Update on the Rule of Law for Human Rights in ASEAN: The Path to Integration
The Socialist Republic of Vietnam
VIETNAM

TABLE 1
SNAPSHOT BOX

<table>
<thead>
<tr>
<th>Formal Name</th>
<th>The Socialist Republic of Vietnam</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital City</td>
<td>Hanoi</td>
</tr>
<tr>
<td>Independence</td>
<td>1945 (from France)</td>
</tr>
<tr>
<td>Historical Background</td>
<td>In its early history, Vietnam underwent a thousand years of Chinese domination. In the 10th century, it gained independence from it. Feudalism flourished with the expansion of its territory to the south. However, in the late 19th century, it became a colony of France. Vietnam declared independence from France in 1945. In 1946, Vietnam held the first National Assembly election, which adopted its first Constitution. However, the situation was precarious as the French tried to regain power by force, causing Vietnam War I (1946-1954). After the defeat of France in 1954, the country was divided into the north and the south. The south was named the Republic of Vietnam; while the north, the Democratic Republic of Vietnam. The intervention of the United States led to Vietnam War II, which ended in 1975 after the victory of the north. The country was unified and followed the soviet political and economic structures. In 1986, Vietnam implemented a number of economic reforms (known as “Doi Môi”), which developed a market-oriented economy, and provided for the country's integration with the world. Vietnam established diplomatic relations with 178 nations, 1 and economic, trade and investment relations with more than 224 nations and territories. It also became a member of the United Nations (UN), the Association of South East Asian Nations, Asia-Europe Meeting, Asia-Pacific Economic Cooperation (APEC), World Trade Organisation (WTO), International Francophone Organisation, and other international organisations. Since 2000, Vietnam has been one of the countries with the fastest economic growth in the world.</td>
</tr>
<tr>
<td>Size</td>
<td>332,698 sq. kms²</td>
</tr>
<tr>
<td>Land Boundaries</td>
<td>Vietnam is located on the eastern Indochina Peninsula. The combined length of the country's land boundaries is 4,639 kms, ³ and its coastline is 3,444 kms long (excludes islands). ⁴ Vietnam has a land border with China in the north, and Cambodia and Laos in the west.</td>
</tr>
<tr>
<td>Population</td>
<td>90,520,000, of which: Male: 44,620,000 Female: 45,900,000⁵</td>
</tr>
</tbody>
</table>

4 Ibid.
5 General Statistics Office, Population and Household (Báo cáo dân số và nhà ở), Hanoi, 2015; see also CIA, CIA World Factbook, 2014.
### Vietnam

| Demography          | 0-15 yrs. = 23.5%; 15-64 yrs. = 69.1%; 60 yrs. and over = 10.2%; 65 yrs. and over = 7.1% (2015 est.)
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ethnic Groups</td>
<td>Kinh (Viet) 85.7%, Tay 1.9%, Thai 1.8%, Muong 1.5%, Khmer 1.5%, Mong 1.2%, Nung 1.1%, others 5.3%</td>
</tr>
</tbody>
</table>
| Languages           | Vietnamese, ethnic and regional dialects
| Religion            | Buddhist 9.3%, Catholic 6.7% Muslim 0.1%, Protestant 0.5%, Hoa Hao 1.5%, Cao Dai 1.1%, none 0.1% (2014 est.)
| Adult Literacy      | 95.4 %: male: 96.4 %, female: 93.7% (2014 est.)
| Gross Domestic      | 6.6% (2015)
| Product             |
| Government Overview | There has been no change since 2011, except in the organisation of the People’s Court. Vietnam is a single-party socialist state officially espousing communism. Its current Constitution, the 2013 Constitution, asserts the central role of the Communist Party of Vietnam (CPV) amongst all organs of government, politics, and society. All senior government positions are held by members of the CPV. The government of Vietnam operates under the principle of parliamentary supremacy. The National Assembly, the highest organ of state power, is superior to both the executive and judicial branches, and is vested with constitutional and legislative powers. The National Assembly, a 498-member unicameral body elected to a five-year term, meets twice a year.

The authority of the National Assembly includes, amongst others, the power (i) to pass the Constitution and the laws; (ii) to organize, grant authority, and dictate the activities of the state, the Presidency, the Supreme and Local People’s Court, the People’s Procuracy, and local administrations; (iii) appoint and dismiss the heads of executive and judicial state organs; and (iv) to pass the national economic, social, and monetary plans and policies, and the state budget.

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6 Ibid.
7 Ibid.
9 Ibid.
10 Ibid.
14 Ibid.
The President, appointed by the National Assembly, is the head of the state, and represents Vietnam in domestic and foreign affairs. The President has the authority to: (i) enact legislation; (ii) act as chief of the armed forces; (iii) propose to the National Assembly the appointment or dismissal of the Prime Minister and other key members of the government; (v) approve national amnesty; and (vi) sign international treaties, amongst others.

The executive branch of Vietnam’s government, consisting of various ministries, is headed by the Prime Minister, who is elected by the National Assembly. The executive branch promulgates decrees, and clarifies rules and regulations. Local governments administer laws, and control, adopt, and develop policies for their respective localities.

The Vietnamese judicial system is comprised of several levels of courts, tribunals, and a Supreme People’s Procuracy. The highest court in the country is the Supreme People’s Court. Underneath the Supreme People’s Court are three levels of courts: (i) the superior courts, which are appellate courts based in Hanoi, Danang, and Ho Chi Minh City, each responsible for the northern, central, and southern regions of the country; (ii) the provincial-level people’s courts; and (iii) the district-level people’s courts, which are at the lowest level. Provincial and municipal courts are both trial courts and appellate courts, while district courts are trial courts only. There are military tribunals established in accordance with divisions of the Vietnam People’s Army, the highest one being the Central Military Tribunal, which is subordinate to the Supreme People’s Court.

### Human Rights Issues
Under the active process of integration, human rights have improved gradually in Vietnam. However, there are still many issues. The main human rights issues in Vietnam include, amongst others, freedom of expression and association, arbitrary detention, human trafficking, and freedom of religion.

### Membership in International Organisations
Vietnam was admitted to the UN in September 1977 and gained membership in some of its specialised and related agencies, such as the Food and Agriculture Organization (FAO), the World Bank, the International Civil Aviation Organization (ICAO), the International Monetary Fund (IMF), the UN Development Program (UNDP), the UN Educational, Scientific, and Cultural Organization (UNESCO), the World Health Organization (WHO), and the World Intellectual Property Organization (WIPO). Vietnam is also a member of the Asian Development Bank (ADB), the Colombo Plan, the Economic and Social Commission for Asia and the Pacific (ESCAP), Intelsat, the Mekong Development Project Committee, the Nonaligned Movement, APEC, ASEAN, and WTO.¹⁵

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Vietnam

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I. INTRODUCTION

Vietnam has undergone a fast pace of economic and legal development since its implementation of the Doi Moi (Renovation) reformation policy, which emphasizes promotion of multicomponent commodity economy, active integration and increased democratic governance.

The government of Vietnam operates under the principle of parliamentary supremacy. The National Assembly is the highest organ of state power, superior to both the executive and judicial branches, and is vested with constitutional and legislative powers.

Vietnam, along with China, Cuba, and Laos, is one of the world’s four remaining single-party socialist states officially espousing communism. The Communist Party of Vietnam (CPV) is defined under the Constitution as the “leading force of the state and the society,”16 and thus, assumes a central role in all organs of government, politics, and society. Members of CPV hold all senior government positions.17 Therefore, the election of the National Congress of the CPV is important to the development of the country.

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16 Article 4, Constitution 2013
The significance of the development of rule of law in Vietnam was recognised in the Constitution of 1992 for the first time. The concept was further cemented in the recently adopted Constitution of 2013. Accordingly, Article 2 of the 2013 Constitution states that “[the] Socialist Republic of Vietnam is a socialist rule of law State of the People, by the People and for the People. […] The State powers are unified and delegated to state bodies, which shall coordinate with and control one another in the exercise of the legislative, executive and judiciary powers.” However, up to now, there has been neither a legal procedure nor a state institution for directly enforcing constitutional norms.

