

**REPORT OF FINDINGS:
A BASELINE DESK STUDY ON POLICY
DIRECTIONS AND DEVELOPMENT
THROUGH VIETNAM'S CONSTITUTIONS**

By Dr. Vu Cong Giao

72 Xuan Dieu, Tay Ho, Hanoi, Vietnam
Phone +84 4 3 718 5836 Fax +84 4 3 718 5834
Email hanoi@rosalux.de www.rosalux.vn

Table of Contents

Acronyms and Abbreviations	1
I EXECUTIVE SUMMARY	2
II OVERVIEW OF VIETNAM'S HISTORY AND ITS CONSTITUTIONAL HISTORY.....	3
2.1 Vietnam's History Overview.....	3
2.2 Vietnam's Constitutional History Overview.....	4
2.3 Summary of Vietnam's Constitutions.....	6
III OVERVIEW OF POLITICAL BACKGROUND AND POLICY DIRECTIONS PRESENTED IN 1946, 1959,1980, AND 1992 CONSTITUTIONS.....	7
3.1 The 1946 Constitution.....	7
3.2 The 1959 Constitution.....	8
3.3 The 1980 Constitution.....	9
3.4 The 1992 Constitution.....	11
IV THE 2013 AMENDED CONSTITUTION.....	12
4.1 Overview of Amendment to the 1992 Constitution (2 nd time).....	12
4.2 Important changes in the 2013 (revised) Constitution	14
4.2.1 The Preamble.....	14
4.2.2 Political Regime (Chapter I).....	15
4.2.3 Human rights, fundamental rights and duties of citizens (Chapter II).....	15
4.2.4 Economy, society, culture, education, science, technology and environment (Chapter III)	17
4.2.5 National defense (Chapter IV).....	18
4.2.6 State apparatus	18
4.2.7 National Assembly (Chapter V).....	18
4.2.8 State President (Chapter VI).....	19
4.2.9 Government (Chapter VII).....	20
4.2.10 Supreme People's Court (SPC) and Supreme People's Procuracy (SPP) (Chapter VIII).....	20
4.2.11 Local government (Chapter IX).....	21
4.2.12 National Election Council and State Audit (Chapter X).....	21
4.2.13 Effect and amendment of the Constitution (Chapter XI).....	22
V PROSPECTS FOR CHANGE AND CHALLENGES IN IMPLEMENTING THE 2013 CONSTITUTION.....	22
5.1 Prospects for change from the 2013 Constitution	22
5.2 Challenges for implementing the 2013 Constitution	23
MAIN REFERENCES.....	27
Disclaimer	28

Acronyms and Abbreviations

CPV	Communist Party of Vietnam
Doi Moi	Renovation
RLS	Rosa-Luxemburg-Stiftung
SPC	Supreme People's Court
SPP	Supreme People's Procuracy
USA	United States of America
USSR	The former Soviet Union

I EXECUTIVE SUMMARY

This report analyzes prominent features of policy directions and development models as evidenced by five Vietnam's Constitutions (1946, 1959, 1980, 1992, 2013) with a focus on the current one (the 2013 Constitution), thus providing recommendations to programs of Rosa-Luxemburg-Stiftung (RLS) in Vietnam during the period of 2015-2020.

The report begins by describing briefly Vietnam's national history and its constitution-making history (Section II) as a background for changes of policy directions and development models through Vietnam's Constitutions in more than sixty years. In the next section (III), the report in turn analyzes core contents of the previous Constitutions of Vietnam (1946, 1959, 1980, 1992), providing a general explanation of the causes and pointing out dynamics of the changes in the political line and state policies in each Constitution.

Section IV of the report is dedicated to describe and comment on the rationale, process, and outcome of the amendments of the 1992 Constitution, the most important political and legal event of Vietnam during the past two years. In Section IV, the most important changes in the 2013 Constitution will be described and assessed in details, laying the basis for comments on the prospects for change and challenges for implementing the Constitution in Section V.

In an overview of Sections II-V, the report indicates a constant change in the policy directions and development models through Vietnam's Constitutions where the important reason has been the dominance of the ideology. The milestone for the strongest changes in the political and economic line took place in the Constitutions between 1946-1959, 1980-1992. Respectively, the Constitutions that have had most profound institutional characteristics are 1946, 1980, and 1992. The 2013 Constitution, albeit a number of new issues, does not represent any turning point but only an expansion and in-depth development of reform orientations set out in the 1992 Constitution. Interestingly, given core issues, the movement of institutions and policies through Vietnam's Constitutions seems to go in a circle as many ideas and democratic values, rule of law embedded in the first Constitution (1946) are gradually returning in a more substantive way to later Constitutions (1992, 2013). That circle reflects the change in the influence of Marxism - Leninism in Vietnam.

Corresponding to each stop point on the circle mentioned, the position and role of the people and civil society (social organizations, non-governmental organizations, academic institutions, the media) in governance and society differ. The pinnacle of democracy (for Vietnamese context) is still the 1946 Constitution. With many new rules on institutional reforms, the 2013 Constitution marks a leap forward as compared to the previous Constitutions in 1959, 1980, and 1992, however, it has not reached the level of democracy as of the 1946 Constitution.

II OVERVIEW OF VIETNAM'S HISTORY AND ITS CONSTITUTIONAL HISTORY

2.1 Vietnam's History Overview

Vietnam is a nation in Southeast Asia, formed in the mid-17th century BC (Hung King era) in the Red River Delta (Northern region). The first Vietnamese state was Van Lang, which was later renamed Au Lac. In year 179 BC, Au Lac was annexed by a Northern country named Nam Viet, which was the start of over 1000 years of Chinese feudal dynasties colonizing Vietnam¹.

In 938, the Vietnamese defeated the Chinese to gain their long-standing independence (except for the 10 years under the control of the Ming dynasty). The Vietnamese feudal era commenced to exist since then with rule of many dynasties (the Ngo, Dinh, Early Le, Ly, Tran, Ho, Late Le, and Nguyen) one after another till the mid-19th century.

In 1858, the French started to invade Vietnam and by 1886 officially colonized the entire territory of the country. In 1945, under the leadership of the Communist Party of Vietnam (the CPV), Vietnam fought and obtained its independence from the French and the Japanese. Thereby, the Democratic Republic of Vietnam was born.

Shortly after that, the revolution against the French colonialists (coming back to invade) started and lasted for 9 years, ending with the defeat of the French in Dien Bien Phu Battle (May, 1954), which resulted in the signing of the Geneva Agreement (July, 1954). In accordance to this Agreement, the 17th parallel was the borderline between the two sides' temporary military areas (the troops of the Democratic Republic of Vietnam in the North and those of the French Union in the South) with a vision of a general election in two-year time to reunify the country.

Nevertheless, the Vietnam Republic Government in the South (established on April 25, 1954 and headed by President Ngo Dinh Diem) refused to conduct the general election. With the intervention and support of world powers (China, the USSR together with their communist allies for the North, while the USA and its allies for the South), a war between the two parts of the country broke out and continued for two decades and finally ended with the fall of South Vietnam Government on April 30, 1975.

After the unification, Vietnam had to go through two more inevitable wars, one in the Southwestern border against Cambodian Khmer Rouge (1977-1979) and another in the Northern border against China (1979), while simultaneously suffering from the sanction imposed by the USA and Western countries till 1995. The severe economic crisis in the 1980s together with the collapse of the communist system in the USSR and Eastern Europe, which are Vietnam's economic and political supporters, forced the CPV to start "Doi Moi" (Renovation) to help the country integrate into the world economy in 1986.

The "Doi Moi" policy helped to shift Vietnam out of list of the world's poorest countries and join the list of low average income nations in 2010. However, Vietnam's development since "Doi Moi" has been considered to be still unsatisfactory compared to its potentials. At the moment, Vietnam is still struggling with a variety of obstacles to future development. Among which, the most challenging issue is the obsolete economic and political institutions.

Vietnam has become a member of the United Nations since 1977, of the Association of Southeast Asian Nations (ASEAN) since 1995, of the Asia-Europe Meeting (ASEM) since 1996, of Asia-Pacific Economic Cooperation (APEC)

¹ Also known as "Chinese Colonization Era", during this period of time, once the Vietnamese managed to gain their short-lived independence for a few years but was soon suppressed.

since 1998, of the World Trade Organization (WTO) since 2006. The country has developed diplomat relationships with 167 countries.²

2.2 Vietnam's Constitutional History Overview

During the feudalism and the French colonization, Vietnam had no constitution. Nonetheless, since the beginning of the twentieth century, the idea of developing a constitution was introduced into and propagated in Vietnam thanks to some intellectuals and revolutionists, among them are Phan Boi Chau, Phan Chu Trinh, Pham Quynh, Bui Quang Chieu, Nguyen Truc, Nguyen An Ninh, Phan Van Truong, Nguyen Ai Quoc (Ho Chi Minh).³

Despite a variety of views on constitutional development in Vietnam throughout this time due to the influence of diverse ideologies, political directions and benefits, two major schools could be identified:⁴

- *The Moderate School* (typical members included Bui Quang Chieu, Nguyen Truc, Pham Quynh, Phan Chu Trinh and Phan Van Truong) advocated campaigning for permission from the French colonial regime to build a constitution where the Vietnamese would be empowered with political rights so as to develop an autonomous country within the French Union community. Despite the varied views on forms of state among the school members (Bui Quang Chieu and Pham Quynh backed the building of a constitutional monarchy like the ones in the United Kingdom and Japan,⁵ while Phan Chu Trinh strongly objected to the idea),⁶ all highly appreciated the role of constitution as a tool to carry out democratic reform, thereby, step by step gaining the country's independency. Some among the school supporters, including Phan Chu Trinh and Phan Van Truong, discussed and analyzed in depth radical ideologies on democracy, constitution, and decentralization doctrine⁷.

Nevertheless, due to the advocacy for the French authorities' support in reformation and constitution development as well as their acceptance to build Vietnam as a French protectorate, the moderate school was criticized by Vietnamese Marxist historians for being conservative reformist.

