



**TƯ PHÁP  
VIỆT NAM**

**Chính phủ Việt Nam - Chương trình Phát triển Liên hợp quốc  
Government of Viet Nam - United Nations Development Programme**

***“Tăng cường tiếp cận công lý và bảo vệ quyền tại Việt Nam”  
“Strengthening Access to Justice and Protection of Rights in Viet Nam”***



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## **The 10th Legal Partnership Forum:**

**“Implementation of the new Constitution 2013  
in the process of Legal and Judicial Reform in  
Viet Nam”**

## **Diễn đàn Đối tác pháp luật lần thứ 10:**

**“Triển khai thực hiện Hiến pháp năm 2013  
trong quá trình cải cách pháp luật và tư pháp  
ở Việt Nam”**

**(Materials in English)**

**Ha Noi, 03.04.2014**

# **The 10th Legal Partnership Forum: Implementation of the new Constitution 2013 in the process of Legal and Judicial Reform in Viet Nam**

## **AGENDA**

**Thursday, 03 April 2014**

***Venue: Sheraton hotel, K5 Nghi Tam, 11 Xuan Dieu Road, Tay Ho District, Hanoi***

### **Opening remarks:**

- Mr. Ha Hung Cuong, Member of the Central Committee of the Communist Party, Minister of Justice
- Ms. Pratibha Mehta, United Nations Resident Coordinator in Viet Nam

### **Co-chairs:**

- Mr. Hoang The Lien, Deputy Minister of Justice
- Ms. Pratibha Mehta, United Nations Resident Coordinator in Viet Nam

### **Panelists:**

- Mr. Nguyen Van Hien, Member of the Standing Committee of the National Assembly, Chairman of the Judiciary Committee of the National Assembly
- Mr. Le Minh Thong, Deputy Chairman of the Legal Committee of the National Assembly
- Mr. Nguyen Tat Vien, Member of the Standing Central Steering Committee for Judicial Reform
- Mr. Le Thanh Khuyen, Deputy Director General of General Bureau of Land Management, Ministry of Natural Resources and Environment
- Ms. Nguyen Thi Kim Thoa, Director General of Department of Criminal and Administrative Laws, Ministry of Justice

**8.00 - 8.30    Registration**

**8.30 - 8.35    Introduction**

Ms. Dang Hoang Oanh, Director General of the Department of International Cooperation, Ministry of Justice

- 8.35 – 9.00 Opening remarks**  
Mr. Ha Hung Cuong, Member of the Central Committee of the Communist Party, Minister of Justice  
Ms. Pratibha Mehta, United Nations Resident Coordinator in Viet Nam
- 9.00 – 9.45 2013 Constitution: New developments on citizen’s rights and human rights and implementation plan**  
Ms. Nguyen Thi Kim Thoa, Director General of Department of Criminal and Administrative Laws, Ministry of Justice  
**Q&A**
- 9.45- 10.30 Major changes in land policies toward equality among land users and better utilization of land resources for socio-economic development**  
Mr. Le Thanh Khuyen, Deputy Director General of General Bureau of Land Management, Ministry of Natural Resources and Environment  
**Q&A**
- 10.30-10.45 Tea break**
- 10.45-11.15 Results of 8 years’ implementation of the Judicial Reform Strategy (2005-2012) and the Action Plan for 2014**  
Mr. Nguyen Tat Vien, Member of the Standing Central Steering Committee for Judicial Reform  
**Q&A**
- 11.15-11.45 Q&A**
- 11.45-12.15 Closing by Co-chairs**
- 12.15 Luncheon hosted by the organizers**

# CONTRIBUTIONS AT THE 10<sup>TH</sup> LEGAL PARTNERSHIP FORUM

## Part 1

- 1. 2013 Constitution: New developments on citizen's rights and human rights and implementation plan** – *Ms. Nguyen Thi Kim Thoa, Director General of Department of Criminal and Administrative Laws, Ministry of Justice*
- 2. Major changes in land policies toward equality among land users and better utilization of land resources for socio-economic development** – *Mr. Le Thanh Khuyen, Deputy Director General of General Bureau of Land Management, Ministry of Natural Resources and Environment*
- 3. Results of 8 years' implementation of the Judicial Reform Strategy (2005-2012) and the Action Plan for 2014** – *Mr. Nguyen Tat Vien, Member of the Standing Central Steering Committee for Judicial*

## MATERIALS FOR REFERENCE

## Part 2

1. **10 key tasks of judicial activities in 2014**
2. **The 2013 Constitution of the Socialist Republic of Viet Nam**
3. **Law on Land No. 45/2013/QH13** (*only available in Vietnamese*)
4. **Research report on amending and supplementing regulations on the National Assembly in the 1992 Constitution** – *Sub-component Legal Committee of the National Assembly is in charge of coordination and supervision of the study*

## **2013 CONSTITUTION: NEW DEVELOPMENTS ON CITIZEN'S RIGHTS AND HUMAN RIGHTS AND IMPLEMENTATION PLAN**

**Ms. NGUYEN THI KIM THOA**  
**Director General**  
**Department of Criminal and Administrative Laws**  
**Ministry of Justice**

The passage of the new Constitution by the XIII<sup>th</sup> National Assembly on 28 November 2013 was a significant political-legal event in the year 2013. The new Constitution is intended to address problems encountered and recognized during implementation of 1992 Constitution; to institutionalize the country's development platform for the transition to socialism; and to enhance the constitutional development skills to ensure that the Constitution serves as the basic law with sustainability.

2013 Constitution (effective since 1 January 2014) presents a number of important developments, especially those regarding organization and operation of the state; human rights, fundamental rights and obligations of citizens...; it provides the constitutional foundation for continued reforms and development in the new period.

### **I. 2013 Constitution Developments: Human rights, fundamental rights and obligations of citizens**

*1. First and foremost, respect and protection of human rights and citizen's rights is a crosscutting objective of the Government of Vietnam.*

Therefore, provision of fundamental rights and obligations of citizens has always been a cornerstone in all versions of Vietnam's Constitution since 1946. 1992 Constitution has a separate chapter (Chapter V) with 33 articles (from Art 49 to Art 82) providing for citizen's basic rights and obligations. Particularly, for the first time in history, 1992 Constitution recognized that human rights be respected and translated to basic rights of citizens.

Nevertheless, the reviews of 1992 Constitution implementation conducted by the Government, ministries and local governments revealed weaknesses in the Constitution regarding human rights and fundamental citizen's rights and obligations. Examples include lack of distinction between citizen's rights and human rights; a

number of provisions on fundamental human and citizen's rights and obligations are not well-designed, as they do not truly reflect the relationship between the State and citizens, and are no longer appropriate in the new context of promoted democracy, secured human rights and development of the rule of law state; a number of citizen's rights and freedoms are attached to "as specified by law" phrase, which has caused problems in interpretation, development and enforcement of necessary measures to ensure human and citizen's rights; and as a consequence, various sub-law documents may restrict the constitutional rights and freedom of the citizen.

The review of 1992 Constitution and its implementation have also shown that many provisions on human rights have not yet been translated into life. For various reasons, many rights provided for in the former Constitutions have not been translated into laws or sub-law documents. While certain necessary laws have not been included in the National Assembly's law-making agenda, others, despite having been drafted, were not passed for poor preparation or perceived limited enforceability.

## *2. New developments in 2013 Constitution on human rights and fundamental citizen's rights and obligations*

Aiming at overcoming the shortcomings of 1992 Constitution as mentioned, 2013 Constitution introduces new provisions on human rights and fundamental citizen's rights and obligations. 2013 Constitution has been recognized by the public and international community as a big step in the conceptualization and thought of the Party and State of Vietnam on the role and position of the Constitution in recognition, respect, protection and assurance of human rights and fundamental citizen's rights and obligations. This is in line with the mainstream idea of the human race and the current trends. The Constitution is the highest legal document, through which the people on the one hand assert their power and authorize the State to exercise that power, and on the other hand, claim the human and citizen's rights that the State must recognize, respect, protect and secure.

With the purpose of promoting human factor and demonstrating the State's responsibility in respecting, protecting and securing human and citizen's rights, 2013 Constitution encompasses progressive views on this very important subject matter, namely:

First, renaming the Chapter "Citizen's Fundamental Rights and Obligations" to "Human rights and fundamental citizen's rights and obligations" and moving the chapter from Chapter V to Chapter II (following the Chapter on Political Regime) to signify the importance of human rights and citizen's rights.

Second, for the first time, the Constitution spells out in the 1<sup>st</sup> Article of the Chapter (Article 14) the key principles in respecting, protecting and securing rights and fundamental citizen's rights and obligations, specifically:

"In the Socialist Republic of Vietnam, human rights and citizen's rights in political, civil, economic, cultural and social aspects are recognized, respected, protected and secured by the Constitution and Laws (clause 1);

At the same time, the Constitution also asserts that human rights and citizen's rights can only be restricted by laws and under only 4 circumstances: national defence and security; social order and security; social morality and community health (clause 2).

Third, 2013 Constitution provides distinction between human rights and citizen's rights. 15 out of 26 articles on human and citizen's rights are about human rights and these are deemed innate natural rights, such as: right to equality before the law, right to physical inviolability, right to life...; and only 11 articles are about citizen's fundamental rights, attached to Vietnamese citizenship.

Accordingly, a number of provisions on rights have been modified against the former Constitution. For example, while 1992 Constitution provided that "Citizens have the right to physical inviolability" (Article 71), "Citizens have the right to belief and religion, to follow or unfollow a religion" (Article 70), 2013 Constitution now provides: "Everyone has the right to physical inviolability" (Article 20); "Everyone has the right to inviolability of private life, personal and family privacy" (Article 21); "Everyone has the right to freedom of belief, religion, to follow or unfollow a religion"...

Fourth, a shift in the approach and mindset about human and citizen's rights in the sense that these are not the rights given, "decided" by the State, but the Constitutional rights expressed by "Everyone has the right..." "Citizen has the right...", and that the State has the responsibility in respecting, protecting and securing realization of these rights.

Hence, instead of providing "Citizen has the right to information" as stated in Article 69 of 1992 Constitution, Article 25 of 2013 Constitution provides "Citizen has the right to access to information". A number of rights have been strengthened, such as right to privacy (Article 21), right to participate in the management of state and management of society (Article 28) ...

And fifth, the Constitution not only builds on but also expands and develops the human and citizen's rights recognized in 1992 Constitution. For example, private

ownership is protected by law (Article 32); a shift from “everyone is entitled to conduct lines of business as prescribed by the law” to “everyone enjoys freedom of enterprise in lines of business which are not prohibited by the law” principle (Article 33); recognitions of more rights, including the right to life (Article 19), the right to live in a healthy environment (Article 43), the right to social security (Article 34), the right to enjoy and access to cultural values, participate in cultural life, and make use of cultural facilities (Article 41); the right to determine one’s nationality, use one’s mother tongue and select one’s language of communication (Article 42)...

A number of rights and obligations are expected to be regulated further by laws, such as “No one shall be illegally deprived of his or her life” (Article 19); the right to vote and stand for election to the National Assembly and People’s Councils (Article 27); and the obligation to pay tax (Article 47)...

With such developments and progress, 2013 Constitution opens up a wide space for expanding and promoting democracy, respecting and securing human and citizens’ rights in Vietnam.

## **II. 2013 Constitution: Implementation Plan**

### *1. General tasks in Constitution enforcement*

The enforcement of the new Constitution is crucial in translating the Constitution into life, upholding the Constitution’s values in reality, especially the progressive developments in various parts of the Constitution; in educating all groups of population (officials, civil servants, public employees, workers, soldiers, overseas Vietnamese...) on contents and significance of the Constitution, in order to enhance compliance with the Constitution and the law and everyone’s responsibility in the development, enforcement of the law and protection of the Constitution.

To this purpose, the National Assembly adopted Resolution No. 64/2013/QH13 providing for a number of issues related to the Constitution enforcement; the Standing Committee of the National Assembly adopted Resolution No.718/NQ-UBTVQH13 and the Prime Minister issued Decision No.251/QĐ-TTg on the Operational Plan for Constitution enforcement, which identify two major groups of tasks:

First, to introduce, disseminate information and provide training on contents and importance of the Constitution.

Legal education in general and education of the Constitution in particular serves as the stepping stone for different population groups to access to, know and understand the legal provision for effective enforcement. As the Constitution is considered the

supreme law with the highest legal effect, the education and dissemination of the Law plays a crucial role, hence the need for well-designed, structured training throughout the country, at all levels through many forms and methods of delivery, which should be designed to suit different audiences while ensuring quality and efficiency.

Under the Government's Plan of Constitution Enforcement, various outreach, dissemination and training activities will be organized, including: introductory seminars on basic contents of the Constitution; thematic training workshops on detailed provisions of the Constitution for leaders, managers and heads of legislation department of ministries; communication campaigns via mass media, publication and dissemination of research materials and comments on the Constitution; a nation-wide writing contest "Understanding the Constitution of the Socialist Republic of Vietnam"; review and edition/development of textbooks, training materials, research and teaching materials on the constitution and laws in educational facilities...

The effective communication and education of the Constitution will contribute significantly to enhancing awareness and understanding of the public, particularly officials and civil servants on the Constitution; producing accurate and consistent understanding of the Constitution's contents, philosophy and ideas; through which to contribute to development and enforcement of laws and protection of the Constitution; enhancing the observance of the Constitution and translating it into life.

Second, to review all laws, ordinances and legal normative documents promulgated prior to the Constitution effective date for necessary revision, supplement or new development to ensure consistency and alignment to the Constitution, and to annul inappropriate regulations.

This is one of the most important tasks of various agencies; requiring the time, efforts and resources of the Government, ministries and local authorities in the coming time.

The volume of laws and ordinances alone to be reviewed, amended or newly developed, according to estimates of the Standing Committee of the National Assembly, is huge:

- As per the tentative program attached with Resolution No.718/NQ-UBTVQH13, 88 laws and ordinances (not including tax laws) are expected to be amended, supplemented or newly developed. As per the list attached to Decision No.251/QĐ-TTg of the Prime Minister, the indicative number of laws and ordinances to be submitted by the Government to the National Assembly and the NA Standing Committee is 82, concentrating in 2014-2016 period.

- The total number of laws and ordinances on human rights and fundamental citizen's rights and obligations expected to be amended, supplemented or newly developed is 28 (including 12 laws related to political and civil rights; 16 laws concerning economic-cultural and social rights).

*2. Enhancing legislations on human rights and fundamental citizen's rights and obligations in line with 2013 Constitution.*

To address the common past problems, to ensure the rule of law and supremacy of the Constitution, that the 2013 Constitution be translated into life, and that human and citizens' rights are no longer "suspended rights" in the Constitution, the following considerations need to be made in the institutional development and enhancement regarding human rights and fundamental citizen's rights and obligations:

First, priority should be given to revision, amendment and supplementation of legal documents on human rights and fundamental citizen's rights and obligations.

According to Resolution No.718/NQ-UBTVQH13, the development of legal normative documents in line with the Constitution shall ensure the following priority:

- Amendment, supplementation and development of legal normative documents on organization of state agencies and other institutions in the political concerning human rights and fundamental citizen's rights and obligations.

- Development of a schedule for legal development and improvement in economic, social and cultural fields, in education, science, technology and environment, in Country's protection, external relations and international cooperation.

As such, with 28 laws on human and citizens' rights expected to be amended, supplemented and developed, the pressure is huge and the schedule tight. As planned, the majority of these laws are expected to be developed and submitted to the National Assembly in 2015 and 2016 (such as the Amended Criminal Code, Amended Civil Code, Law on Authentication, Law on Civil Status, Amended Law on Legal Aid, Amended Law on Media, Law on Information Security, Law on Access to Information, Law on Associations, Law on Belief and Religion, Law on Citizens' Identity...), some expected even in 2014 (such as Amended Law on Marriage and Family...).

Also, on the basis of the comprehensive review of laws on human and citizen's rights, it is important to keep updated the list of legal normative documents on human rights and citizen's rights which need amendment, supplementation or new development. Therefore, it is imperative to identify an appropriate schedule and

needed resources for enhancing laws on human rights and fundamental citizen's rights and obligations, building on and further developing the current legal framework.

Second, in relation to contents: specification of human rights and fundamental citizen's rights and obligations needs to build on adequate and sound understanding of the rights, and the limits of each right (there are differences in the scope of human rights and basic rights of citizens), ensure enforceability and safeguards in the specific socio-economic circumstances of the country, given the increasingly expanded socialist democracy, strengthened rule of law and international integration, and continuously improved awareness of human rights and fundamental citizen's rights and obligations.

- The further specification of human rights and fundamental citizen's rights and obligations provided in the Constitution needs to comply with the constitutional principles of recognition, respect, protection and assurance of these rights, especially the principle specified in clause 2, Article 14: "Human rights and citizen's rights shall only be restricted in imperative circumstances for the reasons of national defence, national security, social order and security, social morality and the health of the community".

Third, considerations are to be made during implementation:

- To conduct thorough research of international conventions on human rights (UN Universal Declaration on Human Rights 1948; International Convention on Civil and Political Rights 1966, International Covenant on Economic, Social and Cultural Rights 1966); to learn from international experience in improving legal framework on human rights and citizen's rights to provide proper stipulations);

- To strengthen coordination among relevant stakeholders in the development of legal normative documents to ensure alignment with the Constitution; to enhance the role of legislation functions of ministries and local governments in this process.

- To strengthen communication and education efforts regarding contents and significance of the Constitution, especially the provisions concerning human rights and fundamental citizen's rights and obligations; to secure broad engagement of the people and all stakeholders in the process of amendment, supplementation or development of legal normative documents on human rights and fundamental citizen's rights and obligations. In addition, it is advisable to engage experts, legal professionals, and those who have experience in reviewing, researching and developing 2013 Constitution, to make sure that the Constitution idea and intents are correctly and adequately translated into laws and ordinances.