Key Rule of Law Structures

Vietnam adopted a new Constitution in 2013, which aims at further strengthening the status of Vietnam as a democratic state that respects the principle of the supremacy of the law. In particular, Article 8 of the Constitution provides that, “the [government] shall be organised and operates in compliance with the Constitution and the law, manages society by the Constitution and the law and practices the principle of democratic centralism.” All government bodies and agencies, economic and social organisations, and army and police forces must strictly abide by the Constitution and the law. Individual citizens are equal before the law, and have the duty to respect the Constitution and the law. All actions violating the legitimate rights and interests of the state and state agencies, as well as interests of individuals and private associations, shall be handled in compliance with the law.

With respect to the economic regime, Vietnam recognises and pursues the development of a “market economy under the socialist orientation” with “multi-forms of ownership and multi-sectors of economic structure.” Participants in different economic sectors in the national economy are deemed equal, and cooperate and compete in accordance with the law. In addition, the government undertakes to provide favourable conditions for entrepreneurs, enterprises, individuals, and other organisations to invest, produce, and do business, and to contribute to the stable development of economic sectors and nation building. Legal possessions of individuals, organisations of investments, productions, and businesses are protected by the law, and are not subjected to nationalisation.

Recent international economic integration endeavours (e.g., the establishment of the ASEAN Community, the execution of the Trans-Pacific Partnership Treaty, the European Union-Vietnam Free Trade Agreement) have influenced significantly the development of the system of the rule of law in Vietnam. The National Assembly adopted/amended a number of laws from 2014 to 2015 to prepare for the abovementioned integration endeavours, including the Laws concerning the Organisation of People’s Court (2014) and the

18 Mai Hong Quy, ‘New significant features of the draft amendments to the Constitution 1992 and some commentaries’ (Nửa điểm mới cơ bản của Dự thảo sửa đổi Hiến pháp 1992 và một số kiến nghị), Journal of Legal Sciences, Issues 1 (74), 2013, pp.4-16
19 Article 16, Constitution 2013.
20 Article 14, Constitution 2013.
21 Article 51, Constitution 2013.
22 Ibid.
23 Ibid.
24 Law No. 62/2014/QH13 on organisation of the People’s Court, dated 24 November, 2014
People’s Procuracy (2014), 25 the Law on Referendum (2015), 26 the Law on Marriage and Family (2014), 27 the Law on Real Estate Business (2014), 28 the Law on Investment (2014) 29 and the Law on Enterprises (2014), 30 amongst others. The new Civil Code 31 and Criminal Code, 32 leading laws in Vietnam that govern all civil and penal relations in society, were also adopted and shall take into effect (and replace the existing codes) on 1 January 2017. This legal development is expected to improve the quality of the law in the country.

The Law on the Organisation of the People’s Courts aims to promote judicial reform in Vietnam. It establishes a new hierarchy of courts, with the previous Supreme Court restructured into two levels: the current Supreme Court and three High Courts. In addition, Vietnam’s Supreme Court has also recognised judicial precedent and started working on the issuance of the first casebook in 2016. This development is expected to improve the efficiency and quality of the courts in Vietnam.

On the political aspect, the most recent remarkable events are the 12th National Congress of the CPV, which was held successfully in January 2016, 33 and the national election. The new leaders of the CPV promised to continue legal reform. Thus, it is assumed that there will be significant changes in many fields of law, state administration and policies, and politics.

Foundation & Evolution of Rule of Law

The discussion on development of “rule of law” in Vietnam took place for the first time during the 2nd Plenum of the CPV National Congress VII (1991). 34 The notable result of the theoretical studies of the 1990s was the creation of the concept of a “socialist Rule of Law state.” The rule of law state has been understood and recognised as a democratic state that not only embodies the law, but also abides by the law. 35 The Constitution of 1992 declared that Vietnam is “building the socialist rule of law state of the people, by the people and for the people.” 36 The construction of the socialist rule of law became the central task of the government with a range of strategies, including the entire organisation and operation of the state apparatus. It also became the basis and orientation for the reform process in the state apparatus under the condition of the development of the market economy with a socialist orientation. The concept of the “rule of law state” was stipulated in the 2001 amendments to the Constitution of 1992 and in the new Constitution of 2013.

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25 Law No.63/2014/QH13 on organisation of People’s Procuracies, dated 24 November 2014
26 Law No 96/2015/QH13 on Referendum, dated 27 November 2014
29 Law No 67/2014/QH13 on Enterprises, dated 26 November 2014
30 Law No 68/2014/QH13 on Enterprises, dated 26 November 2014
31 Civil Code No 91/2015/QH13, dated 27 November 2015
32 Criminal Code 100/2015/QH13, dated 27 November 2015
36 Article 2 Constitution 1992
The concept of “rule of law” in Vietnam is derived from its relation to the state's ruling political ideology.\(^{37}\) Whilst sharing the same basic terminology, in particular embodying the notion of “rule,” it carries some connotations that differ from the Western notion of the “rule of law” as a principle.\(^{38}\) Accordingly, “rule of law” in Vietnam is said to embody the following key principles, namely, (i) supremacy of the Constitution and the law, (ii) equality of all people before the law, (iii) respect of human rights, as well as community values, (iv) significance of the social order, and (v) democratic centralisation of state powers.\(^{39}\) It is of course particularly the latter two principles that distinguish the Vietnamese conception of the rule of law from core notions of the rule of law embodied in most constitutional democracies.

Pursuant to the rule of law as a concept in the Vietnamese legal order, the state shall create a legal framework to protect the socialist democracy, and the freedom, rights, and obligations of citizens. It is also recognised that all peoples are equal before the law, are allowed to do anything that the law does not ban, and shall not be forced to do what the law does not oblige.\(^{40}\) Restrictions on constitutional freedoms and rights are allowed only to prevent the violation of the interests of other people or that of the state, and must be stipulated by law or sub-law regulations.\(^{41}\)

### Human Rights Treaties

Vietnam is a party to following human rights treaties:

1. **CERD** (in force on 4 January 1969): Vietnam ratified the Convention on 9 June 1982, and in domestic legislation, Article 5 of the Constitution of 2013 states that: “All the ethnicities are equal and unite with, respect and assist one another for mutual development; all acts of discrimination against and division of the ethnicities are prohibited.”

2. **ICCPR** (in force on 23 March 1976) and **ICESCR** (in force on 23 March 1976) were both acceded to on 24 September 1982, and Article 14 of the Constitution provides that: “1. In the Socialist Republic of Vietnam, human rights and citizens’ rights in the political, civil, economic, cultural and social fields shall be recognized, respected, protected and guaranteed in accordance with the Constitution and law. 2. Human rights and citizens’ rights may not be limited unless prescribed by a law solely in case of necessity for reasons of national defence, national security, social order and safety, social morality and community well-being.”

3. **CEDAW** (in force on 3 September 1981) was ratified on 17 February 1982, and in Article 26 of the Constitution of 2013, it is declared that: “1. Male and female citizens have equal rights in all fields. The State has a policy to guarantee equal gender rights and opportunities. 2. The State, the society, and the family create conditions for women’s comprehensive developments and promotion of their


\(^{41}\) Ibid, p. 132
role in the society. 3. Sex discrimination is strictly prohibited.”

4. CAT (in force on 26 June 1987) was ratified on 5 February 2015 and, after its ratification, the Prime Minister has adopted Decision No. 364/QĐ-TTg as regards its implementation, which provides for its direct application.

5. CRC (in force on 2 September 1990) was ratified on 28 February 1990, and Article 37 of the Constitution provides that: “Children shall be protected, cared for and educated by the State, family and society; children may participate in child-related issues. Harassing, persecuting, maltreating, abandoning or abusing children, exploiting child labour or other acts that violate children’s rights are prohibited.”

6. Convention on the Rights of Persons with Disabilities (CRPD) (in force on 3 May 2008) was signed on 22 October 2007 and ratified on 5 February 2015. Article 59(2) of the Constitution provides that the state shall, among others, exercise a policy of assisting disabled people, while Article 61(3) stipulates that the state shall provide favourable conditions for the disabled and the poor to access cultural and vocational learning.