- *The Revolutionist School* (typical members are Phan Boi Chau, Huynh Thuc Khang, Nguyen Ai Quoc and Nguyen An Ninh) advocated that the Vietnamese built their own constitution on the foundation of a new government formed after the abolition of the half-colonial-half-feudal regime. According to this school, in order for a constitution to be established, first of all, the Vietnamese must operate a revolution, employing violence to gain independence from the French and overthrow the feudal system. Similar to the moderate school, some revolutionist school members, including Phan Boi Chau and Nguyen Ai Quoc, discussed and dissected a number of vital constitutional issues such as state power, people's sovereignty, people's rights, etc.⁸

² Source: <http://www.mofa.gov.vn/vi/nr040807104143/nr040807105001/ns050818141957> (accessed March 2nd, 2014).

³ For more information, see Phan Đăng Thanh – Trương Thị Hòa (2013), *An overview of Vietnam Constitutional History*, Ho Chi Minh General Publishing House, p.12.

⁴ For more information, see Thai Vinh Thang (2011), "Constitutional Ideologies in Vietnam before the August Revolution in 1945", *State and Law Magazine*, No. 11/2011.

⁵ For more information, see Phan Dang Thanh (2006), *Constitutional Ideologies in Vietnam during the first half of the 19th Century*, Justice Publishing House, pp.182-183.

⁶ In Phan Chu Trinh: "A Speech on Government by the Military and Government by the People", *History Research Magazine*, No.67, October 1964, p. 22.

⁷ In Phan Chu Trinh, as noted above, p.22. Also in Phan Van Truong, *An Overview of Law*, Past – Present Publishing House, Sai Gon, 1926, pp.18-28.

⁸ For example, see *Phan Boi Chau's Chronical*, translated by Pham Trong Diem and Ton Quang Phiet, Literature-History-Geography Publishing House, Hanoi, 1957, p. 72.

The constitutional view of the revolutionist school was also the vision of the CPV as can be seen in the Party Central Committee's VIth Meeting Resolution in 1939. The Resolution asserted that, "The Communist Party does not fight for the unification of the Vietnamese people by pleading or negotiating with imperialists to be granted a constitution; on the contrary, the Party resolves to unify all the peoples, all classes, and all anti-colonial parties to put an end to the colonization and carry out the liberation revolution for all the people."⁹

Acknowledging the significant role of a constitution, shortly after gaining independence (1945), at the first meeting of the Vietnam Democratic Republic's Provisional Government (September 3, 1945), President Ho Chi Minh listed 6 missions, among which was to promptly develop a constitution¹⁰. A Constitution Development Committee was established on September 10, 1945 and the first Constitution of Vietnam was approved by the National Assembly on November 8, 1946.

After the 1946 Constitution, Vietnam has had Constitutions year 1956, 1959, 1967, 1980, 1992 and 2013 (as presented in the table below). However, due to the fact that the 1956 and 1967 Constitutions by South Vietnam Administration were not recognized (and the administration already subsided in 1975), they will not be analyzed in the third section of this report.

⁹Vietnam Communist Party, *The Party's Documents from 1939 till September 2, 1945*, the Truth Publishing House, Hanoi, 1963, p. 54.

2.3 Summary of Vietnam's Constitutions

No.	Constitution	Date of approval	Administration	No. of Chapters & Articles	Notes
1.	1946 Constitution	9/11/1946	National Assembly of Vietnam Democratic Republic	7 chapters, 10 articles	Vietnam's first Constitution build after the country's independence by the administration controlled by the CPV. Not to be enforced in reality due to the anti-French resistance war (1946-1954)
2.	1956 Constitution	31/12/1956	Constitutional Congress of Vietnam Republic	11 chapters, 98 articles	The first constitution build by South Vietnam Administration (opposition to the CPV) during the Vietnam war, taking effect only in the South until 18/3/1967.
3.	1959 Constitution	31/12/1959	National Assembly of Vietnam Democratic Republic	10 chapters, 72 articles	Build by the CPV in North Vietnam during the Vietnam war, taking effect only in the North before April 30, 1975.
4.	1967 Constitution	18/3/1967	Constitutional Congress of Vietnam Republic	9 chapters, 117 articles	The second constitution build by South Vietnam Administration during the Vietnam war, taking effect only in the South until 30/4/1975.
5.	1980 Constitution	18/12/1980	National Assembly of the Socialist Republic of Vietnam	12 chapters, 147 articles	First Constitution after the country's reunification, build by the CPV. Took effect in the entire country until 15/4/1992.
6.	1992 Constitution	15/4/1992	National Assembly of the Socialist Republic of Vietnam	12 chapters, 147 articles	Second Constitution after the country's reunification, build by the CPV to institutionalize "Doi Moi" in 1986. Took effect in the entire country until 28/11/2013.
7.	2013 Constitution	28/11/2013	National Assembly of the Socialist Republic of Vietnam		Second Constitution after the country's reunification and the Vietnam's current Constitution. Took effect in the entire country since 01/01/2014.

III OVERVIEW OF POLITICAL BACKGROUND AND POLICY DIRECTIONS PRESENTED IN 1946, 1959, 1980, AND 1992 CONSTITUTIONS

3.1 The 1946 Constitution

The 1946 Constitution was developed and approved in exceptional circumstances: Vietnam just gained independence from the French colonialist and Japanese fascist regimes and immediately had to face the threat of the French coming back to recolonize the country. Therefore, the development of this constitution was to serve a two-fold purpose, first to reinforce the country's independence and sovereignty, then to lay a foundation for the establishment of a democratic administration by the Vietnamese people. In reality, together with the 1945 Independence Declaration, the commencement in existence of the 1946 Constitution proclaimed that Vietnam is an independent sovereign nation and no longer a French colony.

In terms of political institution, while the socialist system had been formed worldwide at the time, in the 1946 Constitution, Vietnamese constitution-makers refused to choose the socialist state regime and identified Vietnam as a democratic republic state (Article 1). With this model, the Vietnamese constitution-makers presented their wish to build a government of all the people in the society irrespective of their classes and a state that would bear no one particular class's nature as of the Marxist-Leninist state.

The limited influence of the world socialist system on Vietnam at the time partly accounted for the choice, but more notably, the constitution-makers (most of them are communist) foresaw that a democratic republic state was most appropriate to the goal of unifying the entire people to fight against the French's reinvasion scheme and to protect the country's young and new independence. The political objective was well-conveyed in the Preamble of the 1946 Constitution, where three fundamental principles were defined: (i) Unifying all the people irrespective of ethnic groups, gender, classes and religions; (ii) Ensuring democracy and liberties, and (iii) Operating a strong and perspicacious state by the people.

With the aim to build a strong state, the 1946 Constitution (Chapters III and IV) instituted the state structure in the form of a semi-presidential republic (a combination between principles of presidential republic system and parliamentary republic one¹⁰). In which, the nation's leader (the State President) was not only the representative of the nation in domestic and foreign affairs but also the head of the government who directly led the executive branch (typical in presidential republic system). Although being elected by the parliament, the State President did not have to take responsibility in front of the parliament except for the offense of betrayal to the country (principle of parliamentary republic system). The "semi" nature could be seen in the role of the State President as head of executive branch while the cabinet (including the prime minister, deputy prime minister and ministers) was to be nominated by the State President but must be approved by the parliament via voting and had to take responsibility in front of and could be dismissed by the parliament.

Apart from the above characteristics on the state structure, the 1946 Constitution embraced a number of other particular regulations, which failed to maintain in Vietnam's later constitutions; among those were the model of judicial branch that included only courts (later constitutions redefined the judicial branch as a system of courts and procuratorates) and that the court system was to be organized in accordance to judging functions (first judging, appealing and reconsidering), not to the administrative levels (chapter VI); and the regulation that local au-

¹⁰See Nguyen Dang Dung (1998), "1946 Constitution Regime – A brilliant Creation of President Ho Chi Minh", in *The 1946 Constitution: Inheritance and Development*, National Politic Publishing House, Hanoi.

thorities should be structured in a differentiating and diversifying way, for instance, a representative body (the people's council) elected by the people was not to exist in every local level.¹¹

Overall, the 1946 Constitution was highly appreciated by local experts in many aspects. Firstly, it clearly represented the ideology that the state's powers belong to the people (the Constitution laid down that all powers were possessed to the people; The Constitution was superior to the state; National Assembly could not amend the constitution on its own, all amendments were presented for the whole people to vote). Secondly, it established the mechanism to organize state powers based on Montesquieu's theory of separation of powers, in which, state powers were to be divided among branches – legislative (National Assembly), executive (Government) and judicial (Court), each body had its own independence while mutually monitoring each other. Thirdly, it recognized a range of citizens' rights as people's natural and innate values that the state had to guarantee, among which were political freedoms (of thoughts, organizations, meetings, strikes, and elections), property ownership rights, and freedom of doing business. Fourthly, it determined the relationships and levels in management between central and local authorities. Fifthly, it assigned the independent status to the court system, making sure that other state bodies cannot interfere in judicial affairs of the court.¹² The above-mentioned aspects either failed to be inherited or failed to be defined as clearly in the following Constitutions as in the 1946 Constitution.

3.2 The 1959 Constitution

After Dien Bien Phu victory, the CPV held power in Northern Vietnam; their forces and influences were still significant in the South of the country. Therefore, if the election following 1954 Geneva Agreement were to be held, the CPV would have a big chance of winning control over the whole country.

However, the Republic of Vietnam Administration (backed by the USA) refused to comply with the agreement, the general election as defined in the Geneva Agreement could not be held. In this context, the CPV decided to undertake two strategic missions at the same time: proceeded to build up socialism in the North and continued undertaking the people's democratic revolution (national liberation, drew people from all backgrounds) in order to defeat the Southern administration, which was being supported by the United States of America (USA), and to reunify the nation. In order to undertake these missions, coalitions between the Democracy Republic of Vietnam and communist countries were strengthened.

Through the adoption of the 1959 Constitution, the CPV institutionalized the revolutionary directions in the new period as mentioned above; hence, it started to reflect similar stamps in constitution structures and contents to those of socialist countries.

The most significant stamp was related to the regulation of its regime. Based on the first intention of a gradual transition to socialism, the 1959 Constitution set up the regime of a Democracy Republic and determined that state powers belonged to the people from all backgrounds, not to any particular classes. However, if the 1946 Constitution showed that the state system was organized based on the theory of trias politica common in Western capitalist countries, the 1959 Constitution set up a state structure following the theory of centralism popular in communist countries, in which, all state powers were held by the National Assembly (Article 43).

To go along with this change in direction, the 1959 Constitution left out the regulation that the head of nation (State's President) co-represented the head of executive system. It determined that the role of State President

¹¹Nguyen Dang Dung, as cited above.