In summary, the enforcement of the Constitution is one of the key tasks of the entire political system, the Party, and the nation. Given the current context of the country, with the efforts of all agencies, especially the National Assembly, the Government, the Supreme People's Court, the Supreme People's Procuracy, we strongly believe that the development and adoption of laws and ordinances to realize 2013 Constitution in general and the ones on human rights and fundamental citizen's rights and obligations in particular will be undertaken timely and with good quality, to translate the Constitution into life./.

## **MAJOR CHANGES IN LAND POLICIES TOWARD EQUALITY AMONG LAND USERS AND BETTER UTILIZATION OF LAND RESOURCES FOR SOCIO-ECONOMIC DEVELOPMENT**

**Ms. LE THANH KHUYEN  
Deputy Director General  
General Bureau of Land Management  
Ministry of Natural Resources and Environment**

The (amended) Land Law was passed with broad consensus by the 13th National Assembly in the 6th sitting. This is a very important event that has profound impacts on socio-economic development and maintenance of socio-political stability of the country.

The amended Land Law is a result from a thorough process of reviewing implementation of the 2003 Land Law and institutionalizing broad policy views embedded in the Resolution of the 6th Conference of the Executive Board of the 11th Central Party Committee on continued implementation of policy and legal initiatives in the period of strengthened, broad-based reforms to lay solid foundations for Vietnam to become a modern, industrialized country by 2020. The amended Law reflects the aspiration and determination of the vast majority of population. It is comprised of 14 chapters with 212 articles – an addition of 7 chapters and 66 articles to the 2003 Law – with a number of significant changes introduced. The focus of such changes is to further improve legal, planning, economic, and administrative tools as well as monitoring and oversight mechanisms in land administration in line with development of a socialism-oriented market economy, which are expected to contribute to better utilization of land resources for socio-economic development and a more effective, transparent and modern system of land administration. More specifically:

*1. The amended Law reaffirms the whole population's ownership over land with the State as the owner's representative.* The Law confers eight powers to the State as the owner's representative, namely (1) to decide land use zoning and planning, (2) to decide the purpose of land use, (3) to stipulate limits on area and duration of land use, (4) to decide takings and expropriation of land, (5) to determine land price, (6) to decide granting of land use rights to users, (7) to decide financial policies on land, and

(8) to stipulate rights and obligations of land users, and the exercise of powers of land owner representation (Article 21).

The Law specifies the State's guarantee of rights for land users (Article 26), such as protecting the right to use land and assets legally attached to land; granting land use right certificates, as long as requirements being met; providing compensation and support for those people whose land is taken in accordance with the law; putting in place policies to help those workers who are directly engaged in agricultural production, forestry, aquaculture and salt production and have become landless due to land use transformation, so that they receive training of new job skills and find new jobs.

The Law specifies the State's responsibilities for residential and productive land for people of ethnic minorities (Article 27). More specifically, the State shall put in place policies on residential land and land for community activities for people of ethnic minorities in line with their respective traditions, customs, and cultural identities as well as with specific conditions of each neighborhood; and put in place policies to help ethnic minority people who engage in agricultural production in rural areas have access to land for agricultural production.

The amended Law requires the State to provide land information to citizens (Article 28). Thus, the State shall be responsible for developing and managing the system of land data and ensuring access to land information for organizations and individuals; and making timely disclosure and publication of land information from such system to organizations and individuals, except for information of secretive nature as specified by the law. The State is also required to inform affected individuals and organizations on administrative decisions and conducts in land management. State agencies and competent persons in land management and use have responsibility for facilitating provision of land information to organizations and individuals in accordance with the law. These are important provisions to respond to the growing demand for land information for various purposes of organizations and individuals.

*2. The 2013 Land Law spells out, with specificity, rights and obligations for each type of land user (State agencies and organizations, economic entities, public-funded service delivery entities, foreign-invested enterprises, households, individuals and others) in accordance with their respective arrangement of land allocation or leasehold, recognizes land use rights and sets forth conditions for users to exercise their rights. More specifically:*

New provisions on rights and obligations of user groups with shared land use

rights have been added (Clause 2 Article 167). User groups comprised of households and individuals shall have the same rights and obligations as those of households and individuals. If a user group also includes an economic entity or more, then the group shall have the same rights and obligations as the economic entity. In cases where the land use right is divisible among group members, if each member wishes to exercise their right to their respective portion of land use right, they shall fulfill procedures for land plotting and obtain land use right certificate in accordance with the laws. Only by then, can they exercise rights and fulfill obligations of land users as stipulated by the laws. In cases where the land use right is indivisible, they shall authorize a representative to act on their behalf.

The Law spells out circumstances where contracts or deeds for exercising the land user's rights are subject to public notarization or certification (Clause 3 Article 167). Public notarization or certification is required for those contracts under which the rights to use land or to use land and asset attached to land are assigned, provided as a gift, used as a security, or provided as equity contribution, except for cases where a party or parties to a contract of transferring the rights to use land or to use land and assets attached thereto is an economic entity specialized in real estate business. In cases where a party or parties to a transaction is a real estate business, their contracts of leasing, subleasing the rights to use land or to use land and assets attached thereto, contracts of exchanging agricultural land use rights, and contracts of assigning the rights to use land or to use land and assets attached thereto may be notarized or certified at their own wish.

Deeds of inheritance of the rights to use land or to use land and assets attached thereto shall be notarized or certified in accordance with civil legislation. The Law explicitly indicates that notarization shall be conducted by public notary organizations and certification by commune-level people's committees.

The Law institutionalizes provisions from Decree 181/2004/NĐ-CP of the Government on points of time after which the exercise of land user rights is possible (Article 168) and cases where land use rights are conferred (Article 169). It also adds provisions to allow foreign-invested enterprises to take on transfer of equity capital in the form of the value of land use right (Point b Clause 1) and to allow those Vietnamese people residing abroad eligible for having residential housing in Vietnam to take on transfer of residential land use right in housing development projects (Point dd Clause 1).

The amended Law adds provision on limited use rights over adjacent land plots (Article 171). Such rights shall be established in accordance with civil legislation and shall be registered in accordance with the 2013 Land Law. The Law provides for the

right to choose forms of payment for land lease fee. This provision builds on Article 108 of the 2003 Land Law, which is in line with the broad policy on converting most cases of land allocation to leasehold.

Provisions on the rights and obligations of institutional users are basically taken from the 2003 Land Law with some notable changes as follows:

Concerning rights and obligations of organizations to whom the State has allocated land on user-charge basis or leased land on basis of single payment of lease fee, the amended Law removes provisions on guaranteeing by land use right; expands the right to place land use right as a mortgage, rather than restricting it to mortgage for obtaining loans for productive purposes; adds provisions on the rights of those public-funded service delivery entities who lease land from the State on single-payment basis with their paid lease fee not originating from State budget as well as the rights of organizations to whom the State has allocated or leased land with waiver or reduction of user charge or lease fee (Clause 4 Article 174).

The Law removes provisions that allowed use of assets attached to leased land as a guaranty and adds provisions to allow sale of assets attached to land in accordance with the laws. Article 177 of the Law incorporates provisions on rights and obligations of economic entities that accept equity contribution in the form of land use right as well as the land use right of economic entities in dissolution or bankruptcy from Articles 107 and 109 of Decree 181/2004/NĐ-CP.

The Law adds provisions on rights and obligations of economic entities who lease land from the State for development of underground facilities (Article 178). In cases of single payment, their rights and obligations would be the same as those for economic entities who lease land on single-payment basis; in cases of lease annuities, their rights and obligations would be the same as those for economic entities who lease land on basis of annual payment.

On rights and obligations of households, individuals and communities as land user, the amended Law builds on Article 113 of the 2003 Law, with the following changes:

- Households and individuals as land users to whom the State has allocated agricultural land within prescribed limits may engage in exchanging, transferring or taking on transfer, taking or giving as gift, and inheriting land use right; those to whom the State has allocated land on basis of user charge are entitled to recognition of land use rights; and those who lease land from the State on single-payment basis may transfer their land use right in accordance with the laws; in cases where land is subject to being taken for projects of commercial purposes or development of residential

housing for commercial purpose, they may make their own investment, or lease their land use right or make equity contribution in the form of land use right;

- Households and individuals leasing land from the State on basis of annual payment: They may sell assets under their ownership that are attached to the leased land when they meet requirements specified by the laws and put on rent assets under their ownership that are attached to the leased land in accordance with civil legislation (Article 179); the Law adds provisions on the rights of households and individuals who sublease land in industrial parks, industrial clusters or export-processing zones (Clause 3 Article 179).

The amended Law also introduces the following provisions on rights and obligations of Vietnamese nonresidents, foreign organizations with diplomatic functions and foreign-invested enterprises who are land users:

It provides for the rights and obligations of joint-venture economic entities and foreign-invested enterprises to whom the State allocates land on basis of user charge, as well as the rights and obligations of foreign-invested enterprises that use land acquired as a result of foreign investors buying stakes in Vietnamese enterprises (Article 183).

It adds provisions on the rights and obligations of business joint-ventures that use land acquired as a result of accepting equity contribution in the form of land use right; as well as of fully foreign-invested enterprises who have transformed from joint-ventures (Article 184).

It provides for rights and obligations concerning use of residential land of Vietnamese nonresidents eligible for house ownership in Vietnam; foreigners or Vietnamese nonresidents who are not eligible for purchase of houses attached to residential land use right in Vietnam (Article 186).

It adds provisions on rights and obligations of Vietnamese nonresidents and foreign-invested enterprises who lease land for development of underground facilities (Article 187).

It spells out, with specificity, conditions for exercising the rights of land users to ensure openness and transparency in implementation. More specifically:

On conditions for exercising the rights to exchange, transfer, put on lease or sublease, inherit, provide as a free gift, place land use rights as mortgage as well as to make equity contribution in the form of land use right: land users may exercise the above rights when they have land use right certificates, the land is free from any

dispute, land use rights are not foreclosed for judgment enforcement, and the term/duration for land use has not yet expired. Registration is required for the exercise of such rights, and transactions become effective as of the dates on which they are entered into Land Registry books.

Conditions for sale of assets attached to land leased from the State on basis of annual payment: assets attached to the leased land must be created in a lawful manner in accordance with the laws; construction has completed as detailed construction planning and investment projects have been approved. Buyers of assets attached to leased land must have financial capacity to implement investment projects, (must) have business lines relevant for investment projects, and – for those buyers whom the State has, in the past, allocated or leased land to for project implementation – must be free from any violation of land legislation. Buyers are entitled to leasing land from the State for the remaining term with lease fee being redetermined, and must use land for the specified purpose of the project.

Conditions for exchanging agricultural land use rights: This right is applicable to households and individuals who use land allocated to them by the State or land acquired as a result of exchanging, taking on transfer, inheriting or accepting as a gift the legitimate land use rights from others. And they are allowed to exchange agricultural land use rights with other households or individuals from the same commune for facilitation of agricultural production. And they are not subject to income tax for the transfer of land use right or stamp duties.

The Law specifies circumstances where it is not allowed to take on transfer of land use rights or accept them as a gift. Under the Law, economic entities are not allowed to take on transfer of land use rights over rice-growing land, protective forest land or special use forest land from households or individuals (except for cases where approved land use planning allows conversion of land use). Households and individuals who are not directly engaged in agricultural production are disallowed to take on transfer or accept as a gift the right to use rice-growing land. Nor are they allowed to take on transfer or accept as a gift the rights to residential land or agricultural land in strictly protected zones, eco restoration zones in special use forests or in protective forests if they do not live in the area of such special use or protective forests.

The Law specifies circumstances where households and individuals are allowed to transfer or give as a gift their conditional land use rights. Under the Law, for those households and individuals who live in strictly protected zones or eco restoration zones in special use forests but are not in a position to move out of such zones or in protective forests, they are only allowed to transfer or give as a gift their land use rights over

residential land and forest land under combined use for agriculture, forestry, and aquaculture production to households and individuals living in such same zones. For households or individuals to whom the State allocates residential land or agricultural production land, they are allowed to transfer or give such rights as a gift to those households or individuals living in such protective forest land. For households and individuals of ethnic minorities who use land allocated by the State under support policies, they may not transfer or give as a gift their land use rights within 10 years from the decisions of land allocation in line with Government regulations.

It also sets forth conditions for taking on transfer, accepting as equity, and leasing the agricultural land use right for implementation of non-agricultural production investments.

It specifies conditions for transfer of land use rights for implementation of housing development projects and projects of infrastructure development for transfer or lease.

*3. The amended Law promotes the role of socialism-oriented market mechanism in governing land relationships, and puts an end the command mechanism in land management and use, removing “begging-and-giving” practices in land use*

The 2013 Law narrows down the range of instances where the State allocates land with or without user charge and gradually shifts toward more leasehold. Instances where the State allocates land without user charge include the following: (1) households and individuals directly engaged in production of agriculture, forestry, aquaculture and salt who receive land allocation within prescribed limits; (2) users of protective forest land, special use land, natural productive forest land, land for public offices, land for national defense and security purposes; land for public, non-commercial purposes; land for cemeteries that is not allowed for transfer of land use attached to infrastructure; (3) public-funded service delivery entities without financial autonomy who use land for construction of service delivery facilities; (4) organizations who use land for construction of resettlement housing under State-funded projects; (5) population communities using agricultural land; religious organizations using non-agricultural land.

The Law requires land valuation to be in line with the legitimate purpose of land use at the time of valuation; the term of land use; market rates of the same type of land for same purpose of use, or incomes from land use, or the winning prices of land use auctions where such auctions are present. At the same point of time, neighboring land plots with the same use, and similar profitability from land use should have

similar price levels. The land price frameworks and schedules are formulated every five years and will be adjusted when the market experience fluctuations. Land price schedules serve as the basis for: (1) determination of land use charge when the State recognizes residential land use rights for households and individuals for the land areas allocated to them within prescribed limits; or when the State allows conversion of land use from agricultural land or non-residential non-agricultural land into residential land for the residential land areas allocated to them within the prescribed limits; (2) assessment of land use tax; (3) assessment of fees and charges in land management and use; (4) determination of fines on administrative violations in land issues; (5) assessment of the State compensation for damages caused in land management and use; (6) valuation of land use right for payments to be made to those users who voluntarily return land to the State in cases where the returned land has been allocated by the State with user charge, or the land use right has been recognized by the State with user charge, or the land is leased from the State on basis of single payment.

The Law stipulates that provincial people's committees shall determine specific prices for land at the time of valuation for application in the following circumstances: (1) assessment of land user charge for the areas of residential land beyond prescribed limits when the State recognizes the land use rights of households and individuals; or when the State allows conversion of land use from agricultural land or non-residential non-agricultural land into residential land; or assessment of land lease fee for the area of agricultural land allocated beyond prescribed limits; (2) assessment of land user charge when the State allocates land, but not via auctions of land use rights; or when the State recognizes land use rights or allows conversion of land use for entities subject to payment of land user charge; (3) assessment of land lease payment in cases where the State grants land leases but not via auctions; (4) valuation of land use right in equitization of those State-owned enterprises using land allocated by the State on basis of user charge or leased from the State on single-payment basis; (5) assessment of compensation for land taken by the State.

The Law adds provisions on the role of construction regulators, land valuation appraisal agencies and valuation consultants in land valuation and recruitment of consultants for specific land valuation.

*4. The Law establishes more equal access to land between domestic and foreign investors in response to requirements for international integration and in order to honor Vietnam's international commitments.*

The Law stipulates that domestic and foreign investors are both entitled to land allocation on the basis of user charge for implementation of housing development projects for sale of houses or for both sale and lease of houses as well as projects for developing cemetery infrastructure for transfer of land use rights attached to infrastructure. For remaining cases, land lease either on annual-payment or single-payment basis<sup>1</sup>.

The Law also expands the rights of Vietnamese residents to allow them take on transfer of land user rights in industrial parks, industrial clusters, export-processing zones, high-tech parks and economic zones. Those Vietnamese nonresidents eligible for house ownership as specified by the laws are allowed to take on transfer of land use right via purchase, hire purchase, inheritance or acceptance as a gift of residential houses attached to land use rights in accordance with current laws and regulations; and they are also allowed to take on transfer of land use rights in housing development projects. Foreign-invested enterprises are allowed to take on transfer of land use right as equity contribution.

*5. The Law further promotes transparency, openness and democracy in land use and management, contributing to prevention of corruption and waste in land affairs.*

The Law specifies instances of land-takings by the State, with a more restricted range of land-takings for socio-economic development for the national or public interest<sup>2</sup>. It sheds more clarity on the types of projects subject to the decision-making

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<sup>1</sup> The current legislation on land allows foreign investors to lease land on basis of annual payment or single payment only; domestic investors have choices between land allocation on basis of user charge and leasehold on basis of annual payment.

<sup>2</sup> ***Land may be taken by the State for socio-economic development for national or public interests under the following circumstances:***

1. Implementation of projects of national importance approved by the National Assembly that require land-takings;

2. Implementation of projects approved by the PM that require landtakings, including:

a) Projects to develop industrial parks, export processing zones, high-tech parks, economic zones, new urban zones; projects funded by ODA resources;

b) Projects to construct offices of State agencies and socio-political organizations at the central levels; offices of foreign organizations with diplomatic functions; historic and cultural relics, recognized natural beauty spots, parks, squares, monuments, memorial statutes, facilities for public services at the national level;

c) Projects to build physical infrastructure at the national level, including transport, irrigation, water supply, electricity, communication; systems of fuel and gas supply and storage; national reserves warehouses; facilities of waste collection and management;

3. Implementation of projects approved by Provincial People's Councils that involve landtakings, including:

a) Projects to construct offices of State agencies and socio-political organizations; historic and cultural relics, recognized natural beauty spots, parks, squares, monuments, memorial statutes, facilities for public services at local levels;

b) Projects to develop local physical infrastructure, including transport, water supply and sewerage,

authority of the National Assembly, the Prime Minister, or provincial people's councils to prevent any abuse of power in implementation. For the investment projects not subject to land-taking by the State and being in line with the land use zoning, the domestic investor is entitled to acquire transfers and contributions of land use rights as capital or lease land use rights from economic organizations, households and individuals to have land for their investment projects.