**Interpretation & Use of the ‘Rule of Law’**

The Constitution of 2013 reaffirmed the significance of the rule of law as basis of the democratic state of Vietnam and further elaborated on the content of its five fundamental principles.42 Hence, different from the previous Constitutions, the Constitution of 2013 emphasises that the “State [must] acknowledge, respect and guarantee human rights and citizen rights.”43 Thus, in the provisions relating to human rights and citizen rights, the Constitution of 2013 specifically uses the wording “everyone/every citizen has rights to […],” indicating that those rights are natural and essential to human beings and citizens, and are recognised and protected by the Constitution. The Constitution also establishes that the state has the responsibility to respect, protect, and fulfil the rights of citizens, not that the state merely “grants” or “graces” these rights to peoples and citizens (as in the previous Constitutions). Specifically, human rights and citizens’ rights shall only be restricted when prescribed by law in imperative circumstances for reasons of national defence, national security, social order and security, social morality, and community well-being.44 This broad enumeration of circumstances of course creates considerable room for the state to restrict, limit, or infringe fundamental rights of citizens.

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42 Mai Hong Quy, ‘New significant features of the draft amendments to the Constitution 1992 and some commentaries’ (Những điểm mới của Dự thảo sửa đổi Hiến pháp 1992 và một số kiến nghị), Journal of Legal Sciences, Issues 1 (74), 2013, pp.4-16
43 Article 3, Constitution 2013
44 Article 14, Constitution 2013.
The recognition of this principle in the Constitution is significant as it means that no one, including the state agencies, can arbitrarily truncate or limit human rights and citizen rights stipulated in the Constitution.\(^{45}\) In addition, the regulations on the inalienable natural rights and the freedoms of human beings and citizens (i.e., the right to live,\(^ {46}\) freedom from torture,\(^ {47}\) the right to be equal before the law,\(^ {48}\) and the right not to be arrested in the absence of a decision by the People's Court)\(^ {49}\) shall have direct legal effect; and holders of these rights are entitled to refer to these provisions of the Constitution to protect their rights when they are being violated.

The Constitution of 2013 also recognises some “new” human rights and freedoms, compared to the previous Constitution of 1992, such that: “A [Vietnamese] citizen shall not be expelled or extradited to other nations” (Article 17); “[…] No one shall be illegally deprived of his or her life” (Article 19); “Everyone is entitled to the inviolability of personal privacy, personal secrecy and familial secrecy and has the right to protect his or her honour and prestige […]” (Article 21); “Citizens have the right to social security” (Article 34); “Everyone has the right to enjoy and access to cultural values, participation in cultural life, to use cultural institutions” (Article 41); “Any citizen has the right to determine his or her nationality, use his or her mother language and select his or her language of exchange” (Article 42); and “Everyone has the right to live in a healthy environment and the obligation to protect the environment” (Article 43). This represents a new step in the expansion and development of human rights, reflecting the outcome of the renovation process and international integration of Vietnam. It should be noted that the content of the regulations on human rights, basic rights, and duties of citizens in the Constitution of 2013 are drafted in the light of international treaties on human rights to which Vietnam is a party.\(^ {50}\)

Another important development in the Constitution of 2013 is the clear confirmation that the function of the People's Court is to “perform judicial power” (Article 102). This reflects the implementation of the principle of division of state powers amongst state agencies. The previous Constitutions did not specify which agency implemented judicial power. In addition, the Constitution of 2013 asserts certain constitutional principles on legal proceedings, such as the principle of independence of judges\(^ {51}\) and some other guarantees during trials or legal proceedings.\(^ {52}\) The recognition of the importance of judicial proceedings is of high significance, as it would ensure equality amongst the participants in such proceedings, thereby enhancing transparency and publicity and improving the quality of the judicial process.

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\(^{46}\) Article 19, Constitution 2013.

\(^{47}\) Article 20, Constitution 2013.

\(^{48}\) Article 16, Constitution 2013.

\(^{49}\) Article 20.2, Constitution 2013.


\(^{51}\) Article 103, Constitution 2013.

\(^{52}\) Article 103, Constitution 2013.
### TABLE 2

**ADMINISTRATION OF JUSTICE GRID**

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Figure</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of judges in country</td>
<td>4,957 judges (as at June 2013)</td>
</tr>
<tr>
<td>No. of lawyers in country</td>
<td>11,285 individual lawyers and 3,408 law firms (as at September 2014)</td>
</tr>
<tr>
<td>Annual bar intake (including costs and fees)</td>
<td>800-1,000 new lawyers per year (fee: 200,000 VND or U$9 monthly)</td>
</tr>
<tr>
<td>Standard length of time for training/qualification</td>
<td>A Bachelor of Laws degree and completion of a specific training course are compulsory for all judicial careers.</td>
</tr>
<tr>
<td></td>
<td>Lawyers: 12 months of judicial training, 12 months of pupillage</td>
</tr>
<tr>
<td></td>
<td>Prosecutors: 9 months of training, at least 4 years of legal work</td>
</tr>
<tr>
<td></td>
<td>Judges: 12 months of training, at least 4 years of work experience at the court</td>
</tr>
<tr>
<td>Availability of post-qualification training</td>
<td>Short courses of training every year are available for judges and prosecutors.</td>
</tr>
<tr>
<td></td>
<td>No compulsory courses for lawyers, but lawyers are required to participate in the professional conferences and seminars organised by the local bar association or the Vietnamese Bar Federation (VBF).</td>
</tr>
</tbody>
</table>

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53 Vietnam Supreme People’s Court, Report on the works performed by the people’s court (Báo cáo công tác tòa án nhân dân), 2014.

54 Ministry of Justice, *Strategies of development of legal profession until the year 2020 Conference*, Proceedings, Ho Chi Minh City, 14-15 April 2015, p16-17


56 Resolution 05/NQ-HDLSTQ of the National Lawyer Council on the pupilage fee, membership fee, the cases of waiver of membership fee, dated 14/12/2015.


<table>
<thead>
<tr>
<th><strong>Average length of time from arrest to trial (criminal cases)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>3 months(^{60})</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Average length of trials (from opening to judgment)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal cases: 3 days(^{61})</td>
</tr>
<tr>
<td>Administrative cases: 1 day(^{62})</td>
</tr>
<tr>
<td>Civil cases: 1 day(^{63})</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Accessibility of individual rulings to public</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Judgments and decisions are available to the litigants. However, they are not accessible to the public since they are confidential and protected by law.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Appeal structure</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Vietnam recognises the settlement of cases at two instances (Lower Court -&gt; Appellate Court).</td>
</tr>
</tbody>
</table>

Since 2014, the organisation of People’s Courts system comprises of:
- (a) Supreme Court;
- (b) high courts;
- (c) provincial courts;
- (d) district courts;
- (e) military courts. 

The Supreme Court has the jurisdiction to review the judgments and decisions of the lower courts.

The People’s High Courts have appellate jurisdiction over first-instance judgments or decisions of Provincial People’s Courts within their territorial jurisdictions.

The Provincial People’s Courts have appellate jurisdiction over first-instance judgments or decisions of District People’s Courts within their territorial jurisdiction.

District People’s Courts are courts of first instance only.\(^{64}\)

<table>
<thead>
<tr>
<th><strong>Cases before the National Human Rights Institution</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Not applicable (a National Human Rights Institution has not been established in Vietnam)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Complaints filed against the police, the military, lawyers, judges/justices, prosecutors or other institutions (per year)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>4,252 cases per year (from 2012-2013) for administrative litigants; 50% are subject of appeal.(^{65})</td>
</tr>
</tbody>
</table>

No further information is available for this category of complaints.