¹² See Pham Duy Nghia, *People's Voice Echoing*, at <http://tuoitre.vn/Chinh-tri-Xa-hoi/96260/vang-vong-tieng-dan.html>; Nguyen Si Dung, *The 1946 Constitution and the Rule of Laws*, at <http://www.tuanvietnam.net/2010-05-07-hien-phap-1946-voi-tu-tuong-phap-quyen>; Nguyen Minh Tuan, *the 1946 Constitution: Reflecting power decentralization and power control mechanism*, at <http://tiasang.com.vn/Default.aspx?tabid=116&CategoryID=42&News=4720> (all accessed March 1st, 2014).

was to represent for the nation in domestic and international affairs. Moreover, centralism principle and subsidized planning mechanism initiated to undertake many regulations in the 1959 Constitution, especially the regulations that the state supervised the economy following unification planning (Article 10), unification in local authority organization of all levels (Chapter VII); the adjustment in organizing the people's court system based on administrative structure (Chapter VIII), the establishment of the People's Procuratorate System (also recognized as a judicial body, arranged based on administrative structure as of court system) with function of prosecuting on behalf of the state and general supervising the compliance with laws among other state bodies following the Communist countries' model (Chapter VIII).

Other regulations in the 1959 Constitution showed a clear transition to the socialism constitution model. For instance, the Preamble mentioned the role of the CPV in having gained the country's independence and in leading the state and the society (this marked the start of stronger and more specific regulations on the role of the CPV as the sole political party leading the state and the society as well-defined in the 1980, 1992, and 2013 Constitutions). The 1959 Constitution initiated to establish the democratic centralism – one of the basic operation principles for the CPV – as the operation principle of the state system (Article 4).

In addition, the 1959 Constitution adopted another institution of economic system (Chapter II), it set up a principle that the state lead the economy in a unity way (Article 10) and determined that people's ownership and collective ownership played the key role and were prioritized (Articles 12,13), while private ownership were still be protected, the state encouraged it to shift to state ownership or collective ownership (Articles 14, 15, 16, 18, and 19). The regulation stimulated transformation in agriculture, industry, and commerce in the North (starting in 1958 and ended by the end of 1960), most significantly was the elimination of private ownership of land and other forms of production means among farmers, nationalist bourgeoisies and small traders.

With the above fundamental features, the state model defined in the 1959 Constitution was a transitional state from the people's democracy regime to socialism.

3.3 The 1980 Constitution

After the USA backed Southern administration collapsed, as the winner, the CPV proclaimed the successful completion of the people's democratic revolution in Vietnam and determined the mission of socialism building nationwide. The 1980 Constitution was adopted (in replace of the 1959 Constitution) in order to concretize that direction of the CPV.

At the point of building the 1980 Constitution, Vietnam had just undergone two brief but fierce border wars against China in the North and Cambodian Khmer Rouge in the South. The relationship between Vietnam and China grew hostile while Western countries were still imposing an embargo onto Vietnam, which forced the CPV to join the socialist countries' community in the former Soviet Union (USSR) and Eastern Europe. In June 1978, Vietnam joined the Council of Mutual Economic Assistance (an economic cooperation organization of the USSR-Eastern Europe community). In November 1978, Vietnam signed a comprehensive friendship pact (alliance agreement) with the USSR. In the circumstances, of all Vietnam's constitution over time, the 1980 Constitution had the most simulative constitutional structures and contents to those of socialist countries in the USSR-Eastern Europe community, especially to the USSR's 1977 Constitution. In other words, the 1980 Constitution represented most sufficiently the awareness and endeavor of the CPV in socialism building¹³.

Unlike the 1959 Constitution, the 1980 Constitution determined clearly that Vietnam adopted a *proletarian dictatorship state* led by the one and only CPV (the Preamble and Article 4), aiming to successfully build up socialism

¹³For more information: *Textbook on Vietnam Constitutions*, School of Law, Vietnam National University Hanoi, 2013, p. 34.

then moving forward to communism (Article 2). Although remaining that all state powers belong to the people (Article 6) as mentioned in the 1959 Constitution, the 1980 Constitution also determined the core of regime – i.e. the key subject of political powers – was the alliance of workers and peasantry led by workers (Article 3). Those conflictive regulations originated from the Regulations of the Communist Parties in socialist countries.

In accordance with the above-mentioned changes, in Chapter II (regulating economic system), the 1980 Constitution only assigned two ownership forms of land and means of production, including the people's ownership and collective ownership. Private ownership of land and means of production was not recognized, the State was to protect only private ownership of houses and assets, those to meet day-to-day needs. The aim of these regulations was to achieve the goal of accomplishing infrastructures for socialism in 20 years (i.e. till the end of the 20th century) and initiate to establish the comprehensively developed socialism – the direction was proclaimed by the CPV since the 4th Party's Congress (1976).

Contrasting the 1959 Constitution, in the 1980 Constitution, the centralism, authoritativeness, subsidization in state governance were determined clearly and consistently. The Constitution asserted, "The State guided the national economy following consistent and unifying plans" (Article 33), and, at the same time, regulated collective leadership and responsibility-taking principles for the state system (in place of individual leadership and responsibility-taking principle as before). For instance, institution on the State President in the 1959 Constitution was replaced by the State Council; while institution on the Government was substituted by the Council of Ministers. Moreover, in terms of citizen rights, the 1980 Constitution expanded considerably the safeguarding of economic, social, and cultural rights as similar to other socialist countries' Constitution. Particularly, the Constitution legalized free schooling and free healthcare services; citizens had the rights to accommodations, occupations under the support of the State.

The above-mentioned regulations reflected the much stronger "socialization" in the 1980 Constitution in comparison with the 1959 Constitution. This constitution embedded the objectives and desire of the CPV to accomplish socialism in Vietnam as soon as possible. Some regulations could be considered progressive in theory (such as those of rights to education, health care, accommodation, and occupations); in fact, they could not be realized in reality due to the nation's limited resources at the time. Many other regulations caused more negative consequences than positive ones.

For instance, the regulations about putting the state and society under the all-sided and only control of the CPV together with the regulation about collective leadership made the state system more and more cumbersome, overlapped and authoritative; decision-making process became slower, individual responsibilities were not clarified. Consequently, management efficiency dropped to a very low level. The once successful state governance model based on planning, centralism, authoritativeness and subsidiarity used by the CPV in the North to mobilize material and human resources for the Vietnam war proved to be not suitable for the peacetime context any more and turned out to be an obstacle to development. Especially, a hasty attempt to undertake "*the revolution in production relations*" in order to construct an economy with two main components, including state-run economy and collective economy, resulted in the complete elimination of private ownership and the remolding (in fact, destroying) of non-socialist economic components (especially in the South). Consequently, the mistakenly changes caused a severe socio-economic crisis from 1980 to 1985. The crisis forced the CPV to initiate the Doi Moi (Renovation) and opening policies in 1986 and amended the 1980 Constitution.

The amendment of the 1980 Constitution occurred in two phases: The first phase started right after the year of the VIth Party's Congress (1986). The aim was to apply an open policy for doing business and developing diplomatic relationships with all countries irrespective of political regimes. The Preamble of the 1980 Constitution was amended in order to dismiss some harsh words against colonial countries, imperialists and expansionists (China). The second phase was launched after the fall of Vietnam's key political and economic supporter at the time – the

socialist system in the USSR-Eastern Europe, aiming to bring about comprehensive changes in the contents of regulations. The final result by the end of the second phase was the replacement of the 1980 Constitution by the 1992 Constitution.

3.4 The 1992 Constitution

The 1992 Constitution was developed by the CPV to replace the 1980 Constitution, institutionalizing the Doi Moi directions that the Party proposed in the VIth Party's Congress in 1986 and in the Platform for Nation-building in the Transitional Period to Socialism ratified by the Party at the VIIth Party's Congress in 1991.

The key direction of the Party reflected in these instruments was: strong renovation in economy was to go hand in hand with gradual renovation, solid political foundation was to develop while the aim to build socialism in Vietnam sustained.

Considering the structure and the number of articles, the 1992 Constitution had no differences from the 1980 Constitution, but the contents changed a lot. First, about political regime, the 1992 Constitution still proclaimed the CPV as the only leader of the State and society (Article 4), but the regulation defining Vietnam as a State of proletarian dictatorship in the 1980 Constitution was substituted by "a State of the people, by the people and for the people" (Article 2). It did not mean a radical change in class nature of the state (the 1992 Constitution still determined the exclusive leadership of the CPV and placed the State on the foundation of a coalition between workers and peasantry as in the 1980 Constitution, it only expanded the coalition to include intelligentsia); nevertheless, it proved that the CPV realized the demand for changes and stopped the social administration using extreme and brutal revolutionary violence as well as classes' struggle in the state of proletarian dictatorship.

In terms of institution, the 1992 Constitution changed some regulations about collective leadership and accountability principles in the 1980 Constitution in the direction of re-establishing individual leadership and accountability principles as in the 1946 and 1959 Constitutions. For example, the institution of the State Council (collective head of state) in the 1980 Constitution was replaced by the institution of State President (individual head of state). The institution of Minister Council (collective government) was substituted by the institution of Government led by the Prime Minister, etc. The transition was to improve the accountability of heads of state bodies and induce faster and more promptly decision-making procedure.

In terms of economic system, the 1992 Constitution dismissed the centralized, planning and subsidiary economy as emphasized in the 1980 Constitution, instead, a new regulation was adopted about developing a commercial economy with multi-sectorial structure, diversified business and production models based on a variety of ownership forms toward means of production (Article 15). The Constitution regulated that all economic sectors, including state-owned businesses, collective businesses, individual businesses, private capital business, and state capital business were to be recognized and encouraged (Article 16). Also, it determined that legal properties of individuals and organizations were not be nationalized (Article 23).

In terms of human rights, the 1992 Constitution, for the first time, mentioned the term of human rights and proclaimed that civil, political, economic, cultural and social rights were respected by the state (Article 50). The Constitution also recognized private ownership of property and means of production (Article 58) and determined the freedom of doing business (Article 57) – laid a good foundation encouraging the development of private economic sectors. In addition, the 1992 Constitution amended some "unrealistic and idealist" regulations about some economic, social, and cultural rights as in the 1980 Constitution. For instance, according to the 1992 Constitution, free schooling and free healthcare services were available only for some beneficiaries; the State recognized the rights to work and accommodation construction but it was not obligated to provide citizens with jobs and accommodation as before.