The Law also sets out instances of expropriation of land by the State, power, time limit, effects and forms of expropriation of land. The Law contains specific provisions on the sequence and order of land-takings for the national defence and security purposes; socio-economic development for the national and public interest; principles, conditions, sequence and procedures for coercive implementation of inventory decisions or coercive implementation of land-taking decision which serve as the basis for consistent application by local authorities.

The Law specifies the main forms of land allocation to be done via auction of land use rights<sup>3</sup>.

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electricity, communication, urban lighting; waste collection and treatment facilities;

c) Projects to construct facilities for community activity; projects to construct resettlement, student, social and public service housing; to construct religious facilities; cultural, sport and entertainment facilities for public use; marketplaces; cemeteries, houses of funeral services, cremation facilities;

d) Projects to develop new urban areas, new rural residential areas; renovation of urban areas or rural residential areas; industrial clusters; centralized locations for production and processing of agricultural, forestry, fishery and seafood products; projects to develop protective forests and special use forests;

đ) Projects to extract mineral resources licensed by the competent agencies, except for extraction of mineral resources for use as normal construction materials, sludge coal, mineral resources in areas that have small-scale, fragmented distribution of mineral resources and secondary mining.

<sup>3</sup> *Instances subject to auction of land use rights and instances not subject to auction of*

1. The State shall allocate land on basis of user charge or grant leasehold via auctions of land use rights under the following circumstances:

a) Construction residential housing for sale, lease or hire purchase;

b) Construction of infrastructure facilities for transfer or lease;

c) Use of land funds for generating funding sources for construction of infrastructure facilities;

d) Use of commercial land, use of non-agriculture productive land;

đ) Land lease from agricultural land fund for the purpose of public utility in agricultural, forestry, aquaculture and salt production;

e) Allocation or leasehold of land taken by the State due to relocation of public offices, public service delivery entities, and business entities whose assets attached to land under State ownership;

g) Allocation of residential land in urban or rural areas for households and individuals;

h) Allocation or lease of land in cases where users are entitled to reduced rates of land use charge or lease fee.

2. Instances not subject to auctions of land use rights when the State allocates land or grant lease include the following:

a) Land allocation without land user charge;

b) Use of land subject to waiver of land user charge or land lease fee as stipulated in Article 110 of this

Law;

c) Use of land stipulated in Points b and g Clause 1 and Clause 2 Article 56 of this Law;

d) Use of land for mining operations;

đ) Use of land for implementation of projects to construct resettlement, social and public service housing;

e) Allocation of residential land to public officers and civil servants who are under transfer or rotation decisions of a competent agency;

g) Allocation of residential land to households and individuals with permanent residence status at the

The democracy and openness has been strengthened by a set of provisions in the Law improving people's engagement and State accountability in land zoning, land planning, land takings, providing compensations, support, arrangement of resettlement housing, training, job conversion and support for employment seeking.

A legal framework has been set up for developing a land information system and a land database; and the right to access land information towards a top-down consistent land information system in service of multiple purposes.

The Law describes cases when a certificate is issued. New provisions are added to confirm the compulsory land registration obligation on land users and people allocated with land for management; the ownership rights over residential housing and other assets attached to land will be registered subject to the owners' request. Land registration is done in writing but the Law also contains provisions on on-line registration to gradually apply it in the future for the purpose of administrative reform and avoid troubles for land registrants.

Administrative penalties are also added to the law and applicable to the projects to which the State has allocated or leased land but which fails or delays to use the land, superficially investors in this case can delay using the land for another 24 months subject to payment of an amount equivalent to the land use fee or rental rate for this period, beyond that grace period, the State shall take back the land is still unused. Doing this would address the current wastes of land in many locations. Specific conditions are also set out for allocations or leases of land by the State to carry out investment projects (e.g. investors must have a sound financial standing to ensure that land is used in accordance with the schedule of the project; a deposit must be paid in accordance with the investment legislation; clean of violation of the land legislation as a condition for an investor currently using land allocated or leased land by the State to implement another investment project) which is seen as a tool to screen incompetent investors and consequently address the issue of wastes or delayed uses of land that caused public discontent recently.

*6. The Law further improves practices of compensation, support and resettlement to balance the harmony of interest of the State, land users and investors.*

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commune who do not have residential land and have not yet got residential land allocation from the State;

h) Allocation of residential land for households and individuals with permanent residence status in townships belonging to socio-economically disadvantaged regions or specially socio-economic disadvantaged regions who do not have residential land and have not yet got residential land allocation from the State;

i) Other instances as decided by the PM.

3. Where land use rights are put on auction as stipulated in Clause 1 hereof, but none or only one person attend the auction or auctions have failed twice, the State shall allocate land or grant lease without having to auction land use rights.

This is a very difficult and complicated issue to address since it relates to the interest of land users and has triggered many complaints during the implementation of land legislation. As this issue concerns many people, it was discussed very carefully by the National Assembly. This is one of the topics with new improvements, namely:

Practices of providing compensation, support and resettlement have been improved by not applying the land price schedule but applying the specific land prices determined by the provincial people's council at the time of the land-taking decision; also by conditions of eligibility for land compensation and compensation for the investments in the land remain and for assets attached to land.

Better care is given to ensuring the livelihoods of people subject to land-taking through a series of State subsidies to be provided upon land-taking including for livelihood and production stabilization, for training, job conversion and job creation; and for resettlement housing as the case may be.

The Law also provides for the responsibility for setting up resettlement areas with synchronous infrastructure facilities that meet the applicable standards and technical regulations on construction that fit in with the local conditions, customs and practices of each region and area and provides for the right of people to be involved in developing and implementing options of compensation and resettlement.

Additional provisions are also provided to deal with delayed payment of compensation due to the fault of the State agency or people subject to land-taking aimed at enhancing the accountability of state agencies in the performance of their official duties and people's sense of observance of laws.

*7. The Law further improves land policy and laws for agricultural areas in order to facilitate the promotion of industrialization and modernization of rural areas, to ensure food security, environmental protection and sustainable development through the following provisions:*

- To increase the term of agricultural land allocation within the limits for households and individuals from 20 years to 50 years consistently applicable to various types of agricultural land (land for annual and perennial crops, forestry land); to allow households and individuals to accumulate land up to an area of no more than 10 times higher than the limit of agricultural land allocation.

- To encourage land accumulation through various mechanisms of capital contributions by land use rights or acquisition of land lease right to facilitate the application of science and technology, mechanization and development of commodity

production.

- To add new provisions on conditions of land allocation or land lease to carry out the projects using paddy farming land or forest land to ensure food security and protect the environment given the context of projection that Vietnam will be one of the countries to suffer strong impact of climate change

*8. The Law respects for the land policy in service of the requirements of industrialization, modernization, urban development and assurance of national security through the following provisions:*

- The Law has added principles to give priority, in land use zoning, to national defense and security, national and public interests.

- The Law continuously provides that the State takes back land in instances when the land-takings by the State are required (1) for the purpose of national defense and security, (2) for socio-economic development for the national and public interests.

- The Law contains additional provisions on eligibility for land allocation to carry out investment projects in border areas, coastal areas and islands to safeguard national defense and security.

- The Law has improved the provisions on how to use land for hi-tech parks and economic zones; contains additional provisions on land uses for underground constructions and land allocation and land lease to build the underground works.

*9. The Law improves the mechanisms in place to promote land resources on the basis of additional provisions:*

- To strengthen and improve the capacity of organizations with the land resource development function to enable them to properly implement the tasks of compensations, site clearance, creation and development of land funds in accordance with the law of land.

- To add new mechanisms for fund raising to create fresh land reserves for land use right auctions. To focus on implementation of land use planning, exploitation and use of the land area besides infrastructure works and vicinity, especially advantageous transport infrastructure works for exploitation of land resources.

*10. The Law better cares for securing land use rights for the vulnerable groups*

*including women, the poor, and ethnic minorities.* The Law provides for grant and renewal of certificates of land use rights and ownership over houses and other assets attached to land in case when land use rights are the common property of husband and wife.

To create conditions for people to have their own homes as set out in Article 59.3 of the Constitution, the Land Law adopts the policy on exemptions from and reductions in land use fees and land rentals as a means to implement the housing and land policy for people with meritorious services to the revolution, poor households, ethnic households and individuals in areas with especially difficult socio-economic conditions, border areas and islands; for the uses of land to build social welfare houses in accordance with the law on housing; and provides for the residential land for people when the State has to take back the land due to the risk to human life. The Law also provides for the cases of residential land allocation to individuals and households that permanently reside in a commune but do not have residential land and has never been allocated or leased land by the State; for the allocation of residential land to individuals and households permanently residing in a town of a region with difficult or especially difficult socio-economic conditions that do not have residential land and has never been allocated land by the State in which cases auctions of land use right are not required.

*11. The 2013 Land Law contains additional provisions on land inventory and assessment to enable the State correctly control the volume, quality and potential of land to strictly administer, rationally and effectively use these particularly important resources for the country's industrialization, modernization and sustainable development.* To improve regulations on land use zoning and planning to ensure the uniformity and linkage among land use zoning of various levels and with sectoral land use zoning, specifically:

To add such principles of land use zoning and land use planning as follows: national land use zoning must ensure the characteristics and linkage of socio-economic zones; must properly balance the relationship between land use zoning/planning with zoning/planning of each sector, field and locality to basically address the current shortcomings in land planning under the current Land Law.

The bases and details of land use zoning/planning of each level are set out very clearly in full and apply to all 4 levels to address their shortcomings under the 2003 Land Law.

Under the amended Land Law, the land use zoning contains details of

allocation of targets of all kinds of land by the levels of planning, doing this will deal with the current problems in land use zoning/planning under the 2003 Land Law.

Integrating details of land use zoning/planning of socio-economic zones into the national land use zoning/planning or integrating details of the commune-level land use zoning into the district-level land use zoning would help to increase the linkage between provinces and regions and to reduce the time required for development of land use zoning/planning.

*12. The Law enhances the role of oversight of state agencies and people, and promotes the accountability of state agencies to build a transparent and efficient land management system*

The Law is developed on the basis of enhanced oversight, monitoring and assessment of the National Assembly, People's Councils of all levels, the Fatherland Front of Vietnam, its member organizations and the people with regard to the management and use of land.

The National Assembly, People's Councils of all levels, the Fatherland Front of Vietnam, and its member organization shall exercise the right to oversee the management and use of land in accordance with the provisions of the Constitution, the Law on Oversight Activities of the National Assembly, the Law on Organization of People's Councils and People's Committees and the Law of the Fatherland Front of Vietnam.

Citizens have the right to report either directly by themselves or through their representative organizations on omissions in the management and use of land to the competent authorities. Any report on such omissions must be sufficient, objective and truthful not to abuse the oversight right to make improper complaints or denunciations contrary to the law. The (amended) Land Law also contains provisions on the details and form of citizens' oversight; and provides for the responsibilities of citizens' representative organizations, accountability of state agencies authorized to receive complaints from citizens and their representative organizations.

The Law also provides for tracking systems, evaluation of management and use of land to serve the monitoring and assessment of the implementation of land laws, efficiency of management and use of land, the socio-economic and environmental impact of the land policy and legislation on the national and local scales.

To enhance the role of judicial bodies in resolving land-related disputes, the

(amended) Land Law provides that people's courts shall hear the land-related disputes where concerned parties have a certificate or one of the documents stipulated. For the land-related disputes where concerned parties neither have a certificate nor one of the documents stipulated, they might apply to the people's committee of the competent level or initiate a lawsuit with a competent people's court under the regulations on civil procedures.

The Law also has additional provisions on the responsibilities of the head of the People's Committee at all levels in detecting, preventing and dealing with violations of the law on the management and use of land; and also provides for how to impose liability on public servants for violations of the land law and on the head of agencies and organizations that let such violation happen (including the head of an organization, the head of an authority authorized to decide on land management; public employees and officers of land management agencies of all levels and commune-level cadastral public servants; heads, officers, public employees and civil servants of the organizations using State allocated land, in which case depending on the nature and seriousness of the violation, they shall be disciplined, liable to pay compensation or prosecuted for criminal liability in accordance with the law) ./.

**RESULTS OF 8 YEARS' IMPLEMENTATION  
OF THE JUDICIAL REFORM STRATEGY (2005-2012)  
AND THE ACTION PLAN FOR 2014**

**Mr. NGUYEN TAT VIEN**  
**The Standing Central Steering Committee for Judicial Reform**

**1. Overview**

Development of a socialist ruled-by-law State is a historic decision of the Communist Party of Vietnam which is embodied in the 1992 Constitution (as amended and supplemented in 2001). To implement this policy in parallel with legislative and administrative reforms, on June 2, 2005, the IXth Politburo issued Resolution 49-NQ/TW on the Judicial Reform (JR) Strategy up to 2020 of Vietnam with a goal to “build a strong, noncorrupt, democratic and upright judicial system; protect justice; be gradually modernized to service the people and the Fatherland of the Socialist Republic of Vietnam”. This was a remarkable turning point in the development of the justice system and became an important element of the country’s comprehensive reform agenda. 8 years’ implementation of the JR Strategy started to bear fruits. Initial but major JR achievements have had positive impact on the social, political and legal lives of the country. There still remain, however, many problems that need further addressed. Early 2013, the Politburo gave an assignment to the Central Steering Committee for Judicial Reform to coordinate with relevant agencies to conduct a comprehensive summary of the JR Strategy implementation. This has been done in a due, serious, comprehensive, sufficient and deep manner both theoretically and practically.

*- Requirements of the summation:*

- (1) Ensure the comprehensiveness and systematism;
- (2) Respect the facts;
- (3) Ensure the inheritance and development.

*- Criteria on which the implementation of JR Strategy is assessed:*

1- Changes in the awareness of State employees, officials and people on the position and role of justice and significance of JR;

2- Dynamics: Identify the JR results creating dynamic to address the problems in the judicial sector and contributing to successfully implementing JR objectives with great socio-economic impacts;

3- Feasibility: Identify the conformity of JR objectives, directions and duties with the actual conditions in terms of mechanisms, policies, physical and technical facilities; implementation capacity of agencies, organizations and officers of judicial bodies and relevant agencies.

4- Efficiency: Identify the efficiency of implementation of JR duties for example improvement of laws; strengthening of the judicial apparatus, improvement of quality of human resources, investigation, prosecution, trials and execution of judgments; assurance of human rights and rights of citizens; people's trust in justice.

## **2. Results of the JR Strategy implementation**

Based on the progress and results of implementation of the JR Strategy, it is possible to affirm that the objectives, standpoints, directions and duties concerning JR set out in Resolution 49-NQ/TW of the Politburo are correct and respond to the objective requirements of the development of a socialist ruled-by-law State. All the basic JR duties have been carried out in a serious manner and have made initial but significant progress, specifically:

1. The awareness of part of State employees, party members and people on the position and role of judicial bodies and judicial activities in a Socialist ruled-by-law State, on the necessity to conduct and promote JR has been significantly improved.

2. The development and improvement of laws on judicial affairs has received more adequate attention. Changes and revisions have been gradually made to the system of criminal, civil, procedural laws and organizational structures of judicial bodies in line with JR directions. From June 2005 to June 2013, the National Assembly (NA) and its Standing Committee (NASC) issued, either by way of new promulgations or revisions, a total of 63 laws and resolutions concerning the criminal and civil laws, organization and operation of judicial bodies and judicial support bodies. The Government and central judicial bodies have issued many documents to guide the application of law. The noteworthy point is much of the humanity spirit has been translated into the criminal law policy. Changes have also been made to the civil law setting up legal mechanisms to promote healthy market ties. Many of procedural laws have been issued, revised or supplemented to make a step forward in separation

of the administration function and jurisdiction and judicial powers during proceedings. The policy on encouragement of using arbitration for negotiation and resolution of commercial disputes has been reflected in the Law on Commercial Arbitration and the Law on Grassroots Conciliation, which consequently led to a reduced number of cases/matters that have to be brought to the people's court. The law on judgment execution has been significantly improved, and so have other laws on lawyers, public notaries, judicial examinations, and judicial records giving great supports to investigation, prosecution and trial activities.

3. Organization and operations of people's courts are also gradually improved; the Supreme People's Court has been focusing more on summary of adjudication practices and development of guidelines for consistent application of laws. Organization of People's procuracies of all levels has also been strengthened. People's procuracies have properly exercised the right to prosecute and control judicial activities. Investigation agencies have also gone through reforms. The system of criminal and civil judgment enforcement agencies has been basically strengthened. Quality and efficiency of investigation, prosecution, trial and judgment enforcement activities have been improved reducing the cases of injustice. Adversarial proceedings have been initially introduced at courts. Judicial activities have revealed more democracy resulting in better protection of rights and legitimate interest of citizens during judicial activities. The image of judicial bodies has been improved in social perception.

Examples of successes include the increased jurisdictions of district people's courts to address the backlog situation; jurisdiction of people's courts has been expended to administrative complaints. The system of bailiffs has been piloted in HCM City (2010 - 2012) and gained initial positive results.

4. Training and retraining activities for judicial and judicial support officers have also gone through many improvements to promptly meet the needs of judicial bodies and society for standardized qualification of judicial officers. The number of law training institutions, judicial training and retraining facilities has increased fast (to 50 establishments in 2013) with improved quality. The Prime Minister approved the projects for transforming Hanoi Law University and HCMC Law University into key law officers' training schools; and developing Judicial Academy into a Major judicial title training center. Hanoi Procuracy University has been set up and started operations. The Ministry of Justice (MOJ), the Ministry of Public Security, People's courts, People's procuracies have sent their staff and officers overseas for training and retraining on expertise and foreign languages within framework of national programs/projects and international projects.