<table>
<thead>
<tr>
<th><strong>Complaints filed against other public officers and employees</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>No information is available for this category of complaints.</td>
</tr>
</tbody>
</table>

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\(^{60}\) Supra note 37; see also Article 172, Criminal Procedural Code 2015 and Article 121, Criminal Procedural Code 2003

\(^{61}\) Supra note 53

\(^{62}\) Supra note 53

\(^{63}\) Supra note 53

\(^{64}\) Law No. 62/2014/QH13 on organisation of the People’s Court, dated 24 November, 2014

\(^{65}\) Vietnam Supreme People’s Court, Report on the works performed by the people’s court (Báo cáo công tác tòa án nhân dân), 2014.
II. COUNTRY PRACTICE
IN APPLYING THE CENTRAL PRINCIPLES OF RULE OF LAW
FOR HUMAN RIGHTS

A. On Central Principle 1
(Government and its officials and agents are accountable under the law)

Definition and Limitation of the Powers of Government in the Fundamental Law

Vietnam has several tiers of laws and policies, even beyond those spelled out in the Constitution. Within
the national legal system, the Constitution is superior to all legislations. Any law or regulation that is
“inconsistent” with the Constitution shall be considered void to the extent of its inconsistency. In practice,
however, there is no procedure by which laws can be scrutinized vis-à-vis the Constitution; there is no
constitutional court with the authority to declare laws unconstitutional. Instead, the Constitution grants
the National Assembly control over ensuring conformity with the Constitution and the duty to abrogate all
formal written documents issued by all branches of government that are inconsistent with the Constitution,
statutes, and resolutions taken by the National Assembly.66

The Constitution acknowledges different state powers, but unites them at the hands of the legislative branch
(e.g., the National Assembly), the highest state authority, which has the power to make laws, and delegates
the executive power to the executive and the judicial power to the courts.

There are separate chapters in the Constitution on the National Assembly (Chapter V), the State President
(Chapter VI), the Government (Chapter VII), and the People's Court and People's Procuracy (Chapter VIII).
Each chapter describes the powers and functions of these offices as well as the manner by which persons in
these institutions are to be selected. For instance, Article 96 of the Constitution of 2013 lists the tasks and
powers of the executive government. Article 95 provides for its composition and stipulates that the Prime
Minister is accountable to the National Assembly.

Amendment or Suspension of the Fundamental Law

Recently in 2013, the National Assembly adopted a new Constitution, which replaced the Constitution of
1992. The drafts of the Constitution were officially opened for public and official comment. The procedure
for adoption of the Constitution was carried out in light of Article 147 of the Constitution of 1992.

As the supreme law of the land, the Constitution can only be amended or suspended in accordance with the
rules and procedures set forth in the fundamental law. The previous Constitution stipulated that only the
National Assembly could amend the Constitution. The new Constitution included more actors who could
be involved in the process of amending or suspending the Constitution. Specifically, it allows the President,
the Standing Committee of the National Assembly, or at least one-third of the total number of the National
Assembly’s representatives to propose the drafting of a Constitution or its amendment.

Pursuant to Article 120 of the Constitution of 2013, the amendment, supplementation, or any change to the
Constitution must comply with following procedural steps:

66 Article 70(2) and 70(10), Constitution 2013.
1. The President or the Standing Committee of the National Assembly, or at least two-thirds of the total number of the representatives of the National Assembly, proposes the drafting of a Constitution or its amendment. Such proposal shall be approved by two-thirds of the total number of National Assembly representatives.

2. The National Assembly shall create the Committee of Constitutional Drafting. The Committee of Constitutional Drafting drafts the text, organises the collection of the people’s opinion, and submits to the National Assembly the draft text.

3. The Constitution shall be enacted with the approval of at least two-thirds of the total number of National Assembly representatives. The referendum on the Constitution shall be decided by the National Assembly.

4. The time limit for the promulgation and effective date of the Constitution shall be decided by the National Assembly.

In November 2015, the National Assembly approved the Law on Referendum; it will become effective beginning 1 July 2016. Under the Law on Referendum, the National Assembly may organise a nationwide referendum to seek the opinion of the people in regards amending the Constitution. A referendum is valid when at least three quarters of the total number of voters nationwide take part. For a referendum on constitution-related issues, the content of the Constitution is passed if it receives the support of at least two-thirds of the valid votes of the referendum. Notably, Article 11 stipulates that the result of a referendum is final and decisive. This means that the result of a referendum will take effect directly, without having to undergo any examination by any agency.67

Laws Holding Public Officers and Employees Accountable

The Vietnamese government has acknowledged the negative impact of corruption on both Vietnam’s future prosperity and the CPV’s own legitimacy. Corruption is considered as an alarming issue in society and the government has developed a comprehensive anti-corruption legal framework.

Public officers and government employees, including the police, professional army personnel, and managerial officials in state enterprises, may be subject to the Anti-Corruption Law 200568 if they commit corrupt acts, which covers (i) embezzling property, (ii) taking a bribe, (iii) abusing a position or power to appropriate property, (iv) taking advantage of a position and/or power during the performance of a task or official duties for self-seeking purpose, (v) abusing powers during the performance of a task or official duties for self-seeking purposes, (vi) taking advantage of a position or power to influence another person for self-seeking purposes, (vii) committing forgeries in the performance of work for self-seeking purposes, (viii) giving a bribe or bribe brokerage conducted by a person with a position and/or power to resolve affairs of a body, organisation, entity or a locality for self-seeking purposes, (ix) taking advantage of a position or power to illegally use state property for self-seeking purposes, (x) conducting harassment for self-seeking purposes, (xi) failing to perform tasks or official duties for self-seeking purposes, (xii) taking advantage of a position or power to cover up a law offender for self-seeking purpose; hindering or intervening illegally in the examination, inspection, auditing, investigation, prosecution, hearing or judgment execution for


68 Law 55/2005/QH12 on Anti-Corruption (as amended in by the law 01/2007/QH12 and the Law No. 27/2012/QH13)
self-seeking purposes. The Anti-Corruption Law imposes criminal liability; the weight of the punishment depends on the seriousness of the action. The maximum penalty applicable to public officials and employees is capital punishment.

There have been 1,854 corruption-related cases settled in the Vietnamese people’s courts with 3,987 people prosecuted in last five years. Despite these endeavours, corruption remains inefficiently addressed in Vietnam. Findings from the 2014 Vietnam Provincial Governance and Public Administration Performance Index (PAPI) showed that citizens across the country still witness the prevalence of nepotism for state employment, bribery in the public sector and a lack of willingness to stop corruption from both the local government and citizens themselves. The loss of confidence in the system and lack of effective whistle-blowers’ protection have prevented individuals and organisations from reporting corruption incidents.

As regards laws that hold public officers and employees accountable for acts that exceed their authority, the Criminal Code enumerates a number of offences, amongst others, disobeying a direction of the law with the intent to cause injury to any person, incorrectly preparing or translating with the intent to cause injury, abusing positions and/or powers to humiliate others, violation of land management regulations, and forgery in the course of employment. However, there is no specific law against public officers who violate fundamental rights and freedoms.

Special Courts and Prosecutors of Public Officers and Employees

The right of citizens to complain and denounce government officers is a fundamental constitutional right. This process has formed a dual complaint settlement mechanism: settlement of complaints under administrative procedures and settlement of complaints under legal proceedings in court (judicial procedures). Any individual or organisation disagreeing with the complaint settlement decisions of government agencies, government officers, and employees may initiate administrative actions in court.

The hearings on administrative cases in Vietnam are conducted by the general courts. However, within the High Courts and the Provincial Courts are divisional courts specified for administrative matters. The divisional administrative courts only have the competence to pass judgment on these matters. The laws do not provide for dedicated prosecutors to handle cases against public officers and employees. In practice, dedicated prosecutors exist depending on the policy of the province.

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69 Article 3, Anticorruption Law 2005
70 Vietnam Supreme People’s Court, Report on the works performed by the people’s court (Báo cáo công tác tòa án nhân dân), 2014.
72 Article 30, Constitution 2013
B. **On Central Principle 2**  
*(Laws and procedures for arrest, detention and punishment are publicly available, lawful, and not arbitrary)*

**Publication of and Access to Criminal Laws and Procedures**

In 2015, Vietnam presented two new codes on criminal law and criminal procedure, which would be effective in 2016. The rules for preventive detention, regulated in Resolution No. 162/2004/NDD-CP (amended by Resolution No. 19/2009/NDD-CP), have not been changed for a long time. They are all published and made widely accessible in a form that is up to date and available in the official language (Vietnamese). They are available online in the official website of the National Assembly and the Ministry of Justice. All legal documents are also published in the Official Gazette (Cong Bao).