To meet the demands of continuous reformation in political and economic system, in 2001, the 1992 Constitution was amended for the first time (consisted of 24 articles), in which, supplementary regulations in Article 2 had a significant meaning. The phrase “the socialist rule of laws state” was mentioned for the first time in a Vietnam’s Constitution, affirming the determination of the CPV in shifting the state administrative system from being regulated by the Party’s directions, policies and resolutions to being regulated by laws. Moreover, Article 2 was supplemented with the regulation “state powers are unity with delegation of power to and co-ordination among state bodies in exercising legislative, executive and judicial rights”. Even though still being faithful with the centralism principle, the 1992 Constitution initiated to recognize and integrate many progressive elements of decentralization principle, which lays foundation for institutions about political regime in many nations’ Constitutions worldwide.

In general, in comparison with the 1980 Constitution, the contents of the 1992 Constitution brought about a comprehensive transition, but the renovations were mainly in economic institutions. The transformation in political regime was still limited, piloting and “no particular directions” with the aim to discover a new direction to operate the current political system rather than to replace it. The fact that the 1992 Constitution maintained the socialist republic regime and continued affirming the exclusive leading role of the CPV to the State and the society well-reflected the circumstances.

Such distinctive feature can be seen in the implementation of Vietnam’s Doi Moi and opening policies, where renovations occurred gradually and steadily, initiated from economic then to political renewal. In reality, it helped the CPV sustain, and further reinforce its powers while avoid sudden collapse as the socialist parties in the former USSR-Eastern Europe by the end of the 20th century. Besides, it also raised some challenges regarding the coming renovations in political regime and economy of Vietnam that needed to be overcome. It was also the reason why the CPV started the amendments to the 1992 Constitution for the second time in 2011. Consequently, the 1992 Constitution was replaced by the 2013 (Amended) Constitution.

IV THE 2013 AMENDED CONSTITUTION

4.1 Overview of Amendment to the 1992 Constitution (2nd time)

The 1992 Constitution (amended in 2001) established an important legal foundation for the renovations proposed by the CPV in the VIth Party’s National Congress and in the 1991 Platform for Nation-building in the Transitional Period to Socialism. During 20 years under the effect of this amended constitution, Vietnam achieved significant accomplishments, especially in economic development.

Nonetheless, by the end of the 2010s, Vietnam’s economic growth started to decelerate. A range of issues newly appeared and grew to be increasingly severe including prevalent corruption, collapse of state-own economic corporations, plentiful business bankruptcy, frozen estate market, deteriorating competitiveness of the economy and especially, the growing discontent and negative reactions toward the authorities among residents helped the CPV realize the need to continue renovating its political and economic institution in order to sustain the country’s development and protect the system. Under those circumstances, the 10th Party’s Congress ratified the Platform for Nation-building in the Transitional Period to Socialism (modified and developed in 2011) that determined development objectives and directions in the new era, focusing on constructing 8 distinctive features of socialism in Vietnam (compared to 2 features as in 1991 Platform), including: (i) wealthy people, strong nation, democracy, justice and civilization; (ii) all state powers belong to the people; (iii) an advanced economy based on modern production resources and state ownership of major means of production; (iv) an advanced culture rich in national identity; (v) people have a life of comfort, freedom, and happiness while entitled conditions to comprehensive development; (vi) all ethnic groups in Vietnam are equal, solidary, respectful and helpful to each other in their

development; (vii) a socialist rule of law state of the people, by the people and for the people led by the CPV; (viii) Friendly and cooperative relations with people from all over the world¹⁴.

The 1992 Constitution was amended for the second time in order to institutionalize the CPV's above directions, for instance, so as "to ensure a comprehensive renovation in economy and politics, build the socialist rule of law state of the people, by the people and for the people, perfect the socialist-oriented market economy institution, better protect human rights and fundamental rights of citizen, build and defense the nation; and take initiatives in international integration".¹⁵

In preparation for the second amendment, since 2011, the CPV started to evaluate the implementation of the 1992 Constitution, and, simultaneously, established the Drafting Committee for the Constitution Amendment. This committee determined amendment requirements for this time, including:¹⁶ (i) Continuing to proclaim and further clarify distinctive features of the system as regulated in the 1992 Constitution, involving promoting socialist democracy, ensure the Party's leadership, develop the socialist-oriented market economy, build and perfect the socialist rule of law state; (ii) Institutionalizing major directions and viewpoints mentioned in the Platform (2011) together with other Party's documents (ratified at the IXth Party Congress); (iii) Improving constitutional methods, while making sure that the Constitution is the stable and long-standing primary law.

In accordance with the above requirements, the Committee identified amendment viewpoints, including:¹⁷ (i) Inheriting regulations in the 1992 Constitution and previous constitutions that remain relevant; amending and supplementing essential issues as well as well-defined and reality-tested content that gained high consensus and was appropriate in the new circumstances as stated in the XIth Party's Congress Document; (ii) Continuing to emphasize the nature and general model of the political system and state structure as defined in the Platform (2011) and the 1992 Constitution, which is: Vietnam is a socialist rule of law state of the people, by the people and for the people; all state powers belong to the people; The state powers are unified and distributed to state agencies, which shall coordinate with and control one another in the exercise of the legislative, executive and judicial powers; (iii) Declaring that the CPV is the vanguard of the Vietnamese working class, simultaneously, the vanguard of the toiling people and of the Vietnamese people, the faithful representative of the interest of the working class, the toiling people and the whole nation, acting upon the Marxist-Leninist doctrine and Ho Chi Minh's thought, and is the leading force of the state and society; (iv) Developing the socialist-oriented market economy; carrying out comprehensive renovation relevant to both economy and politics for the objective of building up a socialist Vietnam of wealthy people, powerful nation, democracy, justice and civilization; (v) Respecting and guaranteeing human rights and citizen's rights; citizen's rights are inseparable from citizen's duties; exercising socialist democracy; strengthening disciplines and laws; gathering and promoting the great national solidarity; (vi) Constitution Amendment must be carried out in a scientific way under the leadership of the Party; ensuring the participation of experts, scientists and authorities; asking for public opinion via polls among the people and organizations or agencies; paying more attention to information publicizing, and propaganda so as to ensure the communication in the right directions, and not to be manipulated by reactionary and hostile forces.

After over a year in preparation, on January 2nd, 2013, the CPV decided to collect people's opinions on the draft amendment to the 1992 Constitution, which had not been included in its original agenda. It was considered by some foreign and local experts as a sensible action with the aim to establish righteous legalization for the amend-

¹⁴ See Le Huu Nghia's (Party Central Committee member, Director of Ho Chi Minh Political and Administrative National Institute) Speech at January 14 morning session of the XIth Communist Party Congress, at www.xaydungdang.org.vn/Home/PrintStory.aspx?distribution=3525&print=true (accessed March 2nd 2014).

¹⁵ See *Report No. 194/TT-UBDTSBHP dated 19/10/2012* by the Drafting Committee for the 1992 Constitution Amendment.

¹⁶ Same document as above.

¹⁷ Same document as above.

ed constitution drafted under the supervision of the Party and also, as a way to respond to the unprecedentedly urgent requests from the society to renovate the constitution to facilitate even stronger democracy. Typical was the Petition for Amending 1992 Constitution, which was started by 72 intellectuals, then got publicized on January 19th, 2013, and was successful in collecting tens of thousands of signatures after only 2 months.¹⁸

The public opinion collecting had first been planned to end on March 31, 2013, but then was prolonged till the end of 2013 via 3 major channels: conferences and workshops; the Internet; and questionnaires being delivered to each household. According to reports from the Drafting Committee for the Constitution Amendment, till May 17, 2013, there were over 26,091,000 turns of people sharing their opinions while more than 28,000 meetings, forums and conferences were organized.¹⁹

Some local dissident groups also alleged that local authorities applied several “tricks” together with the limited understanding and neglectfulness of a big number of people toward such sophisticated issues as the constitution contributed to the final result that the vast majority of people approved the draft amended constitution.²⁰

On November 28, 2013, the 13th National Assembly voted for the 2013 (amended) Constitution. The results turned out that 97.59% (i.e. 486/488) of the delegates being present at the meeting voted yes, only 2 gave blank cards.

4.2 Important changes in the 2013 (revised) Constitution

The 2013 Constitution comprises of 11 chapters, 120 articles (1 chapter and 27 articles less, as compared to the 1992 Constitution; only 7 articles stay unchanged, 12 articles are new and 101 articles are revised). This scope of change is extensive (but formalistic in the core issue of political regime). There are a number of important changes as follows:

4.2.1 The Preamble

The Preamble is written a much more concise way while it still inherits the major substance from the 1992 Constitution on the traditions, national history, constitution-making history, the tasks of the revolution in the new period, the objectives of nation-building. The most notable difference is a new statement that “the Vietnamese people make and implement this Constitution...” which indicates that the idea of popular sovereignty over the Constitution (once appeared in the 1946 Constitution has been re-asserted after being abolished in the 1959 and 1980

¹⁸The petition is available (in Vietnamese) at <http://boxitvn.blogspot.com/2013/01/kien-nghi-ve-sua-oi-hien-phap-1992.html>. Two other petitions with tens of thousands of signatures including the Letter of Vietnam Bishop Council to the Drafting Committee of the 1992 Amendment Constitution to suggest changes to the Constitution (publicized on March 01, 2013, full-text in Vietnamese is available at

<http://www.hdgmvietnam.org/thu-cua-hoi-dong-giam-muc-viet-nam-nhan-dinh-va-gop-y-sua-doi-hien-phap/4750.116.3.aspx>) and the Declaration of Free Citizen group (full-text in Vietnamese is available at <http://diendancuachungta.com/cong-cuoc-dau-tranh-cho-tu-do-dan-chu/loi-tuyen-bo-cua-cac-cong-dan-tu-do/>) strongly calling for the elimination of Article 4 about the leadership of the Communist Party in the Constitution and organizing a Constitutional Conference so as to develop a new constitution directly reflecting the wishes of all the Vietnamese. Besides, there were other petitions and campaigning activities of many civilian groups supporting the democratic reformations in the amended 1992 constitution, such as the Petition of Vietnamese civilian organizations (35 organizations) about adjusting the 1992 Constitution (full-text in Vietnamese is available at toàn văn <http://www.isee.org.vn/Content/Home/Library/civil-society/kien-nghi-cua-cac-to-chuc-xa-hoi-dan-su-viet-nam-ve-du-thao-sua-doi-hien-phap-1992.pdf>); the petition and survey (online) of the Writing-the-Constitution-together Group about amendment to the 1992 Constitution (full-texts in Vietnamese at <http://hienphap.net/y-kien/>, <http://hienphap.net/ket-qua-khao-sat/>) (accessed to all cited sources on March 1st 2014).