5. Organizations of lawyers, notary public and judicial examination have also been reformed to meet the new requirements of investigation, prosecution and adjudication. The number of cases presented by lawyers has been increasing. Many lawyers become more active in debates creating the atmosphere of democracy in court sessions. Power of lawyers have been extended, judicial bodies have better cooperated with lawyers to enable them to do assigned duties and powers. Lawyers' role becomes more recognized in the country's political and legal life. The policy on socialization of notary activities has helped to reduce the workload for notary public offices and to better serve people's needs. The system of judicial examination organization has been gradually strengthened. At the central level, there are four judicial examination institutions. At the local level, a project is being carried out to set up forensic examination centers under the Department of Health and forensic divisions under provincial general hospitals. Criminal technical examination organizations of the criminal police of provinces and cities under central authority continue their operations in an order and efficient manner.

6. To strengthen and enhance the oversight effectiveness and efficiency of law implementation in judicial activities, NA has set up a Committee on Judicial Affairs and People's Council of provinces and cities under central authority have strengthened their legal division system. Questioning of judicial bodies has been substantively reformed with increased number of questioning sessions and improved quality of answers<sup>4</sup>. NA and NASC also held hearings on explanations and oversight reports, supervised and produced a report on the supervision results. The Fatherland Front and mass organizations have been actively involved in, and made contributions to, the selection of judges, procurators, appointment of jurors; and in amnesty activities etc. The mass media have taken initiative and participated more in communication and reporting news on judicial activities.

7. Rapid expansion of judicial and legal relationships with many countries and international organizations has marked Vietnam's intensive and extensive integration with international legal arena showing its readiness to cooperate with other countries and has affirmed the role and position of Vietnam's judicial bodies in the regional and international field.

8. The Government, relevant ministries and agencies, and local authorities have paid adequate attention to assuring physical facilities for judicial activities. Given the

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<sup>4</sup> In the 4<sup>th</sup> and 6<sup>th</sup> sessions of Legislature XIII, NA issued Resolution 37/2012/QH13 dated November 23, 2012 on "Prevention and control of violations of laws and offences, operations of people's procuracies and people's courts and judgment enforcement activities for 2013" and Resolution 63/2013/QH13 dated November 27, 2013 on "enhanced measures to prevent and control crimes"

context of economic difficulties, the State budget still gives priority to the development and operations of judicial bodies by allocating more funds to them than other State agencies.

In addition to these achievements, there still remain shortcomings in the implementation of JR Strategy, for example delays in the JR schedule, lack of consistency; delayed improvements of the legal framework for the operations of judicial bodies; incorrectness of investigation, custody, prosecution and adjudication in several cases; heavy backlogs, great number of judgments being cancelled or reversed; inadequacy of judgment enforcement agencies; lack of trust among part of population in the quality of judicial activities; inefficiency of the oversight of elected bodies; and confused oversight of people's councils of various levels and of civil organizations. The above shortcomings can be attributed to both objective and subjective reasons. First, the awareness on JR among officials and party members in a number of agencies and organizations is insufficient and inconsistent. A great number of State employees and civil servants do not yet show strong commitment or still hesitate to implement the JR task at their agencies and organizations. Theoretical study of the organization and operation of judicial bodies is not yet done in a timely manner. Country's economic conditions remain difficult and therefore the State cannot make adequate investments in material resources for judicial activities etc.

### **3. Key duties in the 2014 Action Plan for JR**

One of the key requirements for the years to come is continue promoting JR in light of the new provisions in the Documents of the Party's XIth National Congress and the 2013 Constitution. JR duties have to be carried out in the new situation with new requirements and at higher level. The Target Plan for JR in the 2011-2016 needs to be continued in addition to fulfilling the key JR duties for 2014, specifically:

3.1. Judicial bodies, relevant agencies and organizations need to promptly disseminate the results of 8 years' implementation of the JR Strategy, and develop plans and programs to further advance the JR duties for 2014.

3.2. Develop projects on revisions of legal normative documents (LNDs) relating to the organization and operations of judicial bodies including detailed project for the organization and operations of 4-level People's courts and several key issues of the Project on (revised) Law on Organization of People's courts; detailed project for the organization and operations of 4-level People's procuracies and several key issues of the Project on (revised) Law on Organization of People's procuracies; project for "renewing HR management activities and material facilities of People's courts"; project for "renovating the mechanism for budget allocations to People's courts and

People's procuracies"; project for development of Vietnam's civil proceeding model, project for development of Vietnam's administrative proceeding model and some other projects.

### 3.3. Develop and improve the following proposed laws:

- (Revised) Law on the Organization of People's courts to confirm that people's courts act as the adjudication bodies and exercise the judicial power, the people's court system shall be organized by the levels of adjudication not by administrative units;

- (Revised) Law on the Organization of People's procuracies to confirm the principle that People's procuracies shall exercise the right to prosecute and control judicial activities, the system of people's procuracies shall be organized in accordance with the organizational system of people's courts;

- To develop the Law on the organization of criminal investigation agencies. This Law shall be developed in a way to keep unchanged the system of organization of specialized investigation agencies in the public security, people's military and people's procuracy systems, simplifying the contact point in each agency to ensure efficiency and avoid overlaps; clear identification of the relationship between investigation in criminal proceedings and scouting activities. Appropriate mechanisms shall also be set up to strictly monitor and oversee investigation activities of the investigation agencies under the Supreme People's Procuracy and the Central Military Procuracy. Clearer provisions shall be developed on the investigation activities of border guards, coastal guards, customs officers and rangers.

- (Revised) Penal Code shall be developed to uphold the efficiency of prevention, humanity, inclination to the good and protection of human rights in dealing with offenders. The application of death sentences shall be limited, imprisonment sentences shall be reduced, application of other forms of penalties including pecuniary penalties, non-custodial penalties shall be extended to some offences etc.

- (Revised) Civil Code shall be developed in a manner to protect rights and legitimate interest of individuals and organizations in civil transactions, promote healthy civil relationships, further improve the regulations on contracts, compensation and indemnifications etc.

- The revisions of the Criminal Procedure Code and the Civil Procedure Code need to be developed by inheriting the advantages of the inquisitorial model and learning, on a selective basis, from the advanced adversarial model to ensure the democracy, publicity, transparency, respect for and protection of human rights.

- To improve the legal framework for judgment enforcement by relying on People's courts to make decision on enforcement of legally binding judgments/decisions, and assigning them to the competent judgment enforcement agencies for execution (the judgment enforcement model will basically be kept as currently).

- To study revisions of other laws on judicial support and other relevant LNDs already set out in the NA Legislative Agendas for 2013 and for Legislature XIII.

#### 3.4. Training and retraining of judicial officers and judicial support officers

To further study and improve mechanisms for selection, appointment, training and retraining of judicial officers and develop appropriate policies for job-based salaries and rewards. To carry out activities to implement the projects for transforming Hanoi Law University and HCMC Law University into key law officers' training schools; and developing Judicial Academy into a Major Judicial Title Training Center. To strengthen and improve capacity of the Hanoi Procuracy University and Court Officers' Training School. To set up the Court Academy to provide training and retraining services to public employees and civil servants of the court system.

#### 3.5. Organization of lawyers and judicial support

- To re-determine the position of lawyers, train and develop a pool of qualified lawyers with expertise and moral qualities; to develop mechanisms to ensure the role of lawyers in adversarial proceedings at court sessions, to enhance their roles in the investigation phase and to gradually guarantee that people's needs for legal support and representation in criminal proceedings will be met. To improve lawyers' awareness on their code of conduct. To develop a project for development of lawyers' profession and a project for public lawyers.

- To further improve the regulations on judicial examination towards stricter provisions on the sequence, order and time limit for calls and conduct of examinations. To promulgate examination standards in all areas. To identify mechanisms for assessment of examination conclusions to serve as the basis for settlement. To socialize examination activities with appropriate extent, scope and roadmap.

- To improve regulations on public notarization towards stronger socialization and facilitating public notary organizations to operate lawfully, equally and effectively. To have mechanisms to protect interest of relevant agencies, organizations and individuals in public notary activities.

- To further promote the pilot implementation of bailiff regime in order to have a basis for summation, assessment and development of specific options by end of 2015.

3.6. International cooperation in the judicial sector: To promote, enhance and expand international cooperation with other countries in legal and judicial sectors. To organize proper implementation of international treaties that Vietnam has acceded or joined. To further enter into judicial assistance agreements with other countries.

3.7. Oversight of judicial activities: To improve the role and responsibility of the NA Committee on Judicial Affairs, provincial people's councils, the Fatherland Front and people's associations in overseeing judicial activities. To enhance the role and responsibilities of mass media in reporting news and information about judicial activities.

3.8. To study and clarify the theoretical issue of judicial powers in a socialist ruled-by-law State, identify the connotation of the issue and develop mechanisms for people's courts to effectively exercise this juridical power; to improve the organizational structure, HR, material facilities of people's courts and people's procuracies at all levels and improve the mechanism for budget allocations to them; to take all necessary actions to prepare for the renovation and strengthening of organization and operations of judicial bodies and JR for the 2016 – 2020 period and in service of implementation of the documents of the Party's XIIth National Congress.

**Conclusions:** Implementing JR Strategy is a long-term and complicated mandate facing many difficulties and challenges. Therefore, firm political determination is essential while the implementation needs to be done in a consistent and flexible manner with appropriate roadmaps. Any sign of conservatism and sluggishness, reluctance to reform should be put under control. Regular attention should be paid to the development of strong and clean judicial officers since this is the key factor that decides the quality and efficiency of judicial activities and JR./.

## MATERIALS FOR REFERENCE

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## Part 2

1. **10 key tasks of judicial activities in 2014**
2. **The 2013 Constitution of the Socialist Republic of Viet Nam**
3. **Law on Land No. 45/2013/QH13** (*only available in Vietnamese*)
4. **Research report on amending and supplementing regulations on the National Assembly in the 1992 Constitution** – *Sub-component Legal Committee of the National Assembly is in charge of coordination and supervision of the study*

## 10 KEY TASKS OF JUDICIAL ACTIVITIES IN 2014

According to assessment of the Ministry of Justice, judicial activities in 2013 have stuck closely with the targets and tasks of the socio-economic development of the National Assembly and Government; comprehensively realized the assigned tasks with focuses, making contributions toward regulations on market economy; successfully implemented solutions on direction and management of the socio-economic development, ensuring the social stability, enhancing the social welfare and establishing solidarity among citizens.

In 2014, the Justice Sector proposes the following key tasks:

1. To focus on implementation of law dissemination and education, and organization of implementation of the 2013 Constitution; to advise the Government in reviewing and developing the plan and list of legal normative documents to be developed, amended, supplemented in order to ensure the compatibility with the Constitution.

2. To advise and support the National Assembly and Government to develop and improve the legal system in serving the 2014 socio-economic development targets, especially legal projects related to re-structuring the State enterprises and development of the financial market. To further improve criminal and criminal justice, civil and civil justice laws. To enhance monitoring, supervision and inspection of implementation and promulgation of documents on detailed guidelines on implementation of laws, ordinances, resolutions.

To develop a mechanism to ensure close link between development and assessment of legal normative documents with control of administrative procedures, examination of legal normative documents and monitoring law implementation.



Mr. Ha Hung Cuong, Member of the Central Committee of the Communist Party,  
Minister of Justice

3. To enhance capacity in the State management, responsibility and professionalism in law dissemination and education; to renovate contents and forms of law dissemination and education, closely linked with law development, implementation and protection. To organize the Law Day with focuses and key points. To renovate and gradually shift the strategy of legal aids in the light to enhance management, quality and quantity of legal aid cases in the proceeding activities; to enhance socialization of legal aid activities; to effectively use the legal aid funds. To effectively implement the Law on reconciliation at the grassroots No. 35/3013/QH13.

4. To enhance implementation of control of administrative procedures in accordance with Decrees on control of administrative procedures. To focus resources to effectively implement the Overall scheme on simplification of administrative procedures, citizenship papers and databases related to population management for the period of 2011-2020.

5. To effectively implement Decision No. 1950/QĐ-TTg of the Prime Minister on approval of Project “Development of organizational apparatus, workforce and consistent management for implementation of laws on handling of administrative violations of the Ministry of Justice, ministerial agencies and local judicial agencies”.

6. To enhance the effectiveness and efficiency of the State management in judicial administrations. To further improve the Draft Law on Civil Status to be submitted to the Standing Committee of the National Assembly, ensuring the progress and quality. To effectively implement the Strategy on development of judicial records

to the year 2020, vision to 2030. To study and propose amendments of the Law on the State compensation liability.

**7.** To effectively improve new laws in judicial affairs support. To strengthen and improve organizations on judicial expertise; to amend, supplement or provide guidelines on application of professional standards of judicial expertise in each area, especially forensics, forensic mental, finance, banking, and construction. To improve the legal institutions in order to maximum promote the effectiveness and role of socio-vocational organizations in judicial area.

**8.** To further implement the civil execution tasks assigned by the National Assembly according to Resolution No. 37/2012/QH13 on judicial activities; to strive for achievements of more than 88% in terms of matters and more than 77% in terms of money in complete execution over the total cases that are feasible for execution. To enhance working disciplines, rules and responsibility, professional ethics of public officials in order to redress law violations in civil execution in particular and anti-corruption and anti-crime fight in general.

**9.** To further enhance international judicial and legal cooperations in areas of the Ministry's and Sector's functions and State management; to timely advise the Government in development of directions and strategy on legal cooperation in the new context.

**10.** To strongly renovate and enhance quality of legal trainings, judicial titles, establishing human sources in legal and judicial area with high quality, serving the cause of development of a socialist rule-of-law State and international integration. To effectively implement Project on development of the Hanoi Law University, Hochiminh Law University to become key institutions on legal trainings and Project on development of the Judicial Academy to become a major training center for judicial titles...

**THE 2013 CONSTITUTION  
OF THE SOCIALIST REPUBLIC OF VIET NAM**

**THE NATIONAL  
ASSEMBLY**

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**SOCIALIST REPUBLIC OF VIETNAM  
Independence - Freedom - Happiness**

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*Hanoi, November 28, 2013*

**THE CONSTITUTION  
OF THE SOCIALIST REPUBLIC OF VIETNAM**

**PREAMBLE**

Throughout their millennia-old history, the Vietnamese People, working diligently and creatively and fighting courageously to build and defend their country, have forged a tradition of patriotism, solidarity, humanity, justice, resilience and indomitableness, and have created the civilization and culture of Vietnam.

Since 1930, under the leadership of the Communist Party of Vietnam founded and trained by President Ho Chi Minh, our People have waged a protracted struggle full of hardship and sacrifice for national independence and freedom and for their own happiness. In the wake of the triumph of the August Revolution, on September 2, 1945, President Ho Chi Minh read the Proclamation of Independence, declaring the birth of the Democratic Republic of Vietnam, now the Socialist Republic of Vietnam. With the will and strength of the entire nation and the assistance of friends around the world, our People have gained great victories in the struggles to liberate the nation, reunify the country, defend the Fatherland and fulfill international duties, and have recorded resounding achievements of historical significance in the cause of renewing and building the country toward socialism.

Institutionalizing the Platform for National Construction during the Period of Transition toward Socialism, and perpetuating the 1946, 1959, 1980 and 1992 Constitutions, the Vietnamese People create, implement and defend this Constitution to achieve the goal of a prosperous people and a strong, democratic, equitable and civilized country.

## **Chapter I**

### **THE POLITICAL REGIME**

#### **Article 1**

The Socialist Republic of Vietnam is an independent and sovereign country enjoying unity and integrity of territory, including the mainland, islands, seas and airspace.

#### **Article 2**

1. The State of the Socialist Republic of Vietnam is a socialist state ruled by law and of the People, by the People and for the People.

2. The Socialist Republic of Vietnam is the country where the People are the masters; all the state power belongs to the People and is based on the alliance of the working class, the peasantry and the intelligentsia.

3. The state power is unified and delegated to state agencies which coordinate with and control one another in the exercise of the legislative, executive and judicial powers.

#### **Article 3**

The State shall guarantee and promote the People's right to mastery; recognize, respect, protect and guarantee human rights and citizens' rights; and pursue the goal of a prosperous people and a strong, democratic, equitable and civilized country, in which all people enjoy an abundant, free and happy life and are given conditions for their comprehensive development.

#### **Article 4**

1. The Communist Party of Vietnam - the Vanguard of the working class, concurrently the vanguard of the laboring people and Vietnamese nation, faithfully representing the interests of the working class, laboring people and entire nation, and acting upon the Marxist-Leninist doctrine and Ho Chi Minh Thought, is the force leading the State and society.

2. The Communist Party of Vietnam is closely associated with the People, shall serve the People, shall submit to the supervision of the People, and is accountable to the People for its decisions.

3. Organizations and members of the Communist Party of Vietnam shall operate within the framework of the Constitution and law.

#### **Article 5**

1. The Socialist Republic of Vietnam is a unified nation of all ethnicities living together in the country of Vietnam.

2. All the ethnicities are equal and unite with, respect and assist one another for mutual development; all acts of discrimination against and division of the ethnicities are prohibited.

3. The national language is Vietnamese. Every ethnic group has the right to use its own spoken and written language to preserve its own identity and to promote its fine customs, practices, traditions and culture.

4. The State shall implement a policy of comprehensive development and create the conditions for the minority ethnicities to fully utilize their internal strengths and develop together with the country.

#### **Article 6**

The People shall exercise the state power in the form of direct democracy and of representative democracy through the National Assembly, People's Councils and other state agencies.