**Accessibility, Intelligibility, Non-reactivity, Consistency, and Predictability of Criminal Laws**

All the laws in Vietnam, including the Criminal Code, Criminal Procedural Code, and their sub-law regulations, are published in the Official Gazette (Cong Bao) and freely accessible online on the website of the Ministry of Justice, government offices, and some ministries and departments. Hard copies of the laws can be found in universities, public libraries, and bookstores.

With regard to consistency and predictability of criminal laws, the National Assembly is tasked by Article 70 of the Constitution to exercise “control over conformity to the Constitution, the law and the resolutions of the National Assembly,” as well as to abrogate all formal written documents issued by the State President, the Standing Committee of the National Assembly, the Government, the Prime Minister, the Supreme People’s Court, and the Supreme People’s Procuracy that are inconsistent with the Constitution, statutes, and resolutions taken by the National Assembly. However, challenges remain in this regard. As was noted in the 2\textsuperscript{nd} Universal Periodic Review, “There is still a lack of uniformity in the legal system, together with overlapping legislation. The Government is aware of the difficulties and challenges and will continue to improve the legal system on the basis of the 2013 Constitution.”

The guarantee against the retrospectivity of laws has remained the same since 2011. Article 7(1) of the Criminal Code 2015 states that, “[t]he provision [of the Criminal law] applying to a criminal act shall be the provision currently in force at the time such criminal act is committed.”

**Detention Without Charge Outside an Emergency**

Article 20(2) of the Constitution states that no one shall be arrested in the absence of a decision or sanction by the People’s Court or the People’s Procuracy, except when caught in the act of committing an offence. It then states that the taking of persons into custody shall be provided by law. Administrative detention without charge or trial can be carried out under the rules of temporary custody according to the administrative

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Vietnam

procedures of Decree 112/2013/ND-CP. Accordingly, the temporary custody of people on the basis of administrative procedures shall be applied when:

1. It is necessary to immediately prevent or stop acts that disturb public order;
2. It is necessary to immediately prevent or stop acts injuring other individual(s);
3. It is necessary to immediately prevent or stop acts injuring public safety or national interests.

The duration of temporary custody according to administrative procedures must not exceed 12 hours. In case of necessity, such duration may be extended, but must not exceed 24 hours from the time the violators are held. For violations of border regulations or administrative violations in remote mountainous areas or islands, the temporary custody duration may also be extended, but must not exceed 48 hours from the time the violators are held.

With regard to laws during emergencies, under Article 110.4 of the Criminal Procedural Code, persons may be arrested in urgent cases. Accordingly, the proper procuracy must be immediately notified in writing of the urgent arrest, enclosed with documents related to it, for the procuracy's consideration and approval. Procuracies must closely examine the grounds for the urgent arrest. In case of necessity, the procuracies must meet and question the arrestees in person, before considering and deciding to approve or not to approve the arrests. Within 12 hours after receiving the request for approval and documents related to the urgent arrest, the procuracies must issue a decision approving or disapproving such arrest. If the procuracies decide not to approve the arrest, the issuer of the arrest warrant must immediately release the arrestee.

There are some reports concerning arbitrary arrest and detention, including of minority groups and human rights activists, for activities that constituted their practice of freedom of religion, expression, association and/or peaceful assembly.

In Vietnam, around seven in every 10 suspects become detainees, and sometimes the rate could be nine in 10—which is very high. More than 200,000 people were detained pending criminal investigations between 2012 and 2014. During the drafting process of the new Criminal Procedural Code, members of the National Assembly's Standing Committee had observed that the presumption of innocence is not respected during investigations. According to Le Thu Ba, deputy head of the National Steering Committee on Legal Reform, in many cases, the investigation agencies failed to prove the allegation against suspects but they fabricated some accusations or sought to legalize the detention period instead of freeing detainees.
People dependent on drugs, including children, are held in government detention centres where they perform “labour therapy.” In 2015, the government reduced the overall number of detainees, but confirmed plans to leave some 15,000 detainees in the centres by 2020.78

Rights of the Accused

*Freedom from Arbitrary or Extra-legal Treatment or Punishment, and Extra-Judicial Killing*

Article 20(1) of the Constitution states that every person is protected against torture, harassment, coercion, violations of his or her life and health, and offences against honour and dignity. The Law on Compensation Liability of the State, Criminal Code, and Criminal Procedural Code elaborate on the protection of accused persons from arbitrary or extra-legal treatment or punishment, including inhumane treatment, torture, arbitrary arrest, detention without charge or trial, and extra-judicial killing by the state. The right to habeas corpus is not limited in any circumstance.

Despite the constitutional and statutory protections, there are still many allegations of torture and ill-treatment. The Ministry of Police reported that 226 detainees died around the country between October 2011 and September 2014.79 The claim that the detainees died mostly from illness or suicide has been met with incredulity, including from members of the National Assembly who urged the government to provide further details on the causes.80

In 2015, the National Assembly approved the reduction in the number of capital offences from 22 to 15 and exempted offenders under 18, over 75, or pregnant/nursing women from capital punishment.81 The World Coalition Against the Death Penalty reports there were five executions in 2011, no recorded executions in 2012, seven executions in 2013 and three in 2015.82

*Presumption of Innocence*

The principle of presumption of innocence was introduced in the Criminal Procedural Code of 1988 (Article 10). Hence, the Constitution of 2013 has recorded it as one of the basic principles to be observed in legal proceedings. According to Article 31.1 of the Constitution, a defendant shall be regarded as innocent until the crime is proved in accordance with legal procedure and the sentence of the court has acquired full legal effect. The Criminal Procedural Code 2015 further elaborates that when there is not enough evidence or the evidence is not sufficient to accuse a person, or sentence him or her in accordance with the procedures set, the official conducting the legal proceeding shall conclude that the accused is innocent.83

79 Supra note 76.
80 Ibid.
83 Article 13, Criminal Procedural Code
Legal Counsel and Assistance

There has been no change in the law since 2011. The Constitution of 2013 provides that any person who has been arrested, held in custody, prosecuted, investigated, charged or brought to trial in violation of the law, has the right to defend himself/herself or to seek the assistance of lawyers or other people.84

Article 16 of the Criminal Procedural Code also reconfirmed that the accused has the right to defend himself/herself and to request for a legal counsel or other persons to defend him or her. Accordingly, within 24 hours from receipt of such a request from the detainee or accused, the competent authority is obliged to forward such application to defence counsels, representatives, or relatives of the detainee or accused. In cases where the detainee or accused does not identify particular defence counsels, competent authorities must forward the application to their representative or their relatives so that they could find a defence counsel for them.85 If accused persons do not invite defence counsels to the proceedings, the competent authority conducting the proceedings must appoint defence counsels for them in the following cases: (a) They are accused of criminal offences where the maximum prescribed penalty is 20 years imprisonment or death; (b) The accused has physical disadvantages that render them unable to defend themselves; and (c) The accused has mental defects or is under 18 years old.86 The competent authority may require the following organisations to appoint a defence counsel, namely, the lawyers’ or bar association, government centres for legal aid, and the Committee of the Vietnam Fatherland Front and its member organisations.87

Knowing the Nature and Cause of the Accusation

There has been no change in the law—Article 16 of the Criminal Procedural Code embodies this right. Accordingly, the accused shall be informed of the offences that they have been accused of committing. Competent authorities must explain to the accused their rights and obligations during the proceedings in a timely manner so that they can act in their own defence or ask their legal counsels or other persons to defend them.

Guarantees during Trial

There has been no change in the law since 2011. This right has been entrenched in the Constitution of 2013. A defendant/accused person must be tried in a timely manner in a public process, with respect for the principle of equality before the law.88

The Criminal Procedural Code also states that the accused shall be tried without undue delay, tried in their presence, defend themselves in person, and examine, or have their counsel examine, the witnesses and the evidence against them. However, in practice, competent authorities often do not carry out the trial within the required time frame due to lack of resources, such as shortage of investigators, prosecutors and clogged

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84 Article 31, Constitution 2013
85 Article 75.3, Criminal Procedural Code
86 Article 76, Criminal Procedural Code
87 Ibid.
88 Article 31, Constitution 2013.
They usually would apply various technical measures to justify their delay, such as requiring the involved parties to provide verification and proofs.