¹⁹ Drafting Committee of Constitution Amendment, *Report No. 287/BC-UBDTSĐHP dated May 17, 2013 on Explaining, Receiving and Adjusting the Draft Amendment to the 1992 Constitution in accordance with the people's opinions.*

²⁰See, *The people generally agreed to the 1992 amended Constitution*, at <http://www.sggp.org.vn/chinhtri/2013/3/312529/> (accessed March 1st 2014).

Constitutions). This is one of prominent achievements of the advocacy by legal scholars and civil society organizations in Vietnam during the Constitution amending process.

4.2.2 Political Regime (Chapter I)

The 2013 Constitution continues to affirm the model of socialist republic enshrined in the 1992 Constitution. However, a number of issues have been revised and supplemented as follows:

- The word *control* is added to the overarching principle: “The State powers are unified and allocated to state bodies, which shall coordinate with and *control* one another in the exercise of the legislative, executive and judiciary powers” (Article 2). It shows that the CPV continues to make use of attributes of the separation of powers while it has not formally recognized the principle. It also demonstrates efforts by Vietnam’s constitution framers in formulating a feasible institution to prevent power abuse in the state apparatus, which used to be highly alien to the political system of socialist countries.
- Adding the phrase “the Communist Party of Vietnam maintains intimate contact with the people, serves the people, submits to people’s supervision, and is accountable to the people for its decisions” and at the same time asserting that not only Party organizations but also members of the Party must operate within the framework of the Constitution and the laws (Article 4). These additions are supposed to clarify the nature, role and responsibility of the CPV as the leading force of the state and society.²¹ However, according to some local critics, except for the rule that Party members also have to operate within the parameter of the Constitution and laws, the remaining phrase is too vague which would be very difficult in measuring and assessing the implementation.
- Adding the rule “The people practice the state power under the forms of direct democracy and indirect democracy through the National Assembly, the People’s Councils and other state agencies” (Article 6). This clarifies and expands the mechanisms of implementing democratic rights of the people, particularly laying foundation for promoting forms of direct democracy (the 1992 Constitution merely provides that “the people practice the state power through the National Assembly and the People’s Council”, which means only forms of representative democracy).
- Adding the rule “the State is organized and operates in accordance with the Constitution and the laws, governs the society by the Constitution and the laws, and practices the principle of democratic centralism” (Article 8). This clause indicates a mixed thinking of constitution makers in Vietnam. While trying to strengthen principles of the rule of law (the state is organized and operates in accordance with the laws), they have been able to escape from the principle of a socialist state (democratic centralism principle).
- Adding a rule on the practice of social supervision and criticism by the Vietnam Fatherland Front (Article 9) to institutionalize the decision in the Xth Party Congress Resolution. Nevertheless, it is only a principle and concrete regulations on implementation of social supervision and criticism still need to wait for a law.

4.2.3 Human rights, fundamental rights and duties of citizens (Chapter II)

The institution of human rights and citizens’ rights contains the most new points in the 2013 Constitution as follows:²²

²¹ The Constitution Amending Committee, *Report on the Justifications for the draft of the 1992 Constitution amendments*, 25 January 2013.

²² See Vu Cong Giao (2013), ‘Advances and limitations in the institution of human rights and citizens’ rights in the third draft of the 1992 Constitution amendments in 2013’, *Vietnam National University-Hanoi Journal of Science – Law Review*, No. 3, 2013.

Changing the chapter name (from “Rights and duties of citizens” to “Human rights, rights and duties of citizens”) and moving up the order of the chapter to number 2 (in the 1992 Constitution it is Chapter 5).

- No longer conflating human rights with citizens’ rights (as in Article 50, the 1992 Constitution), and using quite appropriately these two terms for the constitutional rights/freedoms in Chapter 2.
- Changing (not radically) the way to stipulate rights from the formula that the state “decides” and “bestow” rights upon the people to the formula that human rights are natural and inherent, the state shall recognize, protect and ensure implementation.
- Recognizing the three obligations by the state of respecting, protecting and ensuring human rights (in Article 3 and 14) (the 1992 Constitution merely recognizes the obligation of respecting human rights in Article 50).
- Stipulating a new principle on limiting rights (Item 2, Article 14).
- Recognizing a number new rights: Right to life (Article 19); Cultural rights (Article 41); The right to determine his or her nationality, to use the mother language, to select the language of communication (Article 42); The right to live in a fresh environment (Article 43); The citizens’ right not to be expelled, handed over to another country (Article 17, Item 2).
- Strengthening almost every right recognized in the 1992 Constitution (clarifying or separating them into different articles) including: Equality before law (Article 16); prohibition of torture, cruel, inhuman and degrading treatment (Article 20); Protection of privacy (Article 21, 22); Access to information (Article 25); Participation in governance of the state and society (Article 28); Gender equality (Article 26); Vote in a referendum (Article 29); Fair trial (Article 31); Private property right (Article 32); Social security (Article 34); And employment (Article 35).

These changes indicated that Vietnam’s constitution makers have been more aware of importance of human rights and citizens’ rights institution in the Constitution, and of its regulatory character and scope. It renders this institution of the 2013 Constitution more in line with international treaties on human rights to which Vietnam is a state party. Nevertheless, there remain a number of serious limitations as follows:²³

- According to international human rights law, the ground of national security protection can only be justified for restricting the rights of expression, peaceful assembly and association (when necessary based on standards of a democratic society); however, in the 2013 Constitution, it is regarded as a general principle to limit every rights (Article 4, Item 2). It creates a risk that state organizations can misuse the ground of national security protection to arbitrarily deprive of or restricting human rights and citizens’ rights.
- Similarly, a new rule in Item 4, Article 15 “Human rights and citizens’ rights must not be misused to infringe national interests, others’ legal rights and legitimate interests” is too broad and ambiguous with a potential risk of being abused by state organizations to violate constitutional rights.²⁴
- A number of rights and freedom applicable to everyone are reserved only for citizens, including: freedom of movement and residence (Article 23); freedom of speech, press, access to information, assembly, association, demonstration (Article 25); Right to learn (Article 39); Right to determine the nationality, to use

²³ See Vu Cong Giao, *ibid*.

²⁴ See the commentary and recommendations by ARTICLE 19 which contends that this rule is against international human rights law, available at <http://www.article19.org/resources.php/resource/3680/en/vietnam:-proposed-constitutional-amendments-go-against-international-law> (accessed March 2nd, 2014).

mother language (Article 42)... That can be considered as a discrimination against aliens who live lawfully in Vietnam.²⁵

- Not recognizing a number of important rights and freedom in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) to which Vietnam is a state party, including: Right not to be held in slavery and servitude (ICCPR: Article 8); Right not to be imprisoned on the ground of inability to fulfill contractual obligation (ICCPR: Article 11); Right to recognition as a person before the law (ICCPR: Article 16); Right to strike (ICESCR: Article 8.1); Right to form and join trade unions (ICCPR: Article 22, ICESCR: Article 8.2); Freedom of thought (ICCPR: Article 18.1); Right to hold opinions without interference (ICCPR: Article 19.1).
- Not stipulating that constitutional rights shall come into immediate effect, thus many rights and freedoms are unable to be implemented until laws and decrees set out concrete conditions, resulting in a paradox that constitutional rights established by the people to bind the state need to wait for and depend on the state to be enjoyed by the people.

4.2.4 Economy, society, culture, education, science, technology and environment (Chapter III)

- In terms of economic system, the 2013 Constitution still asserts that Vietnam's economy is a socialist oriented market economy with multi-forms of ownership and multi-sectors of economic structure; actors of different economic sectors are equal, cooperate and compete in accordance with the law (Article 51) although it no longer lists the names of each economic sector and leaves that for the law. A new issue is that the 2013 Constitution for the first time defines the role of the state in building and improving the economic institution, regulating the economy on the basis of respect for market laws; practicing delegation and decentralization in governance; promoting regional economic links, ensuring the unity of the national economy (Article 52).

There are two important issues that made many local experts disappointed, and are still under controversial. *First*, the 2013 Constitution remains committed to a leading role for the state-owned economic sector (Article 51) despite its low efficiency. This economic sector uses an enormous amount of assets of the country and has special privileges in policy and mechanism incentives but is plagued by mismanagement and rampant corruption. Many state-owned conglomerates once regarded as "iron fists" of the economy like Vinashin and Vinalines have made tremendous loss and gone bankrupt, leaving a great burden for the state budget. *Second*, the 2013 Constitution still entrenches the entire people's ownership of land under the state's management (Article 53) although this rule is attributable to arbitrary and widespread withdrawal of land and a root cause of a conflict between the people and the state since Doi Moi (more than 70% of complaints and denunciations in Vietnam involve land issues of which 70% are related to the state's confiscation of land).

- In terms of society and culture, the 2013 Constitution continues to affirm the state's responsibility and society in the field of labor, employment, social security, healthcare, conservation, promotion of cultural values and human development (Articles from 57-60) and at the same time adds a rule on the state's re-

²⁵ For example, concerning the freedom of movement and residence, Article 12(1) of ICCPR stipulates "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence." Thus, the stipulation that only citizens are entitled to that right is obviously not in accordance with Article 12, ICCPR. Similarly, when stipulating freedom of expression, assembly, association, demonstration, rights of ethnic minorities to preserve their own culture (Articles 19, 21, 22, 27 ICCPR), right to an adequate standard of living (including housing); right to education (Article 11, 13 of ICESCR), the Covenants use the pronoun "everyone" to indicate right-holders or express in such a way that these rights are not only applicable to citizens in a country.

sponsibility in protecting rights and lawful interests of workers and employers and generating conditions for building progressive, harmonious and stable industrial relations (Article 61).