#### **Article 7**

1. The elections of deputies to the National Assembly and People's Councils must be conducted on the principle of universal, equal, direct and secret suffrage.

2. A National Assembly deputy or a People's Council deputy may be removed from office by the voters or the National Assembly or the People's Council, when he or she is no longer worthy of the confidence of the People.

#### **Article 8**

1. The State shall be organized and operate in accordance with the Constitution and law, manage society by the Constitution and law, and implement the principle of democratic centralism.

2. All state agencies, cadres, civil servants and public employees shall show respect for the People, conscientiously serve the People, maintain close contact with the People, listen to their opinions and submit to their supervision; resolutely combat corruption, waste, and all manifestations of bureaucracy, arrogance and authoritarianism.

#### **Article 9**

1. The Vietnam Fatherland Front is a political alliance and a voluntary union of the political organization, socio-political organizations and social organizations, and prominent individuals representing their class, social strata, ethnicity or religion and overseas Vietnamese.

The Vietnam Fatherland Front shall constitute the political base of the people's administration; represent and protect the lawful and legitimate rights and interests of the People; rally and fully utilize the strength of the great national unity, exercise democracy and promote social consensus; conduct social supervision and criticism; and participate in the building of the Party and the State, and in people's external relations' activities, thus contributing to national construction and defense.

2. The Trade Union of Vietnam, the Vietnam Peasants' Association, the Ho Chi Minh Communist Youth Union, the Vietnam Women's Union and the Vietnam War Veterans' Association are socio-political organizations established on a voluntary basis to represent and protect the lawful and legitimate rights and interests of their members; and, together with other member organizations of the Vietnam Fatherland Front, coordinate and unify action within the Front.

3. The Vietnam Fatherland Front, its member organizations and other social organizations shall operate within the framework of the Constitution and law. The

State shall create the conditions for the Vietnam Fatherland Front, its member organizations and other social organizations to operate.

#### **Article 10**

The Trade Union of Vietnam is a socio-political organization of the working class and laborers voluntarily established to represent laborers, care for and protect the lawful and legitimate rights and interests of laborers; participate in the state management and socio-economic management; participate in the examination, inspection and supervision of the operations of state agencies, organizations, units and enterprises regarding issues related to the rights and obligations of laborers; and mobilize laborers to learn to improve their professional qualifications and skills, abide by law, and build and defend the Fatherland.

#### **Article 11**

1. The Vietnamese Fatherland is sacred and inviolable.
2. All acts against independence, sovereignty, unity and territorial integrity, or against the construction and defense, of the Fatherland must be severely punished.

#### **Article 12**

The Socialist Republic of Vietnam shall consistently implement its foreign policy of independence, self-reliance, peace, friendship, cooperation and development; multilateralization and diversification of external relations, proactive and active international integration and cooperation, on the basis of respect for each other's independence, sovereignty and territorial integrity, non-interference in each other's internal affairs, and equality and mutual benefit; abide by the Charter of the United Nations and treaties to which the Socialist Republic of Vietnam is a contracting party; act as a friend, reliable partner and responsible member of the international community for the sake of national interests, and contribute to the cause of peace, national independence, democracy and social progress in the world.

#### **Article 13**

1. The national flag of the Socialist Republic of Vietnam is rectangular in shape, with its width equal to two-thirds of its length; in the middle of a red background is a five-pointed gold star.
2. The national emblem of the Socialist Republic of Vietnam is circular in shape; in the middle of a red background is a five-pointed gold star encircled by rice ears, below which is half a cogwheel and the inscription "The Socialist Republic of Vietnam".
3. The national anthem of the Socialist Republic of Vietnam is the music and lyrics of the song "*Tien quan ca*" (March to the Front).
4. The National Day of the Socialist Republic of Vietnam is the day of the Proclamation of Independence, the Second of September 1945.
5. The capital of the Socialist Republic of Vietnam is Hanoi.

### **Chapter II**

## **HUMAN RIGHTS, FUNDAMENTAL RIGHTS AND**

## OBLIGATIONS OF CITIZENS

### Article 14

1. In the Socialist Republic of Vietnam, human rights and citizens' rights in the political, civil, economic, cultural and social fields shall be recognized, respected, protected and guaranteed in accordance with the Constitution and law.

2. Human rights and citizens' rights may not be limited unless prescribed by a law solely in case of necessity for reasons of national defense, national security, social order and safety, social morality and community well-being.

### Article 15

1. Citizens' rights are inseparable from citizens' obligations.

2. Everyone is obliged to respect others' rights.

3. Citizens shall perform their obligations toward the State and society.

4. The exercise of human rights and citizens' rights may not infringe upon national interests and others' lawful rights and interests.

### Article 16

1. All people are equal before law.

2. No one is subject to discriminatory treatment in political, civil, economic, cultural or social life.

### Article 17

1. A citizen of the Socialist Republic of Vietnam is a person holding Vietnamese citizenship.

2. A Vietnamese citizen may not be expelled and delivered to another state.

3. Vietnamese citizens living abroad shall be protected by the State of the Socialist Republic of Vietnam.

### Article 18

1. Overseas Vietnamese make up an inseparable part of the community of Vietnamese ethnicities.

2. The State of the Socialist Republic of Vietnam shall encourage and create the conditions for overseas Vietnamese to preserve and promote the cultural identity of the Vietnamese nation, maintain close ties with their families and native land, and contribute to the construction of their native land and the country.

### Article 19

Everyone has the right to life. Human life is protected by law. No one may be deprived of life in contravention of law.

### Article 20

1. Everyone has the right to inviolability of his or her body and to the protection by law of his or her health, honor and dignity; no one shall be subjected to torture, violence, coercion, corporal punishment or any form of treatment harming his or her body and health or offending his or her honor and dignity.

2. No one may be arrested without a decision of a People's Court, or a decision or approval of a People's Procuracy, except in case of a flagrant offense. The arrest, holding in custody, or detention, of a person shall be prescribed by a law.

3. Everyone has the right to donate his or her tissues, organs or body in accordance with law. Medical, pharmaceutical and scientific experiments, or any other form of experiments, on the human body must be consented to by the human subject.

#### **Article 21**

1. Everyone has the right to inviolability of private life, personal secrets and family secrets; and has the right to protect his or her honor and reputation.

The security of information about private life, personal secrets or family secrets shall be guaranteed by law.

2. Everyone has the right to privacy of correspondence, telephone conversations, telegrams and other forms of private communication.

No one may illegally break into, control or seize another's correspondence, telephone conversations, telegrams or other forms of private communication.

#### **Article 22**

1. Every citizen has the right to a legal residence.

2. Everyone has the right to inviolability of his or her home. No one may enter the home of another person without his or her consent.

3. The search of homes shall be prescribed by a law.

#### **Article 23**

Citizens have the right to free movement and residence within the country, and the right to leave the country and to return home from abroad.

The exercise of those rights shall be prescribed by law.

#### **Article 24**

1. Everyone has the right to freedom of belief and religion, and has the right to follow any religion or to follow no religion. All religions are equal before law.

2. The State shall respect and protect the freedom of belief and religion.

3. No one may violate the freedom of belief and religion, nor may anyone take advantage of a belief or religion in order to violate the law.

#### **Article 25**

Citizens have the right to freedom of speech and freedom of the press, and have the right of access to information, the right to assembly, the right to association, and the right to demonstrate. The exercise of those rights shall be prescribed by law.

#### **Article 26**

1. Male and female citizens have equal rights in all fields. The State shall adopt policies to guarantee the right to and opportunities for gender equality.

2. The State, society and family shall create the conditions for women to develop comprehensively and to advance their role in society.

3. Gender discrimination is prohibited.

#### **Article 27**

Every citizen who reaches the age of eighteen has the right to vote.

Every citizen who reaches the age of twenty-one has the right to stand for election to the National Assembly or People's Councils. The exercise of those rights shall be prescribed by a law.

#### **Article 28**

1. Citizens have the right to participate in the management of the State and management of society, and to discuss and propose to state agencies issues about their base units, localities and the whole country.

2. The State shall create the conditions for citizens to participate in the management of the State and society; and shall publicly and transparently receive and respond to the opinions and petitions of citizens.

#### **Article 29**

Citizens who reach the age of eighteen have the right to vote in referenda organized by the State.

#### **Article 30**

1. Everyone has the right to lodge complaints or denunciations about illegal acts of agencies, organizations or individuals with competent agencies, organizations or persons.

2. Competent agencies, organizations or persons shall receive and resolve complaints and denunciations. Those suffering damages have the right to material and mental compensation and restoration of honor in accordance with law.

3. Taking revenge on complainants or denunciators, or abusing the right to complaint and denunciation to slander or falsely accuse others, is prohibited.

#### **Article 31**

1. A person charged with a criminal offense shall be presumed innocent until proven guilty according to a legally established procedure and the sentence of the court takes legal effect.

2. A person charged with a criminal offense shall be promptly tried in an impartial and public manner by a court within a legally established time limit. In case of a closed trial in accordance with law, the verdict must be publicly pronounced.

3. No one may be tried twice for the same offense.

4. A person who is arrested, held in custody, temporarily detained, charged with a criminal offence, investigated, prosecuted or brought to trial has the right to defend himself or herself in person or choose a defense counsel or another person to defend him or her.

5. A person who is illegally arrested, held in custody, temporarily detained, charged with a criminal offence, investigated, prosecuted, brought to trial or subject to judgment enforcement has the right to compensation for material and mental damages

and restoration of honor. A person who violates the law in respect of arrest, detention, holding in custody, laying of charges, investigation, prosecution, trial or judgment enforcement, thereby causing damages to others, shall be punished in accordance with law.

### **Article 32**

1. Everyone has the right to ownership of his or her lawful income, savings, housing, chattels, means of production and capital contributions to enterprises or other economic entities.

2. The right to private ownership and the right to inheritance shall be protected by law.

3. In case of extreme necessity for national defense or security reasons or in the national interest, in a state of emergency or in response to a natural disaster, the State may compulsorily purchase or requisition the property of organizations or individuals and pay compensation at market price.

### **Article 33**

Everyone has the right to freedom of enterprise in the sectors and trades that are not prohibited by law.

### **Article 34**

Citizens have the right to social security.

### **Article 35**

1. Citizens have the right to work and to choose their occupations, employment and workplaces.

2. Employees are guaranteed equal and safe working conditions; and have the right to wages and rest periods.

3. Discriminatory treatment, forced labor or the employment of people below the minimum working age is prohibited.

### **Article 36**

1. Men and women have the right to marry and divorce. Marriage must adhere to the principles of voluntariness, progressiveness, monogamy, equality and mutual respect between husband and wife.

2. The State shall protect marriage and the family, and protect the interests of mothers and children.

### **Article 37**

1. Children shall be protected, cared for and educated by the State, family and society; children may participate in child-related issues. Harassing, persecuting, maltreating, abandoning or abusing children, exploiting child labor or other acts that violate children's rights are prohibited.

2. Young people shall be provided by the State, family and society with the conditions for learning, working, entertaining themselves, and developing their physiques and minds, and be educated in morality, national traditions and civic

consciousness; and shall take the lead in the cause of creative labor and national defense.

3. The elderly shall be respected and cared for by the State, family and society to promote their role in the cause of national construction and defense.

#### **Article 38**

1. Everyone has the right to health protection and care, and to equality in the use of medical services, and has the obligation to comply with regulations on the prevention of disease and medical examination or treatment.

2. Acts threatening the life or health of other persons and the community are prohibited.

#### **Article 39**

Citizens have the right, as well as the obligation, to learn.

#### **Article 40**

Everyone has the right to conduct scientific or technological research, or literary or artistic creation, and to enjoy the benefits brought about by those activities.

#### **Article 41**

Everyone has the right to enjoy and access cultural values, participate in cultural life, and use cultural facilities.

#### **Article 42**

A citizen has the right to determine his or her ethnicity, use his or her mother tongue and choose his or her language of communication.

#### **Article 43**

Everyone has the right to live in a clean environment and has the obligation to protect the environment.

#### **Article 44**

A citizen has the obligation to be loyal to the Fatherland.

High treason is the most serious crime.

#### **Article 45**

1. It is the sacred duty and the noble right of citizens to defend their Fatherland.

2. A citizen shall perform military service and participate in building a national defense of all the people.

#### **Article 46**

A citizen has the obligation to obey the Constitution and law; participate in the safeguarding of national security and social order and safety, and observe the rules of public life.

#### **Article 47**

Everyone has the obligation to pay taxes in accordance with the law.

#### **Article 48**

Foreigners residing in Vietnam shall abide by the Vietnamese Constitution and law; and have their lives, property, rights and legitimate interests protected by Vietnamese law.

#### **Article 49**

Foreign nationals who are persecuted for taking part in the struggle for freedom and national independence, for socialism, democracy and peace, or for engaging in scientific pursuits may be considered for granting of asylum by the State of the Socialist Republic of Vietnam.

### **Chapter III**

## **ECONOMY, SOCIAL AFFAIRS, CULTURE, EDUCATION, SCIENCE, TECHNOLOGY AND ENVIRONMENT**

#### **Article 50**

The Socialist Republic of Vietnam shall build an independent and self-reliant economy, bringing into full play its internal strengths and international integration and cooperation, in close association with cultural development, social progress and justice, environmental protection, and national industrialization and modernization.

#### **Article 51**

1. The Vietnamese economy is a socialist-oriented market economy with varied forms of ownership and economic sectors; the state economy plays the dominant role.

2. All economic sectors are important components of the national economy. Entities in different economic sectors are equal before law and shall cooperate and compete with one another in accordance with law.

3. The State shall encourage and create the conditions for businesspeople, enterprises or other individuals or organizations to carry out investment, production or business activities; and develop economic branches in a sustainable manner in order to contribute to national construction. The legal property of individuals and organizations engaged in investment, production or business activities is protected by law and is not subjected to nationalization.

#### **Article 52**

The State shall develop and improve economic institutions, regulate the economy on the basis of respect for market rules; delegate, devolve and decentralize the powers in the state management; promote regional economic links, and ensure the unity of the national economy.

#### **Article 53**

Land, water resources, mineral resources, resources in the sea and airspace, other natural resources, and property managed or invested in by the State are public property, owned by all the people, and represented and uniformly managed by the State.

#### **Article 54**

1. Land is a special national resource and an important resource for national development, and is managed in accordance with law.

2. The State shall allocate or lease land to, and recognize land use rights of, organizations and individuals. Land users may transfer land use rights, exercise their rights, and perform their obligations in accordance with law. Land use rights shall be protected by law.

3. The State may recover land currently used by organizations or individuals in case of extreme necessity prescribed by a law for national defense or security purposes; or socio-economic development in the national or public interest. Land recovery must be public and transparent, and compensation must be paid in accordance with the law.

4. The State may requisition land in cases of extreme necessity prescribed by a law to perform national defense and security tasks or during a state of war or a state of emergency, or in response to a natural disaster.

#### **Article 55**

1. The state budget, national reserve, state financial funds and other public financial resources must be uniformly managed by the State and shall be used in an efficient, fair, public, transparent and lawful manner.

2. The state budget consists of the central budget and local budgets, in which the central budget plays the leading role and ensures national spending needs. State budget revenues and expenditures must be estimated and must be prescribed by a law.

3. The national monetary unit is the Vietnam dong. The State shall ensure the stabilization of the national currency value.

#### **Article 56**

Agencies, organizations and individuals shall practice thrift and combat waste, and prevent and fight corruption in socio-economic activities and the state management.

#### **Article 57**

1. The State shall encourage and create the conditions for organizations and individuals to create jobs.

2. The State shall protect the lawful rights and interests of employees and employers and create the conditions for the establishment of progressive, harmonious and stable employment relations.

#### **Article 58**

1. The State and society shall make investments to further the protection of and care for the People's health, implement the universal health insurance, and adopt policies to prioritize health care for ethnic minority people and people living in mountainous areas, on islands, and in areas that have extremely difficult socio-economic conditions.

2. The State, society and family are responsible for protecting and caring for the health of mothers and children, and for family planning.

#### **Article 59**

1. The State and society shall honor, commend, reward, and implement preferential treatment policies to, people who have rendered meritorious service to the country.

2. The State shall create equal opportunities for citizens to enjoy social welfare, develop the social security system, and adopt policies to support elderly people, people with disabilities, poor people, and other disadvantaged people.

3. The State shall adopt housing development policies and create the conditions for everyone to have his or her own home.

#### **Article 60**

1. The State and society shall care for the creation and development of an advanced Vietnamese culture that is deeply imbued with the national identity and has absorbed the cultural quintessence of humanity.

2. The State and society shall develop literature and the arts in order to meet the diverse and healthy spiritual needs of the People; and develop the mass media to meet the People's demands for information and to serve national construction and defense.

3. The State and society shall create an environment for building prosperous, progressive and happy Vietnamese families, and developing Vietnamese people with good health, cultural qualities, patriotism, a spirit of solidarity, a sense of mastery and civic responsibility.

#### **Article 61**

1. To develop education is a top national policy that aims to increase public intellectual standards, develop human resources, and nurture talented people.

2. The State shall prioritize investment in, and attract other investment sources for, education; care for pre-school education; and ensure free compulsory primary education; gradually universalize secondary education; develop higher education and vocational education; and implement reasonable scholarship and school fee policies.

3. The State shall prioritize the development of education in mountainous areas, on islands, in ethnic minority areas, and in areas that have extremely difficult socio-economic conditions; prioritize the employment and development of talented people; and create the conditions for people with disabilities and poor people to receive education and vocational training.

#### **Article 62**

1. To develop science and technology is a top national policy, playing the key role in national socio-economic development.

2. The State shall prioritize investment in, and encourage organizations and individuals to invest in, research, development, transfer and effective application of scientific and technological achievements; guarantee the right to conduct scientific and technological research; and protect intellectual property rights.