**Appeal**

No remarkable changes in policy or practice have taken place since 2011. The right to appeal is guaranteed in Article 103(6) of the Constitution and is regulated by the Criminal Procedural Code.

**Freedom from Double Jeopardy**

There has been no substantial change since 2011. The protection is enshrined in the Constitution of 2013, which states that no one shall be tried twice for the same offence. Judgments of acquittal are final, not reviewable, and immediately executory.

**Remedy before a Court for Violations of Fundamental Rights**

There have been no substantial changes since 2011. There are no laws that explicitly guarantee the right to seek a timely and effective remedy before a competent court for violations of fundamental rights. A person alleging a human rights violation may bring a claim against the alleged perpetrator, through complaint, denunciation or court petition, depending on the nature of the case. The available remedies are compensation for damages and declaration in the form of a reprimand or public apology.

**C. On Central Principle 3:**

(The process by which the laws are enacted and enforced is accessible, fair, efficient and equally applied)

**Law Enactment**

**Openness and Timeliness of Release of Record of Legislative Proceedings**

Every year, the National Assembly announces its plan on the number and kinds of legislative documents that it intends to draft and adopt through a resolution. However, the proceedings are not considered efficient since cooperation between the government (with regard to drafting) and the National Assembly (on evaluation and adoption) is lacking. Furthermore, the large number of legislative documents annually has overloaded the capacity of the legislative department.

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90 Ibid.

Nowadays, the legislative proceedings are open to the public in order to gather every idea and opinion of the people. Any draft legislative document are accessible freely on the website of the government.  

**Timeliness of Release and Availability of Legislative Materials**

There has been no remarkable change since 2011. Vietnam applied to the WTO in 1995 and its accession package was approved in 2006. Since the accession to the WTO (which required Vietnam to be transparent in regards its policies), the official draft of laws and transcripts, or minutes of legislative proceedings, have been made available to the public in a timely manner, usually on the website of the government agencies that are in charge of drafting relevant laws and regulations. In addition, final drafts of important laws are available on the website of the Ministry of Justice and the responsible government office.

**Equal Protection of the Law and Non-Discrimination**

There are no substantial changes since 2011. In Vietnam, the principle that all persons are equal before the law and are entitled, without discrimination, to the equal protection of the law, was incorporated in the Constitution of 1992. Article 16 of the Constitution of 2013 has restated this principle as follows: “1. All people are equal before law. 2. No one is subject to discriminatory treatment in political, civil, economic, cultural or social life.”

**Law Enforcement**

In Vietnam, the quality of law is improving year by year as the government considers the development of the legal system as the core of the development of the rule of law state. The Constitution and other laws are encouraged to be followed efficiently for the equal enforcement of the law. However, laws in Vietnam are not enforced directly; they need to be guided by government documents or regulations. This procedure is sometimes hampered by challenges in making law enforcement effective, fair, and equal. The shortage of competent and skilled bureaucrats also adds to the problems. The issue of fairness and efficiency remains the core problem in Vietnam legal system for many years.

With regard to law enforcement, commentators have expressed concerns over the restriction of rights, including speech, opinion, press, and association, of rights activists and dissident bloggers. It has been reported that police sometimes use excessive force in responding to protests over evictions, land confiscation, and other social issues. The government also restricts religious activities that are deemed contrary to the “national interest,” “public order,” or “national great unity.” In January 2015, UN Special Rapporteur on Freedom of Religion or Belief Heiner Bielefeldt stated that legal provisions concerning freedom of religion and belief lack clarity. This in turn leads to “broad leeway to regulate, limit, restrict or forbid the exercise of freedom of religion or belief in the interest of ‘national unity and public order.’”

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94 Supra note 78.

Reparation for Crimes and Human Rights Violations’ Victims/Survivors

In Vietnam, there is no specific law or department that provides adequate, effective, and prompt reparation to victims/survivors of crimes and human rights violations for harm or violation suffered, and the reparation mechanism differs from case to case. However, there are prescribed solutions in certain laws. For example, there is a legal mechanism for protecting the victims of domestic violence or human trafficking.

d. On Central Principle 4:
(Justice is administered by competent, impartial, and independent judiciary and justice institutions)

Appointment and Other Personnel Actions in the Judiciary and among Prosecutors

No data indicating remarkable changes in policy or practice was found; the process as such still has not been changed or amended. Overall, there has been no visible improvement on the situation of the appointment, reappointment, promotion, discipline, and dismissal of judges and judicial officers since 2011.

All the judges of the People’s Supreme Court are appointed by the State President and all the judges of other courts are appointed by the Chief Justice of their higher court.96 The judges in Vietnam are appointed to a court and not to a particular jurisdiction for a period of five years. The judge may be dismissed after the term if he/she cannot pass the assessment of the Chief Justice of the relevant court. To be appointed as judge, an individual must meet a number of criteria—some of which are quite vague, such as good morals and professional adjudicative capacity. In addition, older personnel are favoured with regard to judicial appointments. Party influence also implicitly affects the assessment of the “adjudicative capacity” criterion. Judges tasked with selecting appointees usually chose from a known pool of party members who are working in the court and possess an “opinion letter” from the Party cell.97

Regarding judicial promotion, there are two kinds of promotion in Vietnam. First, in accordance with civil servant regulations, judges can expect salary increases to reflect their level of experience. Secondly, it is possible for judges to move between courts and obtain the benefits of higher remuneration and status by becoming a member of a more senior court.

The recent change in the organisational structure of the People’s Court in 2015 aims at improving the efficiency of the court, but it has yet to show results.

Training, Resources, and Compensation

Traditionally, judicial training is carried out by the Judicial Academy. The Judicial Academy runs various kinds of both legal and related knowledge trainings and seminars for lawyers, prosecutors, public notaries, and all levels of the judicial personnel (including judges and court secretaries).98 Since 2015, in addition to

96 UN Human Rights Council, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Viet Nam, A/HRC/WG.6/18/VNM/1, 8 November 2013, par 42.
the Judicial Academy, judicial training is also provided by two other institutions: Vietnam Court Academy,\textsuperscript{99} which provides training for judges and court personnel, and Hanoi Prosecutor College, which provides training for public prosecutors.\textsuperscript{100}

The salary of judges is regarded as very low. Judges are considered to be “civil servants” who enjoy the same status and same salary as any other person working in the civil society. The salary system for civil servants is the same irrespective of sector. A 2012 publication placed the salary for civil servants at the lowest level at around USD45 a month; this can rise to ten times higher as the person’s career progresses.\textsuperscript{101}

**State’s Budget Allocation for the Judiciary and Other Principal Justice Institutions**

The budget for the judicial system comes from two sources, namely (i) central judicial budget, proposed by the government and approved annually by the National Assembly, and (ii) local budget, allocated by the provincial government. According to this system, the National Assembly will approve the central judicial budget to the People’s Supreme Court and the latter will then allocate the budget for the local courts and judicial agencies. The local courts may, in addition, receive an additional budget from the local government (taken from the local government’s budget).

It should be noted that although the central judicial budget for the operation of the judiciary is approved by the National Assembly, courts and other justice institutions can only get the monies from the State Treasury at the locality, which is a government agency, upon satisfying the requirements set by the government.

The current regime of budget allocation raises a doubt on the independence of the judiciary from the executive in Vietnam. It is argued that the court can only be independent if it is able manage and supervise the usage of judiciary budget by itself without any interference by government. Moreover, the operation of local courts should not be controlled by local government nor the superior court (e.g. Supreme Peoples Court).

**Impartiality and Independence of Judicial Proceedings**

There is no remarkable change since 2011. The Constitution requires that judicial proceedings be conducted in an impartial manner, free from improper influence by public officials or private corporations. Judges and people’s juries are expected to be independent and obey the law. However, a lack of independence on the part of the judges has been observed.\textsuperscript{102} In practice, impartiality and fairness are sometimes questioned due to corruption. In addition, the fact that judges should be members of the CPV might affect their impartiality when the case is related to issues sensitive to the interests of the CPV or its leadership.