- In terms of education, science and technology, the 2013 Constitution continues to confirm that development of education and training, science and technology is a leading national policy, and at the same time identifies major objectives and orientations for in the development of education and training, science and technology (Articles 61 and 62).
- In terms of environment, the 2013 Constitution adds a new article on environmental protection (Article 63), clearly stating the State has policies to protect the environment, manage and use natural resources in an effective and sustainable way, preserve the nature, biological diversity, actively prevent natural calamities and respond to climate change. It encourages the activities of environmental protection, development and usage of new and renewable energies and at the same time stipulates that organizations, individuals causing environmental pollution and depleting natural resources and biological diversity shall be subject to serious penalty and responsible for overcoming and compensating for damages.

4.2.5 National defense (Chapter IV)

The 2013 Constitution continues to affirm that national defense and maintenance of national security is the cause of the entire people and the people's armed forces (the army, public security, para-military) play a pivotal role (Article 64), and at the same time identifies major objectives and orientations for building the armed forces (Article 66, 67) and organizing and implementing defense and security policy of the country (Article 68).

Another new issue is that the 2013 Constitution extends the requirements of absolute loyalty by the armed forces to the CPV and the State besides the Homeland and the People (Article 65). This rule is among those under the most controversial in the new Constitution. As worried by some local critics, the Article 65 lays a constitutional foundation for the CPV to mobilize the armed forces to crush down the people when the Party needs to maintain its monopoly of power.

Furthermore, Article 65 of the 2013 Constitution mentions a new task of the armed forces for the first time, i.e., *the fulfillment of international obligation*. This new rule pays the way for Vietnam to send troops to join the United Nations' peace-keeping missions, which is a new policy of the CPV.

4.2.6 State apparatus

In general, the 2013 Constitution inherits the rules on the nature and model of the state apparatus in the 1992 Constitution, however it clarifies the principle of power allocation, coordination, and control among legislative, executive, and judiciary bodies, and at the same time defines more clearly their functions, adjusts their mandates. Another important new issue is the 2013 Constitution adds rules on independent constitutional institutions, including the National Election Council and State Audit. Regrettably, the Constitutional Council – an institution received high expectation and support from local legal experts with a belief that it is necessary for a power control mechanism plagued by loopholes in Vietnam – is not accepted by the CPV. According to some experts, this is because, *inter alia*, the CPV's fear of "conflict and its power potentially beyond the Party's Politburo" and even "its basis for promoting peaceful evolution" for regime change.

4.2.7 National Assembly (Chapter V)

The position, function, mandate, and organizational structure of the National Assembly and its organs in the 2013 Constitution basically stay unchanged as compared to the 1992 Constitution despite some revisions as follows:

- Stipulating that the National Assembly has the power to decide the objectives, targets, policies and basic tasks of social and economic development of the country (Item 3, Article 70) to better clarify the role, responsibility and relations between the National Assembly and the Government.

- Adding the power of the National Assembly in approving recommendation of appointment and dismissal of judges at the Supreme People’s Court (Item 7, Article 70) to render it in line with the requirement of renovating the model of the people’s court system and better clarify the role of the National Assembly towards the judiciary bodies, and at the same time raising the position of judges in accordance with the spirit of judicial reform.
- Adding the power of the National Assembly in overseeing, deciding organization and operation, and personnel of the National Election Council, the State Audit and other organs established by the National Assembly (Item 2, 6,7, and 9 Article 70).
- Continuing to stipulate confidence votes and adding a rule on soliciting confidence votes on those elected or approved by the National Assembly (Item 8 Article 70).²⁶
- Stipulating clearly that ratifying or denouncing an international treaty is within the purview of the National Assembly (treaties related to war, peace, national sovereignty, human rights, citizens’ rights, Vietnam’s membership at international and regional organizations...) (Item 14, Article 70).
- Stipulating the power of the National Assembly in establishing an ad-hoc committee to conduct research, appraise a project or investigate a certain issue (Article 78).
- Stipulating a new power of the National Assembly Standing Committee in deciding the inception, dissolution, annexation, division, adjustment of territorial border of sub-province/sub-central city administrative units (Item 8, Article 74).
- Adding a rule on the right of the National Assembly deputies to be member of the Ethnic Council or Committees of the National Assembly (Article 82).

4.2.8 State President (Chapter VI)

The 2013 Constitution continues to designate the State President as the head of the nation who acts on behalf of the state in domestic and foreign affairs. It subsequently revises some issues as follows:

- In relation to the National Assembly: as compared to the 1992 Constitution, the State President retains the power to declare the Constitution, laws, and ordinances, and to request the National Assembly Standing Committee to review ordinances; it further clarifies that the State President can request the National Assembly Standing Committee to review an ordinance within ten days as from the passing date; if an ordinance is still passed by the Committee, the State President has the right to submit to the National Assembly for a final decision at its next sitting (Item 1, Article 88).
- In relation to the Government: the State President retains the power request the National Assembly to elect or dismiss the Prime Minister, and appoint or dismiss Deputy Prime Ministers, Ministers and other members of the Government based on a resolution by the National Assembly (Item 2 Article 88). Moreover, the 2013 Constitution also confirms the power to attend the meetings of the Government, and at the same time add a requirement that the State President can request a meeting of the Government to discuss issues related to the mandate of the former wherever she or he deems necessary (Article 90).
- In relation to the Supreme People’s Court (SPC), Supreme People’s Procuracy (SPP): The State President retains the power to request the National Assembly to elect or dismiss the Chief Judge of the SPC and

²⁶ Solicitation of confidence votes is understood as an annual activity to assess the level of confidence by the National Assembly deputies, People’s Councils’ deputies in those elected or ratified by the National Assembly, People’s Councils and serves as a basis for personnel assessment portfolios; motion of confidence votes is the activity by the National Assembly deputies, People’s Councils deputies to express their confidence or no-confidence in those elected or ratified by the former in the special circumstances stipulated by the law. Both activities aim at increasing the effectiveness of oversight, enhancing the responsibility of those elected or ratified by the National Assembly, People’s Councils before the people. A vote in the first activity has 4 levels: high confidence, fair confidence, low confidence and no comment; A vote in the second activity has 2 levels: confidence and no-confidence. Both the solicitation and the motion of confidence votes use secret ballots.

the President of the SPP (Item 3, Article 93); and at the same time add the power of the State President to appoint or dismiss judges at other courts in line with the requirement of the judicial reform (Item 3 Article 88).

4.2.9 Government (Chapter VII)

- Continuing to affirm the Government is the highest organ of state administration and the executive organ of the National Assembly while adding that the Government *exercises the executive power* (Article 94) to render it more in line with the overarching principle of power delegation, coordination and control among legislative, executive and judiciary bodies.
- Arranging and re-structuring the Government's mandate in accordance with the highest organ of state administration, the executive power, and the executive organ of the National Assembly (Article 96); transferring the power of adjusting sub-province administrative units to the National Assembly Standing Committee to make it appropriate for the nature and importance of the territorial border change.
- Arranging and re-structuring the mandate of the Prime Minister to make it compatible with that of the Government; adding a rule on the power to decide and direct negotiations, signing, and accession to an international treaty within the purview of the Government's mandate; organizing the implementation of the international treaties to which Vietnam is a signatory (Item 5 Article 98).
- With a view to improving the accountability of the Government, the 2013 Constitution adds a rule that the Prime Minister has to report to the people on important issues within his purview (Article 99). Moreover, the 2013 Constitution merges rules on the power of promulgating and inspecting legal normative documents by the Government, the Prime Minister, Ministers and Head of ministry-level agencies into a single article (Article 100) and abolishes the rule that specifies each legal normative document that a respective power-holder can promulgate, leaving it for the law to stipulate so that it can make the rules in the Constitution more stable and permanent.

4.2.10 Supreme People's Court (SPC) and Supreme People's Procuracy (SPP) (Chapter VIII)

As for the SPC:

- The 2013 Constitution still designates the SPC as the judicial body of the Socialist Republic of Vietnam while adding that the court *exercises the judicial power* (Item 1 Article 102) to make it in line with the viewpoint and principle of power allocation, coordination and control among legislative, executive and judiciary bodies.
- With a view to rendering it in line with the orientation of the CPV's judicial reform which is set to establish courts based on judicial functions rather than the administrative units, the 2013 Constitution stipulates that the people's courts comprises of the SPC and other courts (the 1992 Constitution uses the term "local courts") as set out by the law (Item 2 Article 102).
- In the same spirit, the 2013 Constitution amends and stresses a number of principles in the organization and operation of the people's court like the principle of adversarial proceedings at trials, the principle of hearings at the first instance court and the appeal court (Item 5,6 Article 103). Thus, the Constitution still confirms the two-level judicial system, however it also stipulates that the court can conduct trials with reduced procedure (Item 1 Article 103).
- While continuing to assert the task to protect the state's interests, rights and lawful interests of organizations, individuals as of the 1992 Constitution, the 2013 Constitution adds an important task of the people's court, that is, *to protect justice, human rights and citizens' rights* (Item 2 Article 102). This additional rule demonstrates the idea of Vietnam's constitution makers to promote a reform of the court system

from a judicial instrument to protect the political regime to an institution to protect justice in the rule of law.

As for the SPP:

- The 2013 Constitution continues to designate the people's procuracies as practicing the prosecution and oversee judicial activities (Item 1 Article 107); in addition to the task "to contribute to ensuring the law is complied strictly and consistently" as of the 1992 Constitution, the people's procuracies have an extra task "to protect the law, human rights, citizens' rights; to protect the state interests, rights and lawful interests of organizations and individuals" (Item 3 Article 107). It is a new rule which is in accordance with the reality as unlike prosecution agencies in other countries, people's procuracies in Vietnam do not only have the role of prosecution but also have the responsibility to oversee the judicial activities, that is, to prevent wrong charges of innocent people, to detect and deal with violations in judicial activities.
- To make it in line with the new organizational model of the people's court (based on the jurisdiction rather than the administrative unit), the 2013 Constitution stipulates that the people's procuracies comprises of SPP and other procuracies as provided for by law (Item 2 Article 107).
- The 2013 Constitution abolishes a rule on the control committee of the people's procuracies in the 1992 Constitution, leaving it for the Law on organization of the people's procuracies to stipulate so that it is in line with the requirement in each particular period.

4.2.11 Local government (Chapter IX)

The 2013 Constitution inherits rules in Chapter IX of the 1992 Constitution on dividing territorial administrative units, the legal status and mandate of People's Councils and People's Committees. However, to lay a constitutional foundation for renovating the organizational structure, the 2013 Constitution does not specify each level of government as of the 1992 Constitution but stipulates that local government comprises of people's councils and people's committees which are organized in accordance with characteristics of the countryside, municipal areas, islands, special administrative and economic unit as provided for by the law (Article 111).