3. The State shall create the conditions for everyone to participate in, and to enjoy the benefits from, scientific and technological activities.

#### **Article 63**

1. The State shall adopt environmental protection policies; manage and use natural resources in an efficient and sustainable manner; conserve nature and biodiversity; and take the initiative in preventing and controlling natural disasters and responding to climate change.

2. The State shall encourage all activities for environmental protection and the development and use of new energy and renewable energy.

3. Organizations and individuals that cause environmental pollution, natural resource exhaustion or biodiversity depletion shall be strictly punished and shall rectify and compensate for damage.

## **Chapter IV**

### **DEFENSE OF THE FATHERLAND**

#### **Article 64**

To defend the socialist Vietnamese Fatherland is the mission of all the people.

The State shall consolidate and strengthen national defense by all the people and the people's security, with the people's armed forces as the core; and fully utilize the total strength of the country to defend firmly the Fatherland, thereby contributing to protecting peace in the region and around the world.

All agencies, organizations and citizens shall fulfill their national defense and security tasks.

#### **Article 65**

The people's armed forces shall show absolute loyalty to the Fatherland, the People, the Party and the State; protect the independence, sovereignty, unity and territorial integrity of the Fatherland, national security, and social order and safety; safeguard the People, the Party, the State and the socialist regime; and join the entire people in national construction and the performance of international duties.

#### **Article 66**

The State shall build a revolutionary People's Army that is regular, well-trained and gradually modernized, which has an appropriate permanent force, a large and powerful reserve force, and a strong and extensive self- defense and militia force, as the core for performing national defense tasks.

#### **Article 67**

The State shall build a revolutionary People's Public Security force that is regular, well-trained and gradually modernized, as the core to safeguard national security, ensure social order and safety, and prevent and fight crime.

#### **Article 68**

The State shall promote the People's patriotism and revolutionary heroism and educate the entire people in national defense and security; build the national defense and security industry; ensure proper equipment for the people's armed forces, and combine national defense and security with economic activities and *vice versa*; implement policies regarding military families; ensure the material and spiritual lives of the officers, soldiers, workers and employees consistent with the nature of the

activities of the People's Army and People's Public Security force; and build powerful people's armed forces and unceasingly strengthen their national defense capability.

## **Chapter V**

### **THE NATIONAL ASSEMBLY**

#### **Article 69**

The National Assembly is the highest representative body of the People and the highest state power body of the Socialist Republic of Vietnam.

The National Assembly shall exercise constitutional and legislative powers, decide on important issues for the country, and conduct the supreme oversight over the activities of the State.

#### **Article 70**

The National Assembly has the following tasks and powers:

1. To make and amend the Constitution; to make and amend laws;
2. To exercise the power of supreme oversight over the observance of the Constitution, laws and resolutions of the National Assembly; to review work reports of the President, Standing Committee of the National Assembly, Government, Supreme People's Court, Supreme People's Procuracy, National Election Council, State Audit Office, and other agencies established by the National Assembly;
3. To decide on the country's major goals, targets, policies and tasks for socio-economic development;
4. To decide on fundamental national financial and monetary policies; to introduce, change or abolish taxes; to decide on the division of revenues and expenditures between the central and local budgets; to decide on the safe limits for national, public and government debts; to decide on state budget estimates and the allocation of the central budget; and to approve the final accounts of the state budget;
5. To decide on state policies on ethnicities and religion;
6. To regulate the organization and operation of the National Assembly, President, Government, People's Courts, People's Procuracies, National Election Council, State Audit Office, local administrations, and other agencies established by the National Assembly;
7. To elect, relieve from duty or remove from office the President, Vice Presidents, Chairperson and Vice Chairpersons of the National Assembly, members of the Standing Committee of the National Assembly, Chairperson of the Ethnic Council, Chairpersons of the Committees of the National Assembly, Prime Minister, Chief Justice of the Supreme People's Court, Procurator General of the Supreme People's Procuracy, Chairperson of the National Election Council, State Auditor General, and heads of other agencies established by the National Assembly; to approve proposals on the appointment, relief from duty or dismissal of the Deputy Prime Ministers, Ministers or other members of the Government, and Judges of the Supreme People's Court; and to approve the lists of members of the National Defense and Security Council and the National Election Council.

After being elected, the President, Chairperson of the National Assembly, Prime Minister, and Chief Justice of the Supreme People's Court shall take an oath of loyalty to the Fatherland, the People and the Constitution;

8. To conduct votes of confidence on persons holding positions elected or approved by the National Assembly;

9. To decide on the establishment or abolition of ministries or ministerial-level agencies of the Government; to establish, dissolve, consolidate, separate or adjust the administrative boundaries of, provinces, centrally run cities and special administrative-economic units; or to establish or abolish other agencies in accordance with the Constitution and law;

10. To annul documents of the President, Standing Committee of the National Assembly, Government, Prime Minister, Supreme People's Court and Supreme People's Procuracy that contravene the Constitution, laws or resolutions of the National Assembly;

11. To decide on a general amnesty;

12. To stipulate the titles and ranks in the people's armed forces, diplomatic titles and ranks, and other state titles and ranks; to institute orders, medals, and state honorary titles;

13. To decide on issues of war and peace; to determine states of emergency and other special measures to ensure national defense and security;

14. To decide on fundamental foreign policies; to ratify, or decide on the accession to, or withdrawal from, treaties related to war, peace, national sovereignty or the membership of the Socialist Republic of Vietnam in important international and regional organizations, treaties on human rights or fundamental rights and obligations of citizens, and other treaties that are not consistent with the laws or resolutions of the National Assembly;

15. To decide to hold referenda.

#### **Article 71**

1. The term of the National Assembly is five years.

2. Sixty days before the expiration of the term of the National Assembly, a new National Assembly must be elected.

3. In special cases, the National Assembly may decide to shorten or extend its term, at the proposal of the Standing Committee of the National Assembly, if at least two-thirds of the total number of the National Assembly deputies vote for it. The extension of the term of the National Assembly must not exceed twelve months, except in wartime.

#### **Article 72**

The Chairperson of the National Assembly shall preside over National Assembly sessions; authenticate by his or her signature the Constitution, laws and resolutions of the National Assembly; lead the work of the Standing Committee of the National Assembly; organize the conduct of the external relations of the National Assembly; and maintain a relationship with National Assembly deputies.

Vice Chairpersons of the National Assembly shall assist the Chairperson in his or her work as assigned by the Chairperson.

### **Article 73**

1. The Standing Committee of the National Assembly is the permanent body of the National Assembly.

2. The Standing Committee of the National Assembly is composed of the Chairperson, Vice Chairpersons and Members.

3. The number of members of the Standing Committee of the National Assembly shall be decided by the National Assembly. A member of the Standing Committee of the National Assembly may not concurrently be a member of the Government.

4. The Standing Committee of the National Assembly shall perform its tasks and exercise its powers until a new Standing Committee is elected by the succeeding National Assembly.

### **Article 74**

The Standing Committee of the National Assembly has the following tasks and powers:

1. To prepare, convene and preside over sessions of the National Assembly;
2. To enact ordinances on issues assigned to it by the National Assembly; to interpret the Constitution, laws and ordinances;
3. To oversee the implementation of the Constitution, laws and resolutions of the National Assembly and ordinances and resolutions of the Standing Committee of the National Assembly; to oversee the activities of the Government, Supreme People's Court, Supreme People's Procuracy, State Audit Office, and other agencies established by the National Assembly;
4. To suspend the implementation of documents of the Government, Prime Minister, Supreme People's Court or Supreme People's Procuracy that contravene the Constitution, or laws or resolutions of the National Assembly, and refer those documents to the National Assembly to decide on their annulment at the next session; to annul documents of the Government, Prime Minister, Supreme People's Court or Supreme People's Procuracy that contravene ordinances or resolutions of the Standing Committee of the National Assembly;
5. To direct, harmonize and coordinate the activities of the Ethnic Council and the Committees of the National Assembly; to guide and ensure the conditions for the work of National Assembly deputies;
6. To propose the National Assembly to elect, relieve from duty or remove from office the President, Chairperson or Vice Chairpersons of the National Assembly, Members of the Standing Committee of the National Assembly, Chairperson of the Ethnic Council, Chairpersons of the Committees of the National Assembly, Chairperson of the National Election Council, or State Auditor General;
7. To supervise and guide the work of the People's Councils; to annul resolutions of the People's Councils of provinces or centrally run cities that contravene

the Constitution, laws or documents of state agencies at higher levels; to dissolve the People's Councils of provinces or centrally run cities in case they cause serious damage to the interests of the People; 8. To decide on the establishment, dissolution, consolidation, separation, or adjustment of the boundaries of, the administrative units under the provinces or centrally run cities;

9. To decide to declare a state of war in case the National Assembly cannot meet, and report it to the National Assembly for decision at its next session;

10. To decide on general or partial mobilization; to declare or cancel a state of emergency throughout the country or in a particular locality;

11. To conduct the external relations of the National Assembly;

12. To approve proposals on the appointment or relief from duty of ambassadors extraordinary and plenipotentiary of the Socialist Republic of Vietnam;

13. To organize referenda in pursuance to decisions of the National Assembly.

#### **Article 75**

1. The Ethnic Council is composed of the Chairperson, Vice Chairpersons and Members. The Chairperson of the Ethnic Council shall be elected by the National Assembly; Vice Chairpersons and Members of the Ethnic Council shall be approved by the Standing Committee of the National Assembly.

2. The Ethnic Council shall study and make proposals on ethnic issues to the National Assembly; exercise the power of overseeing the implementation of policies on ethnic groups, programs and plans for socio-economic development in mountainous and ethnic minority areas.

3. The Chairperson of the Ethnic Council may be invited to attend Government meetings to discuss the implementation of policies on ethnic groups. The Government shall consult the Ethnic Council before promulgating regulations on the implementation of policies on ethnic groups.

4. The Ethnic Council has additional tasks and powers similar to those of the Committees of the National Assembly set out in Clause 2, Article 76.

#### **Article 76**

1. A Committee of the National Assembly is composed of the Chairperson, Vice Chairpersons and Members. Chairpersons of the Committees shall be elected by the National Assembly; Vice Chairpersons and Members of the Committees shall be approved by the Standing Committee of the National Assembly.

2. The Committees of the National Assembly shall verify draft laws, proposals on laws, other drafts, and reports as assigned by the National Assembly or the Standing Committee of the National Assembly; exercise the oversight power within the scope of their powers and tasks prescribed by a law; and make proposals on issues that fall within the scope of their activities.

3. The establishment or dissolution of the Committees shall be decided by the National Assembly.

#### **Article 77**

1. The Ethnic Council or the Committees of the National Assembly may request members of the Government, Chief Justice of the Supreme People's Court, Procurator General of the Supreme People's Procuracy, State Auditor General or concerned individuals to make reports, give explanations or provide documents on necessary matters. The persons who receive requests shall respond.

2. State agencies shall study and respond to the proposals made by the Ethnic Council and the Committees of the National Assembly.

#### **Article 78**

The National Assembly may, as necessary, establish an ad-hoc Committee to study and verify a certain project or investigate a certain issue.

#### **Article 79**

1. A National Assembly deputy shall represent the will and aspirations of the People of his or her constituency and of the whole country.

2. A National Assembly deputy shall maintain close ties with voters and submit to their supervision; collect and truthfully convey their views and aspirations to the National Assembly and concerned agencies or organizations; meet and report to the voters on his or her activities and activities of the National Assembly; respond to the requests and petitions of voters; monitor and press for the settlement of complaints and denunciations, and guide and assist in the exercise of the right to complaint or denunciation.

3. A National Assembly deputy shall inform the People of, and mobilize them to implement, the Constitution and laws.

#### **Article 80**

1. National Assembly deputies have the right to raise questions to the President, Chairperson of the National Assembly, Prime Minister, Ministers and other members of the Government, Chief Justice of the Supreme People's Court, Procurator General of the Supreme People's Procuracy or State Auditor General.

2. The questioned persons shall present their answers before the National Assembly at a session of the National Assembly or, when the National Assembly is in recess, at a meeting of the Standing Committee of National Assembly; the National Assembly and the Standing Committee of the National Assembly may, as necessary, allow the questioned persons to submit written answers.

3. National Assembly deputies have the right to request agencies, organizations or individuals to provide information and documents related to the latter's tasks. The heads of agencies or organizations, or individuals shall answer questions raised by deputies within the time limit prescribed by a law.

#### **Article 81**

No National Assembly deputy may be arrested, held in custody, detained or prosecuted without the consent of the National Assembly or, when the National Assembly is in recess, without the consent of the Standing Committee of the National Assembly. In the case a deputy is detained for a flagrant offense, the agency holding

the deputy in custody shall immediately report the case to the National Assembly or the Standing Committee of the National Assembly for consideration and decision.

### **Article 82**

1. National Assembly deputies shall fully perform their tasks; and have the right to participate as members in the Ethnic Council or a Committee of the National Assembly.

2. The Standing Committee of the National Assembly, Prime Minister, Deputy Prime Ministers, Ministers, Heads of ministerial-level agencies or other agencies of the State shall create the conditions for National Assembly deputies to perform their tasks.

3. The State shall ensure funding for the activities of National Assembly deputies.

### **Article 83**

1. The National Assembly shall hold sessions in public. The National Assembly may, when necessary and at the request of the President, Standing Committee of the National Assembly, Prime Minister or at least one-third of the total number of the National Assembly deputies, decide to conduct a closed session.

2. The National Assembly shall hold two sessions a year. The National Assembly shall hold an extraordinary session when so requested by the President, Standing Committee of the National Assembly, Prime Minister or at least one-third of the total number of the National Assembly deputies. The Standing Committee of the National Assembly shall convene sessions of the National Assembly.

3. The first session of a newly elected National Assembly must be convened within sixty days from the date of election of the National Assembly deputies; this session must be opened and presided over by the Chairperson of the outgoing National Assembly until the new National Assembly elects its Chairperson.

### **Article 84**

1. The President, Standing Committee of the National Assembly, Ethnic Council and Committees of the National Assembly, Government, Supreme People's Court, Supreme People's Procuracy, State Audit Office, Central Committee of the Vietnam Fatherland Front, and central bodies of the Front's member organizations have the right to submit draft laws to the National Assembly or submit draft ordinances to the Standing Committee of the National Assembly.

2. National Assembly deputies have the right to submit their proposals on laws and ordinances, or draft laws and draft ordinances, to the National Assembly or the Standing Committee of the National Assembly.

### **Article 85**

1. Laws and resolutions of the National Assembly must be voted for by more than half of the total number of the National Assembly deputies; the making or amendment of the Constitution, decisions to shorten or extend the term of the National Assembly or to remove from office one of its deputies must be voted for by at least two-thirds of the total number of the National Assembly deputies.

Ordinances and resolutions of the Standing Committee of the National Assembly must be approved by more than half of the total number of its members.

2. Laws and ordinances must be promulgated within fifteen days of their passage, unless the President requests reconsideration of an ordinance.

## **Chapter VI**

### **THE PRESIDENT**

#### **Article 86**

The President is the Head of State and shall represent the Socialist Republic of Vietnam internally and externally.

#### **Article 87**

The President shall be elected by the National Assembly from among its deputies.

The President is responsible, and shall report on his or her work, to the National Assembly.

His or her term of office follows the term of the National Assembly. At the expiration of the term of the National Assembly, the President shall remain in office until a new President is elected by the succeeding National Assembly.

#### **Article 88**

The President has the following tasks and powers:

1. To promulgate the Constitution, laws and ordinances; to request the Standing Committee of the National Assembly to reconsider its ordinances, within ten days of their passage; if those ordinances are still voted for by the Standing Committee of the National Assembly and disapproved by the President, the President shall refer the matter to the National Assembly for decision at its next session;

2. To propose to the National Assembly to elect, relieve from duty or remove from office the Vice President or Prime Minister; and, based on resolutions of the National Assembly, to appoint, relieve from duty or dismiss Deputy Prime Ministers, Ministers or other members of the Government;

3. To propose the National Assembly to elect, relieve from duty or remove from office the Chief Justice of the Supreme People's Court or Procurator General of the Supreme People's Procuracy; and, based on resolutions of the National Assembly, to appoint, relieve from duty or dismiss Judges of the Supreme People's Court; to appoint, relieve from duty or dismiss Deputy Chief Justices of the Supreme People's Court, Judges of other Courts or Deputy Procurators General or Procurators of the Supreme People's Procuracy; to decide on a special amnesty; or, based on resolutions of the National Assembly, to proclaim a general amnesty;

4. To decide on the award of orders, medals, state prizes or state honorary titles; to decide to permit naturalization in Vietnam, renunciation of Vietnamese citizenship, restoration of Vietnamese citizenship or deprivation of Vietnamese citizenship;

5. To assume command of the people's armed forces and hold the office of Chairperson of the National Defense and Security Council; to decide on the award,

promotion, demotion or deprivation of the ranks of general, naval rear admiral, naval vice admiral and naval admiral; to appoint, relieve from duty or dismiss the Chief of the General Staff or the Director of the Political General Department of the Vietnamese People's Army; based on resolutions of the National Assembly or the Standing Committee of the National Assembly, to promulgate or annul decisions to declare a state of war; based on resolutions of the Standing Committee of the National Assembly, to issue an order on general mobilization or partial mobilization, to declare or cancel a state of emergency; or, in case the Standing Committee of the National Assembly cannot meet, to declare or cancel a state of emergency nationwide or in a particular locality;

6. To receive foreign ambassadors extraordinary and plenipotentiary; based on resolutions of the Standing Committee of the National Assembly, to appoint, relieve from duty; decide to send or recall ambassadors extraordinary and plenipotentiary of the Socialist Republic of Vietnam; to confer the ambassadorial title and rank; to decide on the negotiation and conclusion of treaties in the name of the State; to submit to the National Assembly for ratification of, or decision on the accession to, or withdrawal from, the treaties specified in Clause 14, Article 70; to decide on the ratification of, accession to, or withdrawal from, other treaties in the name of the State.