\textsuperscript{100} Hanoi Prosecutor College, \url{http://tks.edu.vn} accessed in 3 March 2016.


\textsuperscript{102} Supra note 75, par 46.
Provision of Lawyers or Representatives by the Court to Witnesses and Victims/Survivors

Generally, lawyers in Vietnam are competent, with the qualifications of lawyers set out in Lawyer Law 2012, and strictly regulated by the Legal Profession Qualifying Board of the VBF and the provincial bar associations.

Safety and Security of the Judiciary, Prosecutors, Litigants, Witnesses, and Affected Public

In Vietnam, legal procedures and courthouses ensure adequate access, safety, and security for accused persons, prosecutors, judges, and judicial officers before, during, and after judicial, administrative, or other proceedings. The judicial police are in charge and accountable for this mission. They also ensure the same for the public and all affected parties during the proceedings.

Specific, Non-Discriminatory, and Unduly Restrictive Thresholds for Legal Standing

The Constitution, in Article 30, recognises the right of every person to lodge complaints and denunciations with the competent state bodies, organisations, and individuals against the illegal acts of state organs, organisations, and individuals. It was however reported that the government prohibits class-action lawsuits against government ministries, thus rendering ineffective joint complaints from land rights petitioners.103

Publication of and Access to Judicial Hearings and Decisions

Article 31(2) of the Constitution requires defendants to be tried in public. Trials may be heard in camera in accordance with the law, however, the verdict should still be pronounced in public. Article 103(3) of the Constitution stipulates the exceptions, which are special cases necessary for the protection of (i) state secrets, customs and habits of the nation, (ii) adolescents, and (iii) private secrets according to the legitimate requirement of the persons concerned.

Generally, in practice, court proceedings in Vietnam are public; however, court decisions are not publicly available. Only parties to the trial can obtain copies of the decision from the clerk of the People's Court. Only Supreme Court decisions are published and are made public record. In recent years, the Supreme Court has started developing a casebook system, which shall help improve public access to court decisions.104

Reasonable Fees and Non-arbitrary Administrative Obstacles to Judicial Institutions

There are no substantial changes since 2011. Persons have equal and effective access to judicial institutions without being subjected to unreasonable fees or arbitrary administrative obstacles.

104 Decision No 74/QD-TANDTC of the Supreme People's Court on approval of the project 'developing the case book system of the People's Court, dated 31/10/2012.
Assistance for Persons Seeking Access to Justice

Persons seeking access to justice are provided proper assistance and could receive free legal advice from Vietnam's lawyers associations that are available at every local commune. (See discussion below on “Available and Fair Legal Aid to All Entitled.”)

Measures to Minimize Inconvenience to Litigants and Witnesses, and their Families, Protect their Privacy, and Ensure Safety from Intimidation/Retaliation

There is no significant change in the law and procedures since 2011. There is no special law or comprehensive mechanism designed to protect witnesses or whistle-blowers. Instead, matters concerning witnesses are found in various laws, such as the Criminal Procedural Code and the Law on Preventing and Combating Drugs. The laws provide for, and prosecutors, judges and judicial officers take, measures to minimize the inconvenience to witnesses and victims/survivors (and their representatives), protect them against unlawful interference with their privacy as appropriate, and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during, and after judicial, administrative, or other proceedings that affect their interests.

Available and Fair Legal Aid to All Entitled

A legal aid system intended to help poor citizens, war veterans and their families, national minorities, and others access an increasingly complex legal system began developing in Vietnam in 1997, when the Prime Minister issued a regulation for their establishment across the country. Since then, legal aid services have been mainly provided by legal aid centres managed by provincial departments of justice (provincial units of the Ministry of Justice) with annual budgets provided by the state. At present, there are 64 provincial legal aid agencies; five offices specialising on women affairs, 127 district branches, and 928 commune-level legal aid clubs.

The work scope of the legal aid clubs includes, amongst others, providing consultancy in the area of civil, economic, and criminal law; providing legal representation in a host of cases; and, in some cases, helping in the protection of rights vis-à-vis other private parties or the state. In addition, legal aid aims to “propagate” and explain the law, undertake mass legal education, and spread legal literacy to poor and disadvantaged groups of peoples. Legal aid is available in Vietnam for anybody who is seeking a solution to his or her legal troubles, from public to private disputes. To a certain extent, the state-run legal aid system has proved to be helpful in facilitating disadvantaged group’s access to justice. However, some commentators maintain that there has been an increasing need for legal aid, thus, causing the legal aid system to be overloaded.

105 Decision. 734/1997/QĐ-TTg of the Prime Minister on establishment of legal aid center to assist poor and poor citizens and disadvantaged groups, dated 06/09/1997.
106 Supra note 37.
107 Supra note 105
108 Supra note 37.
General Public Awareness of Pro Bono Initiatives and Legal Aid or Assistance

The general public is aware of pro bono initiatives/options for obtaining legal aid or assistance since it is very popular in the whole country. Aside from legal aid centres operating under the departments of justice of provinces/central, some major legal educational institutions, such as Ho Chi Minh City University of Law (HCMUL) and Hanoi Law University, have developed clinics of legal education, which also aim to provide legal aid or assistance on a pro bono basis. The law lecturers and students of HCMUL, in particular, have been providing regular legal aid and assistance to prisoners and the accused since 2013.

III. INTEGRATING INTO A RULES-BASED ASEAN

Progress towards Achieving a Rules-Based ASEAN Community

On Mutual Support and Assistance on the Rule of Law

The ASEAN Political-Security Community Blueprint is guided by the ASEAN Charter, and provides a roadmap to establish and promote political development in adherence to the principles of democracy, the rule of law and good governance, and respect for and promotion and protection of human rights and fundamental freedoms in the ASEAN Community. It shall be a means by which ASEAN states pursue closer interaction and cooperation to forge shared norms, and to create common mechanisms to achieve ASEAN's goals and objectives in the political and security fields.109

Extradition, Mutual Legal Assistance (MLA), and the recovery of proceeds in Vietnam are principally governed by the Law on Mutual Legal Assistance of Viet Nam (passed by the National Assembly in 2007; entered into force in July 2008).110 This law provides for principles, competencies, and procedures for executing legal assistance in civil and criminal matters, extradition, and transfer of sentenced persons between Vietnam and foreign countries,111 and the responsibilities of state agencies of Vietnam in mutual legal assistance. The incoming requests for MLA from a state that does not have a treaty with Vietnam shall be conducted based on reciprocity only.

Vietnam is active in signing the MLA treaties with partners in the region. It has signed and ratified the Treaty on Mutual Legal Assistance in Criminal Matters among ASEAN States in 2004 to create favourable legal grounds for MLA in the area of investigations or proceedings in respect of criminal matters. Vietnam entered into bilateral MLA treaties with European Union members who are former socialist countries, like Czech Republic, Poland, Slovakia, and Bulgaria;112 and has recently also signed bilateral MLA treaties in

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110 The Law No 08/2007/QH12 on Mutual Legal Assistance (LMLA)
111 Article 17, LMLA
respects of criminal matters with the UK (2009)\textsuperscript{113} and Australia (2014).\textsuperscript{114} Vietnam also signed bilateral extradition treaties with India (2011) and Korea (2003).

Vietnam has signed the United Nations Convention against Transnational Organized Crime (UNCTOC), but has not yet ratified it.\textsuperscript{115} The UNCTOC is also relevant to MLAs in the area of anti-corruption investigations and proceedings.\textsuperscript{116}

According to statistics, from 2012 to 2014, Vietnam received an average of 75 MLA requests and three extradition requests from other countries, mostly from European Community member countries. Vietnam also sent 54 MLA requests and two extradition requests to foreign countries.\textsuperscript{117} The MLA requests sought mainly are for serving of documents, providing of evidence, and criminal prosecution.