4.2.12 National Election Council and State Audit (Chapter X)

- The 2013 Constitution adds the institutions of the National Election Council (Article 117) to implement the conclusion reached at the 5th Plenum of the Vietnam CPV's Central Committee of the XIth Term (5/2012) on "strengthening direct democracy in terms of improving the electoral system." However, the rule on this institution in the Constitution is highly general. According to Article 117, the National Election Council is established by the National Assembly and tasked with organizing elections of the National Assembly deputies; directing and guiding elections of People's Councils deputies at all levels. The Council has a Chairperson, Vice Chairpersons and members. The organization and mandate of the National Election Council and the number of its members are set by the law.
- The 2013 Constitution at the same time adds another institution of State Audit (Article 118) with an aim to promote the effectiveness, efficiency and transparency in the use of the state budget. However, like the National Election Council, the rule on the State Audit is also general. According to Article 118, the State Audit is established by the National Assembly, operates independently and only abides by the law, practices the audit of management and use of public finance and public assets. This institution is headed by the State Auditor General elected by the National Assembly, accountable to and report auditing results and its work to the National Assembly, and in between two sittings of the National Assembly, accountable and reportable to the National Assembly Standing Committee. Other issues like the term of the State Auditor General, organization and mandate of the State Audit are provided for by the law.

4.2.13 Effect and amendment of the Constitution (Chapter XI)

The 2013 Constitution continues to assert that the Constitution is a basic law of the state with the highest legal effect. Every other legal document must be consistent with the Constitution; and at the same time, a rule is added that every violation of the Constitution must be dealt with (Item 1 Article 119).

Particularly, for the first time, the 2013 Constitution mentions the phrase “a mechanism to protect the Constitution” and identifies a wide scope of institutions responsible for protecting the Constitution including the National Assembly and its organs, the State President, the Government, the people’s court, the people’s procuracies, and other organizations of the state and the entire people (Item 2 Article 119). It can be seen that the rules on constitutional protection mechanism in the 2013 is only in principle, albeit new, as the core of such a mechanism is the Constitutional Council which was abolished by the CPVs as an option at the last minute before submitting the draft of the Constitutional amendments to the vote at the National Assembly.

The 2013 Constitution also provides more details for rules on the power to request constitutional amendment, the procedure for drafting and passing the Constitution (Article 120). Accordingly, the State President, the National Assembly Standing Committee, the Government, or at least a third of the membership of the National Assembly deputies can request the making of a Constitution or amendment of the Constitution. The National Assembly decides the making and amendment of the Constitution upon the affirmative votes of at least one third of total members of the National Assembly. For the making and amendment of the Constitution, the National Assembly establishes a drafting committee which is tasked with collecting people’s comments and submitting the draft to the National Assembly. The Constitution is passed with affirmative votes of at least one third of total members of the National Assembly. The organization of a referendum on the Constitution shall be decided by the National Assembly. Such a constitution making or amending procedure is much clearer than that in the 1992 Constitution, however it still leaves open some issues for the law, including the procedure and effect of the people’s comments and referendum on the draft Constitution.

V PROSPECTS FOR CHANGE AND CHALLENGES IN IMPLEMENTING THE 2013 CONSTITUTION

5.1 Prospects for change from the 2013 Constitution

As mentioned at item 4.2, the 2013 Constitution has many new issues as compared to the 1992 Constitution. These new issues are likely to create prospects for change in Vietnam as follows:

First, expanding democracy

Democracy is associated with the concept of people’s sovereignty (over the governance in general and the making and approval of the Constitution in particular). This important issue was asserted in the 1946 Constitution, however it had been subsequently submitted to the dominance of the doctrine of proletariat dictatorship in the Marxism and Leninism, thus it had been ignored or distorted in Vietnam’s Constitutions in 1959, 1980, and 1992.

The 2013 Constitution re-asserts people’s sovereignty through a series of statements in the Preamble (confirming that the people make, implement and protect the constitution); Article 2 (confirming that the people are the master of the country, all state powers belong to the people); Article 4 (asserting that the CPV is under the oversight by the people and accountable to the people in its decisions); Article 6 (asserting that the way the people implement state power is through direct democracy and representative democracy); Article 70 (abolishing the rule that the National Assembly is the only body with constitution-making power); Article 120 (on a referendum by the people on the Constitution)...These new issues along with the capitalization of “People” indicate a change in the

perception about the Constitution from an original law made by the state to a social contract where the people are to make, entrust power and set out mechanisms to control the activities of the government they establish²⁷. This change promises the promotion of democratization in Vietnam in the years to come.

Second, promoting the rule of law

The objective of building a socialist rule of law state is set in the 2001 amendment of the 1992 Constitution and continues to be developed into further details in the 2013 Constitution through a series of statements like Article 2 (the Socialist Republic of Vietnam is the socialist rule of law state of the people, by the people and for the people; The state powers are unified and allocated to state bodies which shall coordinate with and control one another in the exercise of legislative, executive and judiciary powers); Article 4 (CPV organizations and members operate within the Constitution and the law); Article 8 (The organization and operation of the state is based on the Constitution and the law, the state manages society by the Constitution and the law); Article 94, 96 (The Government exercises executive power and has the task to protect human rights and citizens' rights); Article 102 (the people's courts exercise the judiciary power and have the task to protect justice and human rights); Article 107 (the people's procuracies have the task to protect human rights, citizens' rights) ... While they are general, these statements demonstrate a trend of structural transformation in Vietnam towards the rule of law principles.

Third, reforming the governance framework

A series of new rules are added or revised in the 2013 Constitution indicate efforts by local constitution makers in creating a new framework for governance like Article 2 (control one another in the exercise of legislative, executive, and judiciary powers); Article 55 and 112 (power delegation between the central and local levels in the advanced model of decentralization which allows the local governments to have their own budget); Article 117, 118 (establishing two independent constitutional institutions, i.e., the National Election Council and the State Audit); Article 9 (clarifying the role of practicing social criticism and supervision by the Vietnam Fatherland Front and its member organizations) ... The reform objective is to build a transparent, effective and accountable form of governance, meeting the requirements of democratization and international integration of Vietnam.

Fourth, ensuring better human rights and citizens' rights

As mentioned at item 4.2, the institution of human rights and citizens' rights is most comprehensively revised in the 2013 Constitution. These amendments indicate a fresh approach associated with universal thinking and standards of international human rights law. They are expressed first at Article 14 of the 2013 Constitution which states that human rights are natural and inherent values to be recognized and ensured by the state rather than bestowed upon the people by the state as written in the previous Constitutions in 1959, 1980, and 1992. The second point is that human rights and citizens' rights can only be derogated by the law in necessary circumstances on the ground of national defense and security, public order, social safety, social morals, public health (Article 14). Moreover, the change of name and order of the chapter to the second as well as the wording revision of a series of rights all demonstrate efforts by constitution makers in improving a constitutional framework to better ensure human rights and citizens' rights in Vietnam.

5.2 Challenges for implementing the 2013 Constitution

Although the 2013 Constitution contains prospects for change, Vietnam is facing a series of challenges to realize these changes as follows:

²⁷ See Nguyen Si Dung (Vice Chairman of the Office of the National Assembly), *The New Constitution, The New Hope*, presented at the seminar "The Constitution and institutional reform" organized by Vietnam's scholars network in Hanoi on 23/01/2013.

Challenges for expanding democracy

The issue of expanding democracy is not only mentioned in the Constitution but in various documents of the CPV as well. However, Vietnam has not got a clear and enabling legal framework for realizing it. The problem lies in the lack of many foundational laws for a democratic regime including law on political party, law on association, law on demonstration, law on referendum, law on access to information... The existing legal framework on representative democracy (laws on election of National Assembly deputies and People's Councils deputies) contains controversial rules (for example the process for nomination and consultation for recommending nomination). Direct democracy²⁸ has not been promoted by any law and is itself a vague concept in Vietnam despite an emphasis by the 2013 Constitution.

However, according to dissident groups, the greatest challenge is the ideology. Until now, as observed by many foreign and local experts, in spite of being faced with increasing pressure for democratization at home and abroad, there has been no sign that the CPV get way from Marxism and Leninism and accept to surrender its monopoly of power. The continued maintenance of Article 4 in the 2013 Constitution is a clear evidence.

As commented by many critics, once the political system is still entrenched in one-party, democratic reforms stemming from new rules in the 2013 Constitution are unlikely to lead to a truly and completely democratic regime in the coming time in Vietnam.

Experiences from countries in the former USSR and Eastern Europe as well as the Arab Spring movement in the Middle East show that democratization is inevitable in totalitarian and dictatorial states (possibly in a prompt and surprising way). However, after that, these countries face difficulties in building a true and sustainable democracy. Vietnam is not an exception to that. While it is extremely difficult to predict the time for democratic change in Vietnam, it is certain that Vietnam has a lot of difficulties even at a greater level than many other countries in building a democracy after transformation. This is because Vietnam has very little experience in pluralism and multi-party democracy, thus being poor in the political culture and people's awareness of democracy; meanwhile, due to consequences of many decades of wars and a special geo-political position in the world, the Vietnamese society is now heavily divided among ideological trends and interests, and at the same time is bound by the influence of the neighboring totalitarian power, i.e., China. They all make it difficult for a true democracy to be delivered and grow robustly in Vietnam.

Challenges for promoting the rule of law

According to the United Nations, the concept *rule of law* comprises of elements like the supremacy of law (every actor in society, including the state, has to abide by the law); defense of human rights; separation of powers (among branches of state powers); and equal participation in the management of the state and society.²⁹ In Vietnam, the concept of the socialist rule of law state includes elements like the mastery of the people, supreme respect for the Constitution and the law; respect and protection of human rights; unified state powers with delegation, coordination, and control among state bodies in the exercise of legislative, executive, and judiciary powers; the state and society is led by a single political party.³⁰

As such, there is a difference between the rule of law state of the CPV and the universal perception in the world. It is highlighted in two important elements: concentration of state powers and a single-party regime. In essence,

²⁸ It is expressed in 4 basic forms: *referendums, citizens' initiatives, agenda initiatives; and recall*. See IDEA, *Direct Democracy: The International IDEA Handbook*, 2008, p. 12, at http://www.idea.int/publications/direct_democracy/ (accessed March 2nd, 2014).