#### **Article 89**

1. The National Defense and Security Council is composed of the Chairperson, Vice Chairperson and Members. The list of members of the National Defense and Security Council shall be submitted by the President to the National Assembly for approval.

The National Defense and Security Council shall work on a collegial basis and make its decisions by a vote of the majority.

2. The National Defense and Security Council shall propose the National Assembly or, when the National Assembly cannot meet, the Standing Committee of the National Assembly to decide on a state of war; mobilize all forces and capacity of the country to defend the Fatherland; perform special tasks and exercise special powers assigned to and vested in it by the National Assembly in case of war; and decide on the participation of the people's armed forces in peacekeeping operations in the region and around the world.

#### **Article 90**

The President may attend meetings of the Standing Committee of the National Assembly and meetings of the Government.

The President may request the Government to meet to discuss issues that he or she considers necessary to fulfill his or her tasks or exercise his or her powers.

#### **Article 91**

The President shall issue orders and decisions for the performance of his or her tasks or the exercise of his or her powers.

#### **Article 92**

The Vice President shall be elected by the National Assembly from among its deputies.

The Vice President shall assist the President in his or her work and may be delegated certain tasks by the President to perform on behalf of the President.

### **Article 93**

When the President is incapacitated from work over a long period of time, the Vice President shall succeed as acting President.

In case of vacancy of the Presidency, the Vice President shall serve as acting President until a new President is elected by the National Assembly.

## **Chapter VII**

### **THE GOVERNMENT**

#### **Article 94**

The Government is the highest state administrative body of the Socialist Republic of Vietnam, shall exercise executive power, and is the executive body of the National Assembly.

The Government is responsible to the National Assembly and shall report on its work to the National Assembly, the Standing Committee of the National Assembly and the President.

#### **Article 95**

1. The Government is composed of the Prime Minister, Deputy Prime Ministers, Ministers, and Heads of ministerial-level agencies.

The structure and number of members of the Government shall be decided by the National Assembly.

The Government shall work on a collegial basis and make its decisions by a vote of the majority.

2. The Prime Minister is the head of the Government and responsible to the National Assembly for the work of the Government and assigned tasks; and shall report on the work of the Government and the Prime Minister to the National Assembly, the Standing Committee of the National Assembly and the President.

3. Deputy Prime Ministers shall assist the Prime Minister in his or her work as assigned by the Prime Minister, and are responsible to the Prime Minister for their assigned tasks. In the absence of the Prime Minister, a Deputy Prime Minister delegated by the Prime Minister shall lead the work of the Government on behalf of the Prime Minister.

4. Ministers and Heads of ministerial-level agencies are personally responsible to the Prime Minister, Government and National Assembly for the sectors and fields under their charge and, together with other members of Government, shall assume the collective responsibility for the work of the Government.

#### **Article 96**

The Government has the following tasks and powers:

1. To organize the implementation of the Constitution, laws and resolutions of the National Assembly, ordinances and resolutions of the Standing Committee of the National Assembly, and orders and decisions of the President;

2. To propose and formulate policies to be submitted to the National Assembly or the Standing Committee of the National Assembly for decision or decide on policies according to its competence, for the performance of its tasks and the exercise of its powers set out in this Article; to submit draft laws, draft state budget estimates and other projects to the National Assembly; and to submit draft ordinances to the Standing Committee of the National Assembly;

3. To perform the unified management of the economy, culture, social affairs, education, health, science, technology, environment, information, communications, external relations, national defense, national security, and social order and safety; to carry out orders on general mobilization or partial mobilization or orders to proclaim a state of emergency, and take other necessary measures to defend the Fatherland and to protect the People's lives and property;

4. To propose the National Assembly for decision the establishment or abolition of ministries or ministerial-level agencies; the establishment, dissolution, consolidation, separation, or adjustment of the administrative boundaries of, provinces, centrally run cities or special administrative-economic units; to propose the Standing Committee of the National Assembly for decision the establishment, dissolution, consolidation, separation or adjustment of the boundaries of, administrative units under the provinces and centrally run cities;

5. To perform the unified management of the national administration system; to manage cadres, civil servants, public employees, and the public service in state agencies; to organize inspection and control work, the settlement of complaints and denunciations, and the fight against bureaucracy and corruption in the state apparatus; to lead the work of the ministries, ministerial-level agencies, government-attached agencies, and People's Committees at all levels; to guide and examine the People's Councils in their implementation of the documents of state agencies at higher levels, to create the conditions for the People's Councils to perform their tasks and exercise their powers which are prescribed by a law;

6. To protect the rights and interests of the State and society, human rights and citizens' rights; and to ensure social order and safety;

7. To negotiate and conclude treaties in the name of the State, as authorized by the President; to decide on the conclusion, accession to, ratification of, or withdrawal from, treaties in the name of the Government, except for treaties to be submitted to the National Assembly for ratification as specified in Clause 14, Article 70; to protect the interests of the State and the legitimate interests of Vietnamese organizations or citizens in foreign countries;

8. To coordinate with the Central Committee of the Vietnam Fatherland Front and central bodies of the socio-political organizations in the performance of the tasks and the exercise of the powers of the Government.

## **Article 97**

The term of the Government follows the term of the National Assembly. At the expiration of the term of the National Assembly, the Government shall remain in office until a new Government is elected by the succeeding National Assembly.

### **Article 98**

The Prime Minister shall be elected by the National Assembly from among its deputies.

The Prime Minister has the following tasks and powers:

1. To lead the work of the Government; to lead the formulation of policies and organize the implementation of laws;

2. To lead and take responsibility for the work of the state administration system from the central to the local level, ensuring the consistency and continuity of the national administration system;

3. To submit to the National Assembly for approval proposals on the appointment, relief from duty or dismissal of Deputy Prime Ministers, Ministers or other members of the Government; to appoint, relieve from duty or dismiss Deputy Ministers or officials of equal rank of ministries or ministerial-level agencies; to approve the election and relief from duty, and to decide on the transfer or dismissal of Chairpersons and Vice Chairpersons of the People's Committees of provinces or centrally run cities;

4. To suspend the implementation of, or annul the documents, of Ministers, Heads of ministerial-level agencies, People's Committees, Chairpersons of the People's Committees of provinces or centrally run cities that contravene the Constitution, laws or documents of state agencies at higher levels; to suspend the implementation of resolutions of the People's Councils of provinces or centrally run cities that contravene the Constitution, laws or documents of state agencies at higher levels and, at the same time, to propose the Standing Committee of the National Assembly to annul them;

5. To decide on and direct the negotiation of, and to direct the conclusion, and accession to, or ratification of, treaties within the scope of the tasks and powers of the Government; to organize the implementation of treaties to which the Socialist Republic of Vietnam is a contracting party;

6. To make reports to the People through the mass media on important issues falling within the competence of the Government and the Prime Minister.

### **Article 99**

1. Ministers and Heads of ministerial-level agencies are members of the Government, shall preside over their ministries or ministerial-level agencies, and shall lead the work of their ministries or ministerial-level agencies; shall perform the state management of the sectors and fields under their charge; and shall organize and monitor nationwide the implementation of laws concerning their sectors and fields.

2. Ministers and Heads of ministerial-level agencies shall report on their work to the Government and Prime Minister; and make reports to the People on important issues under their management.

### **Article 100**

The Government, the Prime Minister, Ministers, and Heads of ministerial-level agencies shall promulgate legal documents to perform their tasks and exercise their powers, review the implementation of those documents, and deal with unlawful documents in accordance with law.

### **Article 101**

The President of the Central Committee of the Vietnam Fatherland Front and heads of central bodies of socio-political organizations may be invited to meetings of the Government that discuss relevant issues.

## **Chapter VIII**

### **THE PEOPLE'S COURTS AND THE PEOPLE'S PROCURACIES**

#### **Article 102**

1. The People's Courts are the judicial bodies of the Socialist Republic of Vietnam and exercise judicial power.

2. The People's Courts include the Supreme People's Court and other Courts prescribed by a law.

3. The People's Courts have the duty to safeguard justice, human rights, citizens' rights, the socialist regime, the interests of the State, and the lawful rights and interests of organizations and individuals.

#### **Article 103**

1. Except in the case of trial by summary procedure, Assessors shall participate in first-instance trials by the People's Courts.

2. During a trial, the Judges and Assessors are independent and shall obey only the law. Agencies, organizations or individuals are prohibited from interfering in a trial by Judges and Assessors.

3. The People's Courts shall hold their hearings in public. In a special case which requires protection of state secrets, conformity with the fine customs and traditions of the nation, protection of minors or protection of private life and at the legitimate request of an involved party, the People's Court may hold a closed hearing.

4. Except in the case of a trial by summary procedure, the People's Courts shall try cases on a collegial basis and make decisions by a vote of the majority.

5. The adversarial principle shall be guaranteed in trials.

6. The first-instance and appellate hearing system shall be guaranteed.

7. The right of the accused or defendants to a defense, and the right of involved parties to protect their lawful interests, shall be guaranteed.

#### **Article 104**

1. The Supreme People's Court is the highest judicial body of the Socialist Republic of Vietnam.

2. The Supreme People's Court shall supervise the judicial work of other Courts, unless otherwise prescribed by a law.

3. The Supreme People's Court shall make overall assessment of adjudicating practices, ensuring the uniform application of law in trial.

#### **Article 105**

1. The term of office of the Chief Justice of the Supreme People's Court follows the term of the National Assembly. The appointment, relief from duty, dismissal, and term of office of the Chief Justices of other Courts shall be prescribed by a law.

2. The Chief Justice of the Supreme People's Court is responsible, and shall report on his or her work, to the National Assembly. When the National Assembly is in recess, he or she is responsible, and shall report on his or her work, to the Standing Committee of the National Assembly and the President.

The reporting regime applicable to the Chief Justices of other Courts shall be prescribed by a law.

3. The appointment, approval, relief from duty, dismissal, and term of office of Judges, and the election and term of office of Assessors, shall be prescribed by a law.

#### **Article 106**

The judgments and decisions of the People's Courts which have taken legal effect must be respected by agencies, organizations and individuals and must be strictly observed by the concerned agencies, organizations or individuals.

#### **Article 107**

1. The People's Procuracies shall exercise the power to prosecute and supervise judicial activities.

2. The People's Procuracies include the Supreme People's Procuracy and other Procuracies as prescribed by a law.

3. The People's Procuracies have the duty to safeguard the law, human rights, citizens' rights, the socialist regime, the interests of the State, and the lawful rights and interests of organizations and individuals, thus contributing to ensuring the strict and unified observance of the law.

#### **Article 108**

1. The term of office of the Procurator General of the Supreme People's Procuracy follows the term of the National Assembly. The appointment, relief from duty, dismissal, and term of office of the Chief Procurators of other Procuracies and of Procurators shall be prescribed by a law.

2. The Procurator General of the Supreme People's Procuracy is responsible, and shall report on his or her work, to the National Assembly.

When the National Assembly is in recess, he or she is responsible, and shall report on his or her work, to the Standing Committee of the National Assembly and the President. The reporting regime applicable to the Chief Procurators of other Procuracies shall be prescribed by a law.

#### **Article 109**

1. The People's Procuracies shall be led by their Chief Procurators. The Chief Procurator of a People's Procuracy is subject to the leadership of the Chief Procurator of the People's Procuracy at a higher level. The Chief Procurators of Procuracies at lower levels are subject to the unified leadership of the Procurator General of the Supreme People's Procuracy.

2. When exercising the power to prosecute or to supervise judicial activities, a Procurator shall abide by the law and is subject to the direction by the Chief Procurator of the People's Procuracy.

## **Chapter IX**

### **LOCAL ADMINISTRATION**

#### **Article 110**

1. The administrative units of the Socialist Republic of Vietnam shall be defined as follows:

The country shall be divided into provinces and centrally run cities; A province shall be divided into rural districts, towns, and provincial cities; a centrally run city shall be divided into urban districts, rural districts, towns, and equivalent administrative units;

A rural district shall be divided into communes and townships; a town or provincial city shall be divided into wards and communes; and an urban district shall be divided into wards.

Special administrative-economic units may be established by the National Assembly.

2. The establishment, dissolution, consolidation, separation or adjustment of the boundaries of, an administrative unit must be consulted with local People and must comply with the process and procedures prescribed by a law.

#### **Article 111**

1. Local administrations shall be organized in administrative units of the Socialist Republic of Vietnam.

2. Local administration levels composed of the People's Council and People's Committee shall be organized consistent with the characteristics of the rural areas, urban areas, islands or special administrative-economic units prescribed by a law.

#### **Article 112**

1. Local administrations shall organize and ensure implementation of the Constitution and law in their localities; decide on local issues prescribed by a law; and submit to the examination and supervision by state agencies at higher levels.

2. The tasks and powers of local administrations shall be determined on the basis of determining the powers between state agencies at the central and local levels and for each level of local administration.

3. Local administrations may, as necessary, be assigned certain tasks of state agencies at higher levels, along with the necessary means to ensure the performance of those tasks.

### **Article 113**

1. The People's Council is the local state power body, representing the will, aspirations and right to mastery of the local People, shall be elected by the local People, and is responsible to the local People and state agencies at higher levels.

2. The People's Council shall decide on local issues as prescribed by a law; and supervise the observance of the Constitution and law in its locality and the implementation of its own resolutions.

### **Article 114**

1. The People's Committee at a local administration level, which shall be elected by the People's Council of the same level, is the executive body of the respective People's Council and is the local state administrative body, and is responsible to the People's Council and state administrative agencies at higher levels.

2. The People's Committee shall organize implementation of the Constitution and law in its locality and implementation of the resolutions of the People's Council, and perform the tasks assigned to it by state agencies at higher levels.

### **Article 115**

1. A People's Council deputy shall represent the will and aspirations of local People; shall maintain close ties with voters and be subject to their supervision, meet and report to voters on his or her own activities and activities of the People's Council, respond to their requests and petitions; and consider and press for the settlement of complaints and denunciations. A People's Council deputy has the task of mobilizing the People to implement the Constitution, law, policies of the State, and resolutions of the People's Council, and encouraging the People to participate in the state management.

2. A People's Council deputy has the right to raise questions to the Chairperson or other members of the People's Committee, Chief Justice of the People's Court, Chief Procurator of the People's Procuracy, and Heads of the agencies of the People's Committee. The questioned persons shall present their answers before the People's Council. A People's Council deputy has the right to make proposals to state agencies, organizations, and units in the locality. The heads of those agencies, organizations or units shall receive the deputy, then consider and resolve the issues raised in his or her proposals.

### **Article 116**

1. The People's Council and the People's Committee shall report on the local situation to the Vietnam Fatherland Front and mass organizations, listen to the opinions and proposals of those organizations for strengthening the local administration and socio-economic development; and coordinate with the Vietnam Fatherland Front and mass organizations in encouraging the People, together with the State, to perform socio-economic, national defense and security tasks in the locality.

2. The President of the Vietnam Fatherland Front and heads of socio-political organizations in the locality may be invited to sessions of the People's Council and to meetings of the People's Committee of the same level that discuss relevant issues.

## **Chapter X**

## **THE NATIONAL ELECTION COUNCIL, THE STATE AUDIT OFFICE**

### **Article 117**

1. The National Election Council shall be established by the National Assembly and has the task of organizing the election of National Assembly deputies, and directing and guiding the election of deputies to People's Councils at all levels.

2. The National Election Council is composed of the Chairperson, Vice Chairpersons and Members.

3. The organization and specific tasks and powers of the National Election Council and the number of its members shall be prescribed by a law.

### **Article 118**

1. The State Audit Office shall be established by the National Assembly, operate independently, abide only by the law, and audit the management and use of public finance and assets.

2. The State Auditor General is the head of the State Audit Office and shall be elected by the National Assembly. The term of office of the State Auditor General shall be prescribed by a law.

The State Auditor General is responsible, and shall report on audit results and his or her work, to the National Assembly. When the National Assembly is in recess, he or she is responsible, and shall report on his or her work, to the Standing Committee of the National Assembly.

3. The organization and specific tasks and powers of the State Audit Office shall be prescribed by a law.

## **Chapter XI**

### **EFFECTIVENESS OF THE CONSTITUTION AND AMENDMENT TO THE CONSTITUTION**

#### **Article 119**

1. The Constitution is the fundamental and supreme law of the Socialist Republic of Vietnam.

All other legal documents must conform to the Constitution.

All violations of the Constitution shall be dealt with.

2. The National Assembly and its agencies, the President, the Government, People's Courts, People's Procuracies, other agencies of the State and all the People shall defend the Constitution.

The mechanism to defend the Constitution shall be prescribed by a law.

#### **Article 120**

1. The President, the Standing Committee of the National Assembly, the Government or at least one-third of the total number of the National Assembly deputies have the right to propose the making of, or an amendment to, the Constitution. The National Assembly shall decide on the making of, or amendment to,

the Constitution when at least two-thirds of the total number of the National Assembly deputies vote for it.

2. The National Assembly shall establish a Constitution Drafting Committee. The composition and number of members, tasks and powers of the Constitution Drafting Committee shall be decided by the National Assembly at the proposal of the Standing Committee of the National Assembly.

3. The Constitution Drafting Committee shall draft the Constitution, collect the opinions of the People on the draft, and submit it to the National Assembly.

4. The Constitution shall be adopted when at least two-thirds of the total number of the National Assembly deputies vote for it. The holding of a referendum on the Constitution shall be decided by the National Assembly.