**On Legislative and Substantive Changes Promoting the Rule of Law**

Vietnam has adopted the new Constitution in 2013, which restated the government’s goal of developing a rule of law state of the people, by the people, and for the people.\textsuperscript{118} Accordingly, the Vietnamese government shall be organized and operate in accordance with the Constitution and the law, manage society by the Constitution and law, and implement the principle of democratic centralism. The Constitution also recognizes and incorporates many important principles of the UN Charter and the ASEAN Charter, including, amongst others, respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice. These can be considered as important legislative changes as Vietnam has committed to actively participate in building the post-2015 ASEAN Community Vision and identifying priorities for ASEAN cooperation in the next 10 years.\textsuperscript{119}

**On Enactment of Laws relating to the ASEAN Community Blueprints and Similar Plan**

Vietnam is pursuing active economic integration policy. The Vietnamese government aims to comply with all international treaties to which Vietnam is a party. To that end, Vietnam has reviewed, enacted, and amended domestic laws to promote compliance with the ASEAN Community blueprints.

Accordingly, in 2014, the Ministry of Justice has reviewed and assessed 506 legal normative documents, including 83 laws and four resolutions ratified by the National Assembly; eight ordinances and 162 decrees of the Government; 16 joint circulars and 199 circulars/decisions of ministries and agencies; and 41 ASEAN international treaties (focusing mainly on trade and economy) to ensure that the national legal system meets

\begin{itemize}
\item \textsuperscript{116} OECD, Assistance, Extradition And Recovery Of Proceeds Of Corruption In Asia and the Pacific, <http://www.oecd.org/site/adboecdanti-corruptioninitiative/37900503.pdf> accessed 10 March 2016
\item \textsuperscript{117} Ministry of Police, Report on the MLA activities (báo cáo hoạt động hợp tác tư pháp) 2014, pp 20-21
\item \textsuperscript{118} Article 2, Constitution 2013
\item \textsuperscript{119} Bao Ha, ASEAN Community – the main pillar of the South East Asia (Cộng đồng ASEAN – trụ cột của Đông Nam Á), Bien Phong Newspaper online <http://www.bienphong.com.vn/congdong-asean-tru-cot-cua-dong-nam-a> accessed 12 January 2016.
\end{itemize}
the requirements for Vietnam’s participation in the ASEAN Community.

In 2014, the National Assembly adopted new Laws on the Organisation of the People's Court\textsuperscript{120} and People's Procuracy,\textsuperscript{121} Law on Referendum,\textsuperscript{122} Law on Real Estate Business,\textsuperscript{123} Law on Investment,\textsuperscript{124} and Law on Enterprises.\textsuperscript{125} In 2015, the National Assembly passed the new Civil Code\textsuperscript{126} and Criminal Code,\textsuperscript{127} the leading legislations governing all civil and penal relations in the society, which will take effective and replace the current one on 1 January 2017. These efforts align with the ASEAN Economic Community Blueprint, which requires revision of legal normative documents by its members to support the development of the AEC. Vietnam, thus, has made efforts to improve its legal system in various fields such as trade, investment, banking-finance, judicial support, and prevention of crime, money laundering and corruption.

\textbf{On Integration as Encouraging Steps toward Building the Rule of Law}

Integration into the ASEAN Community and participation in international trade agreements such as the Trans-Pacific Partnership Treaty and the European Union-Vietnam Free Trade Agreement have encouraged the country to incorporate the concept of the “rule of law” into the new Constitution of the country. The National Assembly also adopted/amended various laws from 2014 to 2015 to prepare for integration endeavours, including those concerning the organisation of the courts, procuracy, referendum, real estate business, investment, and enterprises. These developments are expected to improve the quality of the legal framework and policy implementation in the country. (See discussion above on “Key Rule of Law Structures.”)

\textbf{On the Contribution of ASEAN Integration to the Building of Stronger State Institutions}

Over the last three decades of integration, specifically since the adoption of the Doi Moi policy in 1988, Vietnam has made great steps in market economy institutionalisation by creating an open and equal environment for competition as well as implementing reforms in the organisational and operational structures of the state apparatus. The Ministry of Justice plays increasingly significant roles in improving institutions and policies, involving not only macro-activities, such as assisting the government and the National Assembly in formulating national legal strategies, development, and enforcement of legislation to meet the requirements of socio-economic development, but also micro-activities, such as drafting specific legal normative documents. The justice department is a core force in the process, and the judiciary is an important part of this network of institutions.

The development of the “one-door system” for receiving and answering requests and complaints of the public by the government and the implementation of e-government (in major cities like Ho Chi Minh City and Hanoi) have started to bring positive results in state management in the business sector and in creating

\begin{itemize}
\item Law No. 62/2014/QH13 on organisation of the People's Court, dated 24 November, 2014
\item Law No.63/2014/QH13 on organisation of People’s Procuracies, dated 24 November 2014
\item Law No 96/2015/QH13 on Referendum, dated 27 November 2014
\item Law No 66/2014/QH13, Real Estate Business, 25 November 2014
\item Law No 67/2014/QH13 on Enterprises, dated 26 November 2014
\item Law No 68/2014/QH13 on Enterprises, dated 26 November 2014
\item Civil Code No 91/2015/QH13, dated 27 November 2015
\item Criminal Code 100/2015/QH13, dated 27 November 2015
\end{itemize}
more transparent and equal environments for economic and social activities. The live transmission to the public of the debates during the working sessions of the National Assembly helps improve the efficiency and capacity of the legislative body. These developments had initially taken place due to the requirements of international integration, but they subsequently helped change the way of thinking on developing legislation to timely respond to on-going problems.

**Prospects and Challenges**

*Challenges to a Strengthened Commitment to the Rule of Law*

Strengthening the rule of law is challenged by the political ideology and old approaches in state management by the leaders. The single party system can help maintain stability, but also creates certain challenges in developing the rule of law and the democratic regime in Vietnam. The media is still controlled by the government. Protection of human rights has improved over the years, but human rights violations are still commented on and argued negatively in many forums in all levels: domestically, regionally, and globally.

**Commitments and Plans/Initiatives in relation to ASEAN-wide Commitments and Declarations on Human Rights**

Vietnam signed, but has not yet ratified the binding ASEAN Convention Against Trafficking in Persons, Especially Women and Children, which aims to prevent and combat trafficking in persons, ensure the just and effective punishment of traffickers, protect and assist victims, and promote cooperation amongst the parties. No information on other plans was found.

**IV. CONCLUSION**

*Nexus of the Changes to the Overall State of the Rule of Law for Human Rights*

Legal reforms in Vietnam have established the legal foundation for human rights. However, much is still expected to be done to implement the provisions and principles set in the Constitution of 2013 to ensure the rule of law for human rights.

The problem of the lack of independence of the judiciary, the lack of a transparent procedure for the appointment of judges and judicial officers, police brutality, corruption, and the lack of efficient judgment enforcement remain the main challenges for Vietnam. Other constraints include difficulty to access justice due to limited resources at the judicial and executive bodies, and bad infrastructure. These affect the exercise of fundamental human rights, such as the right to legal counsel and/or to seek external legal assistance, and the right to have the proceedings conducted in a timely manner. Judicial mistakes and inaccuracies during the proceedings will significantly reduce the effectiveness of the laws.
The significant regression in the area of fair trial rights, freedom of expression and separation of powers, and the increase of corruption amongst law enforcement agencies, which has led to the continuation of a culture of impunity, indicates problems in the rule of law in Vietnam.

Role of the ASEAN Declaration on Human Rights in Strengthening Rule of Law for Human Rights

The ASEAN Declaration on Human Rights creates an important foundation for regional developments on the rule of law and human rights. Being a signatory to the Declaration, Vietnam also respects its commitment under it. The country has adopted a number of laws and regulations from 2014 to 2015 in light of the declaration, which would positively influence and improve the state of human rights in Vietnam.

In conclusion, ASEAN integration is a positive development in the region for promoting the rule of law amongst ASEAN countries. The commitments under the ASEAN framework have an important role in promoting and facilitating the implementation of the rule of law and state institutions in ASEAN member countries. Vietnam should continue to contribute to the development of ASEAN programs for mutual support and assistance in the development of the rule of law in the region.
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