²⁹ Report of the UN Secretary-General, *"The rule of law and transitional justice in conflict and post-conflict societies"*, 2004.

³⁰ Nong Duc Manh (the CPV General Secretary, former Chairman of the National Assembly of the Socialist Republic of Vietnam): *Opening speech at the first meeting of the 12th term National Assembly on 19 July 2007*.

the concept of the rule of law state of the CPV contains inherent conflicts (the single-party regime versus supreme respect for the Constitution and the law, respect and protection of human rights and people's mastery).

Hence, the first and foremost challenge for promoting the rule of law in Vietnam is the awareness of its character and attributes. Like the issue of democratization, once it has not broken away with the single-party regime, whatever strong and radical reforms in line with new rules in the 2013 Constitution are unlikely to result in a true rule of law.

More detailed challenges are related to the allocation, coordination, and control among legislative, executive, and judiciary bodies in the context of unified state powers concentrated in the National Assembly and to ensuring that the CPV, the leading force over the state and society, is accountable to the people and under the people's supervision. These are theoretically contradictory and practically void of implementation and clarification in Vietnam's laws.

Challenges for reforming governance framework

Except for the practice of social criticism and supervision by the Vietnam Father Front and its member organizations mentioned (in the Rules on social criticism and supervision by the Vietnam Father Front and political-social mass organizations promulgated along Decision no. 217-QĐ/TW dated 12/12/2013 issued by the CPV Politburo), other issues newly added to the 2013 Constitution meaningful for a governance framework reform have never been clarified and stipulated at a concrete level in Vietnam. They are the mechanism to control one another among legislative, executive, and judiciary bodies; decentralization in an advanced model; organization and operation of the two independent constitutional institutions, i.e., the National Election Council and the State Audit.

However, as commented by some local critics, the greatest challenge is not a legislative solution (legislators and legal scholars in Vietnam are qualified enough to build a transparent, effective and accountable framework of governance) but the reluctance of the CPV resisting the establishment and operation of institutions to control and oversee powers. Because of that reluctance, the article on the Constitutional Council - the institution with the most direct and comprehensive role and effective oversight of power - has been abolished as an option in the draft constitutional amendments at the last minute. The making of the law on social criticism and supervision by the Vietnam Father Front and its member organizations (to legalize the aforementioned rules issued by the CPV's Politburo) is still delayed,³¹ although it has long been proposed by the Front. In sum, the newness and complicatedness of the institutions to control and oversee powers along with their potential conflicts with the existing political regime which is characterized by power concentration and closedness indicates that the governance framework reform in line with the 2013 Constitution of Vietnam is unlikely to be an easy task.

Challenges for ensuring human rights and citizens' rights

The first obstacle is that the 2013 Constitution does not provide for immediate effect of the constitutional rights. This has resulted in a situation that many important rights, particularly civil and political rights like freedoms of association, assembly, demonstration, the right to vote in referendum... have to wait for the National Assembly to promulgate laws and possibly the Government to enact decrees to guide implementation.

The second obstacle is the lack of a clear and effective legal mechanism for protecting constitutional rights. The failure of the Constitutional Council destroys the possibility to prevent and strike down the documents and decisions issued by legislative, executive, and judiciary bodies violating constitutional rights. Similarly, the omission of a national human rights institution destroys the opportunity of the people to be defended by an independent constitutional body specialized in human rights. At the moment, the existing mechanism of dealing with com-

³¹ This law is not on the list of laws and ordinances tentatively submitted to the National Assembly and its Standing Committee to review and adopt (The list is promulgated along with Resolution No. 718/NQ-UBTVQH13 dated 2/01/2014 on the Plan for implementing the 2013 Constitution).

plaints and denunciations like “playing with the ball and blowing the whistle at the same time” (the complaints and denunciations are tackled by the organizations which is the target of complaints and denunciations or their higher level organizations) and a dependent judicial system, there is a high chance that those with human rights, particularly political rights, violated can not receive fair trial and compensation.

The third obstacle is related to an unreasonable rule on the ground of *national security protection* to restrict human rights (Article 14) and an overly expansive and ambiguous prohibition on the misuse of human rights and citizens’ rights to infringe on the national interests, rights and lawful interests of others (Article 15). These rules are practically being and continue to be abused by the state agencies to violate constitutional rights. Against the background that the propaganda apparatus of the CPV is still committed to the view that human rights are “a tool of hostile and reactionary forces to undermine the socialist regime”, the judicial system is still more of a tool to protect the political regime than of an institution to protect justice, and in the absence of independent constitutional institutions to protect human rights like the Constitutional Council or the National Human Rights Institution, it is extremely difficult to prevent the abusive acts.

MAIN REFERENCES

1. Boxit Vietnam (2013), *Petition on Admending Constitution 1992*, at <http://boxitvn.blogspot.com/2013/01/kien-nghi-ve-sua-oi-hien-phap-1992.html>.
2. Cyber Citizen Group (2013), *Declaration of Free Cyber Citizen Group*, at <http://diendancuachungta.com/cong-cuoc-dau-tranh-cho-tu-do-dan-chu/loi-tuyen-bo-cua-cac-cong-dan-tu-do/>
3. Dung, Nguyen Dang (1998), "1946 Constitution Regime – A brilliant Creation of President Ho Chi Minh", in *the 1946 Constitution: Inheritance and Development*, National Politic Publishing House, Hanoi.
4. Dung, Nguyen Si (2010), Nguyen Si Dung, *The 1946 Constitution and the Rule of Laws*, at [http://www.tuanvietnam.net/2010-05-07-hien-phap-1946-voi-tu-tuong-phap-quyen](http://www.tuanvietnam.net/2010-05-07-hien-phap-1946-voi-tu-tuong-phap-quyen;);
5. Dung, Nguyen Si (2013) *The New Constitution, The New Hope*, presented at the seminar "The Constitution and institutional reform" organized by Vietnam's scholars network in Hanoi on 23/01/2013.
6. Diem, Pham Trong – Phiet, Ton Quang (1957), *Phan Boi Chau's Chronical*, translated, Literature-History-Geography Publishing House, Hanoi.
7. Drafting Committee for the 1992 Constitution Amendment (2012), *Report No. 194/TTr-UBDTSĐHP dated 19/10/2012*.
8. Drafting Committee for 1992 Constitution Amendment (2013), *Report No. 287/BC-UBDTSĐHP dated May 17, 2013 on Explaining, Receiving and Adjusting the Draft Amendment to the 1992 Constitution in accordance with the people's opinions*.
9. Drafting Committee for 1992 Constitution Amendment (2013), *Report on the Justifications for the draft of the 1992 Constitution amendments*, 25 January 2013
10. Giao, Vu Cong (2013), 'Advances and limitations in the institution of human rights and citizens' rights in the third draft of the 1992 Constitution amendments in 2013', *Vietnam National University-Hanoi Journal of Science – Law Review*, No. 3, 2013.
11. IDEA (2008), *Direct Democracy: The International IDEA Handbook*, tại http://www.idea.int/publications/direct_democracy/.
12. Kim, Tran Trong (1920), *Vietnam History in Brief*, at http://qhv.vn.org/software/Vietnamsuluoc_TranTrongKim.pdf
13. Manh, Nong Duc (2007), *Opening speech at the first meeting of the 12th term National Assembly on 19 July 2007*.
14. Nghia, Pham Duy (2005), *People's Voice Echoeing*, at <http://tuoitre.vn/Chinh-tri-Xa-hoi/96260/vang-vong-tieng-dan.html>;
15. Nghia, Le Huu (2011), Speech at January 14 morning session of the XIth CPV Congress, at www.xaydungdang.org.vn/Home/PrintStory.aspx?distribution=3525&print=true
16. Petition of Vietnamese civilian organizations about adjusting the 1992 Constitution, at <http://www.isee.org.vn/Content/Home/Library/civil-society/kien-nghi-cua-cac-to-chuc-xa-hoi-dan-su-viet-nam-ve-du-thao-sua-doi-hien-phap-1992.pdf>
17. School of Law, Vietnam National University Hanoi (2013), *Textbook on Vietnam Constitutions*.
18. Son, Phan Anh (2014) *NGOs with Vietnam Development Strategy and Regional Integration*, presented at Strategic Partner Meeting of Rosa-Luxemburg-Stiftung, Da Nang, 24-25/2/2014.
19. Thanh, Phan Dang (2006), *Constitutional Ideologies in Vietnam during the first half of the 19th Century*, Justice Publishing House.
20. Thanh, Phan Dang – Hoa, Truong Thi (2013), *An overview of Vietnam Constitutional History*, Ho Chi Minh General Publishing House.

21. Thang, Thai Vinh (2011), "Constitutional Ideologies in Vietnam before the August Revolution in 1945", *State and Law Magazine*, No. 11/2011
22. Trinh, Phan Chu (1925): "A Speech on Government by the Military and Government by the People", *History Research Magazine*, No.67, October 1964.
23. Truong, Phan Van (1926), *An Overview of Law*, Past – Present Publishing House, Sai Gon.
24. Tuan, Nguyen Minh (2011), *the 1946 Constitution: Reflecting power decentralization and power control mechanism*, at <http://tiasang.com.vn/Default.aspx?tabid=116&CategoryID=42&News=4720>
25. UN, Report of the UN Secretary-General, "*The rule of law and transitional justice in conflict and post-conflict societies*", 2004.
26. Vietnam Communist Party (1963), *The Party's Documents from 1939 till September 2, 1945*, the Truth Publishing House, Hanoi.
27. Vietnam Bishop Council (2013), *Letter of Vietnam Bishop Council to the Drafting Committee of the 1992 Amendment Constitution to suggest changes to the Constitution*, at <http://www.hdgmvietnam.org/thu-cua-hoi-dong-giam-muc-viet-nam-nhan-dinh-va-gop-y-sua-doi-hien-phap/4750.116.3.aspx>)
28. Writing Constitution together (2013), *the Petition and Survey (online) of the Writing-the-Constitution-together Group about amendment to the 1992 Constitution*, at <http://hienphap.net/y-kien/>, <http://hienphap.net/ket-qua-khao-sat/>)

Disclaimer

Rosa-Luxemburg-Stiftung supported this paper. However, the content of this document is the opinion of the author. It does not necessarily reflect the opinion of Rosa-Luxemburg-Stiftung. Rosa-Luxemburg-Stiftung takes no responsibility for the accuracy or legitimacy of the information or opinions provided here.