecutor has the mandate of public prosecution and judicial supervision. Similarly, in the structure of the court, the People's Prosecutor is organized into three levels: the Supreme People's Prosecutor, provincial People's Prosecutor and district People's Prosecutor. In addition to People's Prosecutor, there is the Military Prosecutor.

The whole system of People's Prosecutor and Military Prosecutor is under management and instruction of the Supreme People's Prosecutor. The Chairman of the Supreme People's Prosecutor is elected by the National Assembly at the proposal of the State President, and has the term corresponding to the term of the National Assembly and can be re-elected. The Vice-Chairmen of the Supreme People's Prosecutor and its prosecutors are appointed, removed from office and dismissed by the State President at the proposal of the Chairman of the Supreme People's Prosecutor. The Directors, Deputy-Directors and prosecutors of the local People's Prosecutor and the Military Prosecutor are appointed, removed from office and dismissed by the Chairman of the Supreme People's Prosecutor.

In criminal cases, the People's Prosecutor carries out the public prosecution role. In non-criminal cases, the People's Prosecutor supervises the resolution of the cases and has the prerogative to participate in any part of judicial proceedings except for the conciliation process. Usually, it reviews the file, hears evidence and arguments and makes recommendation to the tribunal panel.

In addition, the People's Prosecutor supervises the enforcement of the judgments.

#### Alternative Dispute Resolution

##### **Mediation**

Culturally, Vietnam is not a litigious society. Large amounts of disputes are resolved outside of court. Vietnamese laws also highly emphasize the role of mediation. Mediation is a mandatory part of certain litigation procedures such as civil litigations, labour and marriage and family litigations. The State encourages the resolution of civil and family disputes and violations of the law, which do not amount to criminal offences by means of mediation. At the local community, groups of non-professional mediators are set up to carry out this mediation mandate.

##### **Arbitration**

Arbitration is a possible alternative for dispute resolution in Vietnam but restricted to commercial disputes only. Arbitration was not a popular dispute resolution means in Vietnam due to weak enforceability.

The Ordinance on Commercial Arbitration adopted in 2003 attempted to improve the effectiveness and enforceability of arbitration in Vietnam. Under the Ordinance 2003, arbitration award given by a Vietnamese arbitration tribunal is automatically enforceable, i.e. the parties no longer have to seek a decision of the court for the execution of the arbitral award. The most well known Vietnamese arbitration organization is the Vietnam International Arbitration Centre at the Vietnam Chamber of Commerce and Industries. By the year of 2013, there are 7 Arbitration Centres in the whole country.

Vietnam is a member of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

As part of Vietnam's judicial reform, it is expected that arbitration will be used more widely in civil disputes and not restricted to commercial disputes.