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

*This Constitution was adopted on November 28, 2013, by the XIIIth National Assembly of the Socialist Republic of Vietnam, at its 6th session.-*

**CHAIRPERSON OF THE  
NATIONAL ASSEMBLY**

**Nguyen Sinh Hung**

**LAW ON LAND NO. 45/2013/QH13**

*(only available in Vietnamese)*

# **RESEARCH REPORT ON AMENDING AND SUPPLEMENTING REGULATIONS ON THE NATIONAL ASSEMBLY IN THE 1992 CONSTITUTION**

*(Sub-component Legal Committee of the National Assembly is in charge of coordination and supervision of the study)*

## **INTRODUCTION**

The NA plays a greatly important role in our State apparatus organisation. Therefore, the strengthening of the organisation and the improvement of operations method and effects of the NA is a great policy of the Party on building and improving the socialist rule of law state of Vietnam of people, by people and for people.

In recent years, in according to 1992 Constitutional regulations, the organisation and operations of our NA have been improved that importantly contribute to enhance the validity and the effect of the operation of the State apparatus and better satisfy requirements of the socialist rule of law state. Nevertheless, after 20 years of implementing regulations on the NA in the Constitution, it has been shown that certain insufficiency and limitations has been existed, such as: unclear regulations on the role and function of the NA in legislative implement, the relation between the NA and other organs in the State apparatus in order to ensure the principle of assignment and coordination between the legislature, the executive and the judiciary; regulations on scope and subjects of supervision are too broad and outspread that there still have been formalism and ineffectiveness in supervisory activities of the NA; unclear regulations that ensure the validity and effect in decisions of the NA on national important issues; regulations on organisation of NA's Committes.

In order to improve the quality and the effect of NA's operation, to improve constitutional regulations on organisation and operation of the NA, basing on the support of Project "Strengthening Access to Justice and Protection of Rights in Vietnam", the consultant team including national consultants chaired by the Legal Committe has evaluate the reality of organisation and operation of the NA and regulations on the NA in the Constitution, present laws and practical researches of some countries, therefrom propose relevant recommendations, particularly the research "Amending and supplementing regulations on the NA in the Constitution 1992". The Research aims at providing comprehensive, authentic and objective evaluations on the system of regulations on organisation and operation of the NA in current constitution and laws, therein focusing on analysing shortcomings and limitations, main causes and proposing solutions of amending relevant regulations in the Constitution in order to enhance the quality and effect of NA's activities.

The research includes four main parts as follow:

- Part I – Overview of laws on organisation and operation of the NA.

- Part II – Evaluation on the situation of implementing the 1992 Constitution of the NA.
- Part III – Regulation on organisation and operation of the NA in the Constitution and laws of some countries in the world.
- Part IV – Recommendations on amending some constitutional regulations on organisation and operation of the NA.

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## **I. OVERVIEW OF LAWS ON ORGANISATION AND OPERATION OF THE NATIONAL ASSEMBLY**

In the history of independent Vietnam, since the 1945 August Revolution, there were 4 Constitutions promulgated in 1946, 1959, 1980 and 1992, among them, the 1992 Constitution was amended in 2001. Each Constitution marked a period of development and growth of our nation. Constitutions promulgated later also inherited selectively from quinessence value of previous Constitutions, concurrently express the essence of the Constitution – fundamental law of a state – in further deepening contents in accordance with the characteristics of building the socialist rule of law state of people, by people and for people.

The NA holding extremely important role in the political sytem of our country is the highest representative organ of people, the highest state power body of the Socialist Republic of Vietnam. The institution of People Parliament in 1946 Constitution as well as the Institution of Assembly in 1959, 1980 and 1992 Constitution were always appropriate with the moethod of organising state power that ensure legal basic for the role and function of the NA to opérate in accordance with the charateristic of a socialist country and meet people requirement of a NA of people, by people and for people.

### **1. Regulations of the 1992 Constitution and relevant laws on the function of the National Assembly**

*One of fundamental and improtant contents of the Constitution is the legal position of the NA of Vietnam. Accordingly, “The NA is the highest representative organ of people, the highest state power of the social republic of Vietnam. The NA is the only one organ that has constitutional and legislative rights. The NA decide fundamental domestic and foreign policies, social-economy, national defense and security tasks of our country; fundamental principles on organisation and operation of the state apparatus, the social relations and activities of citizens. The NA shall exercise the supreme right of supervision overa ll activities of the state”*<sup>5</sup>

The position and the role of the NA in implementation mechanisim of state power are carried out in three aspects: legislature, supervision and decision of important issue of our country. These three functions of the NA have an inextricably relation and have been constantly innovated and improved. The successful implementation of each function is the basis and premiss of ensuring the efficiency and effectiveness of the general operation of the NA, contributing to confirm NA’s position and role in the state apparatus of our country.

#### ***1.1. Constitutional and legislative function of the NA***

Legislature is one of basic functions of our country’s NA. Being the highest representative organ of people, the highest state authority, the NA is the only one organ that has constitutional and legislative rights. That means in our

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<sup>5</sup> See Article 83 of the 1992 Constitution, Art.1 of Law on Organisation of the NA

country, the NA is the only one agency that has the right to institutionalize the policy of the Party, to change people's will into state's will, into laws and rule of conduct generally enforceable to the whole society. The NA exercises its constitutional and legislative functions through activities “ *making the Constitution and amending the Constitution; making laws and amending laws; deciding programs of making laws and ordinances*”<sup>6</sup>.

The Constitution and laws are documents that promulgate highest validity legal norms which adjust basic social relations being the foundation for the organization and operation of other state agencies and all citizens. In the legal system, the Constitution is the foundation, the fundamental law of the State that stipulates the most important issues of State power and state power organizing method, political regime, socio-cultural regime, organizational structure of the state apparatus, relations between the State and individuals, fundamental rights and obligations of citizens ... . Just only the NA has the right of amending the Constitution, the amendment of the Constitution has to be approved by at least two thirds of NA deputies' voting. Laws are legal documents being enforceable after the Constitution. Laws stipulate fundamental issues in the field of economy, society, national defense and security, finance, monetary, budget, tax, ethnicity, religion, culture, education, health, science, technology, environment, foreign affairs, organization and operation of the state apparatus, public service regimes, personnel and civil servant, rights and obligations of citizens; laws and resolutions of the NA are approved by more than half of the total number of the NA deputies' voting.

The Constitution and laws represent basic guidelines and major policies of the Party that being institutionalized by the State and enforceable in the whole country. Legal norms promulgated by the NA are ensured to implement by the power of the State apparatus and the entire society. Legal norms enacted by other state authorities have to base on the Constitution, to concretize the Constitution, laws and resolutions of the NA and not to be contrary to the spirit and contents of the Constitution, laws and resolutions of the NA.

### ***1.2. Supervisory function of the National Assembly***

Supervision is one of basic functions of the NA and an important activity that clearly expresses the power of elected organs. That is the NA using its means and instruments to find out how policies and laws promulgated by the NA are implemented in practice and how state organs perform regulatory function, thereby to protect interests of voters. Supervisory activities are considered as good as they ensure the efficiency and the effectiveness. The quality of supervisory activities has the positive impact on the quality of legislative activities and decide important issues of the country. The operation of the NA not only aims at bringing laws into force in the life, ensuring that laws are strictly and uniformly implemented in the whole country, but also

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<sup>6</sup> See Par.1 Art.84 of the 1992 Constitution, Par.1 Art.2 of the Law on organization of the NA

heighten the responsibility of state organs that contribute to build the socialist rule-of-law state of Vietnam of people, by people and for people.

Because of the importance of supervisory activities, right the first Constitution (1946) stipulated the right of the NA to “control and criticize the Government”, in the 1959 Constitution, the supervisory function of the NA was mentioned in a relatively specific manner with the provision “the NA has the right to supervise the implementation of the Constitution”; “the Standing Committee of the NA has the right to supervise activities of the Council of Government, the Supreme People’s Court, the Supreme People’s Procuracy”. However, it was not until the 1980 Constitution and particularly the 1992 Constitution, the fact that “the NA performs the supreme right of supervision over all activities of the State” was officially confirmed. Articles 84, 91, 95, 96, 98 as well as other legal documents continued to concretize this function into specific regulations on supervisory activities of each subject. This provision gave the NA greater and broader power in supervisory activities. Thereby, according to the 1992 Constitution, the NA has the right to:

- + “Perform the supreme right of supervision over the compliance with the Constitution, laws and resolutions of the NA; examine reports on operation of the President, the Standing Committee of the NA, the Government, the Supreme People’s Court, the Supreme People’s Procuracy”<sup>7</sup>;

- + Abolish documents of the President, the Standing Committee of the NA, the Government, the Supreme People’s Court, the Supreme People’s Procuracy contrary to the Constitution, laws and resolutions of the NA”<sup>8</sup>;

Objects of supervision of the NA are the compliance with the Constitution, laws and resolutions of the NA; activities of senior state agencies as the President, the Standing Committee of the NA, the Government, the Supreme People’s Court, the Supreme People’s Procuracy. Main forms of supervision of the NA are examining reports on activities of the agencies under the supervision, interpellating about relevant issues. Documents of the above agencies contrary to the Constitution, laws and resolutions of the NA shall be abolished by the NA. Person responsible for the mistake shall be considered for the dismissal.

According to the Law on supervisory activities of the NA, the NA exercises the supreme right of supervision over all activities of the State and exercises the supreme right of supervision in the NA’s sessions basing on activities of supervision of the Standing Committee, the Ethnic Council, NA’s Committees, NA delegates and deputies <sup>9</sup>.

Supervision are activities to perform the state power, therefore, the efficiency of supervision has general characteristics of the efficiency of state management activities and also has individual characteristics that represent the

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<sup>7</sup> See Par.2 Art.84 of the 1992 Constitution, Par.2 Art.2 of the Law on organization of the NA

<sup>8</sup> See Par.9 Art.84 of the 1992 Constitution, Par.9 Art.2 of the organization of the NA

<sup>9</sup> See Art.1 of the Law on supervision of the NA

role of supervision of the highest state authority. The efficiency of supervisory activities is also affected by lawfulness and reasonableness. Laws on the position, the role and the competence of the NA, NA's agencies and deputies have created certain legal values and power for supervisory activities and forced objects under the supervision to perform according to the law. When subjects of supervision exercise right authorities, supervisory activities are in compliance with legal regulations, the legal efficiency of supervision will be high that causes the compliance of objects under the supervision. Therefore, the efficiency of supervision is assessed through the level of implementation of resolutions and recommendations on supervision of the NA. Besides, the supervision aims at ensuring law enforcement so the supervision impacts on nearly all fields of social life, clarifies the transparency of social policies, relieve many problems of people. Therefore, if the contents of supervision are in compliance with the requirements of the life, it will facilitate the implementation of supervision and strongly impact on social relations because of the support of the society and the practical efficiency of supervision will be better.

### ***1.3. The function of deciding important issues of the country***

Along with constitutional, legislative and supervisory functions, the function of deciding important issues of our country is a fundamental function of the NA. That is the function of deciding fundamental policies on domestic and foreign affairs, social – economic tasks, national defense and security, prescribing main principles on organisation and operation of the state apparatus, social relations and activities of citizens.

According to regulations of the 1992 Constitution, fundamental issues of our country decided by the NA include of:

- *Organisation and operation of central state agencies, the NA:*

+ Prescribing the organisation and operation of the NA, the President, the Government, the Supreme People's Court, the Supreme People's Procuracy and local authorities <sup>10</sup>;

+ Electing and dismissing the President, the Vice President, NA President, NA Vice Presidents and Members of the Standing Committee of the NA, the Preme Minister, the President of the Supreme People's Court, the President of the Supreme People's Procuracy; approving proposals of the Prime Minister on the appointment and dismissal of deputy prime ministers, ministers and other member of the Government; approving proposals of the President on the list of members of the Council of national defense and security; voting of confidence for those positions elected or approved by the NA<sup>11</sup>;

+ Deciding to establish, abolish minitries and agencies of the Government; establish, merge, split, adjust the boundary of central cities and provinces;

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<sup>10</sup> See Par.6 Art.84 of the 1992 Constitution, Par.6 Art.2 of the Law on organization of the NA

<sup>11</sup> See Par.7 Art.84 of the 1992 Constitution, Par.7 Art.2 of the Law on organization of the NA

establish or dissolve special economic – administrative units <sup>12</sup>;

- *Social-economic issues and budget*, the NA has the rights to:

+ Decide on national social – economic development plans<sup>13</sup>;

+ Decide on national fiscal and monetary policy; decide on national budget estimates and central budget allocation; approve national budget settlement; stipulate, amend or abolish taxes<sup>14</sup>;

+ Decide on policies of ethnic and religion of the State<sup>15</sup>;

+ Decide on the amnesty <sup>16</sup>;

+ Regulate titles and ranks on people armed force, diplomatic titles and ranks; regulate medals and national honor titles<sup>17</sup>;

+ Decide on the referendum<sup>18</sup>.

- *War and Peace*, the NA decides the issues of war and peace; regulate emergency situation, other special measures ensure national defense and security<sup>19</sup>.

- *Foreign affairs*, the NA decides on basic policies of foreign affairs; ratifies or annuls international treaties directly signed by the President; ratifies or annuls other international treaties signed or acceded according to the proposal of the President <sup>20</sup>.

## **2. Regulations of the 1992 Constitution and relevant legal documents on organisational forms and operation modes of the NA, NA's bodies; NA deputies**

The 1992 Constitution had regulations on organisation form and operation methods of the NA, NA's bodies; NA deputies. Based on the Constitution, the Law on the organisation of the NA, Rules of NA's sessions, Operational rules of the Standing Committee of the NA, Operational rules of the Ethnic Council, NA's Committees, Operational rules of NA delegation of deputies and deputies; the Law on the Promulgation of legal documents has more specific regulations.

### **2.1. Organisational forms and operational modes of the NA**

The NA of our country has the organisational structure of one assembly. The NA does not regularly operate, works under the conference regime and makes decisions by majority. The NA has the Chairman, Vice Chairman and the

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<sup>12</sup> See Par.8 Art.84 of the 1992 Constitution, Par.8 Art.2 of the Law on organization of the NA

<sup>13</sup> See Par.3 Art.84 of the 1992 Constitution, Par.3 Art.2 of the Law on organization of the NA

<sup>14</sup> See Par.4 Art.84 of the 1992 Constitution, Par.4 Art.2 of the Law on organization of the NA

<sup>15</sup> See Par.5 Art.84 of the 1992 Constitution, Par.5 Art.2 of the Law on organization of the NA

<sup>16</sup> See Par.10 Art.84 of the 1992 Constitution, Par.10 Art.2 of the Law on organization of the NA

<sup>17</sup> See Par.11 Art.84 of the 1992 Constitution, Par.11 Art.2 of the Law on organization of the NA

<sup>18</sup> See Par.14 Art.84 of the 1992 Constitution, Par.14 Art.2 of the Law on organization of the NA

<sup>19</sup> See Par.12 Art.84 of the 1992 Constitution, Par.12 Art.2 of the Law on organization of the NA

<sup>20</sup> See Par.13 Art.84 of the 1992 Constitution, Par.13 Art.2 of the Law on organization of the NA

NA deputies. The Chairman of the NA presides at NA's sessions; signs to certify laws and resolutions of the NA; leads the work of the Standing Committee of the NA; organises the implementation of external relations of the NA; keeps the relation with the NA deputies. NA's Vice Chairmen assist the Chairman and perform tasks assigned by the Chairman. The effectiveness of the operation of the NA is ensured by the effectiveness of NA's sessions, the operation of the NA Standing Committee, the Ethnic Council, NA's Committees, NA's delegations of deputies and deputies<sup>21</sup>.

Main operational modes of the NA are implemented through NA's sessions and the operation of the NA Standing Committee, the Ethnic Council, NA's Committees, the NA Delegation of deputies and the NA deputies.

#### *NA's sessions*

The session of the NA is an essential operational form of the NA where the State power and the collective understanding of NA's deputies have been most directly and concentratively expressed. The NA regularly meets twice a year. In case of the request of the President, the Prime Minister or at least one-thirds of the total number of the NA deputies or the decision of the NA, the NA Standing Committee convenes extraordinary sessions.

The NA Standing Committee has the task of preparing for NA sessions. The preparation consists of two major blocks of work that are preparation of contents and preparation of administrative work. The NA Chairman presides at NA sessions

At each session, the NA discusses and approves legal document drafts; listens to reports and promulgates resolutions on working report of the Government, the Supreme People's Court and the Supreme People's Procuracy and other thematic reports; interpellates and listens to answers; decides on other important issues.

The operation of the NA Standing Committee, the Ethnic Council, NA Committees, the delegation of the NA deputies and deputies are performed in NA sessions and in the period between two NA sessions.

#### ***2.2. The organisation and operational modes of the NA's bodies***

According to the 1992 Constitution, the NA's bodies includes of the NA Standing Committee, the Ethnic Council and NA's Committees. According to the Law on the organisation of the NA, NA's bodies includes of the Ethnic Council and 9 Committees:

1. Committee on Law;
2. Committee on Justice;
3. Committee on Economy;

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<sup>21</sup> See Art.4 of the Law on organization of the NA

4. Committee on Finance and Budget;
5. Committee on National Defense and Security;
6. Committee on Culture, Education, Youth and Teenager;
7. Committee on social affairs;
8. Committee on Science; Technology and Environment;
9. Committee on Foreign Affairs.

#### *2.2.1. The NA Standing Committee – permanent body of the NA*

The NA of our country is held in collective action model, the NA collectively works and makes decisions by majority; however, the NA does not professionally and regularly work. It is due to this characteristic that a necessary objective requirement is set up that it has been necessary to establish a permanent body of the NA which has the certain duties and authorities in order to ensure the continuity of operation of the NA. Members of this permanent body are professional NA deputies. The permanent body of the NA is a component of the NA whose power is allocated by the NA and delegated in the fields of operation of the NA. In some areas, the NA Standing Committee works in parallel with the NA but the scale of duties and authorities is more limited.

The NA Standing Committee is the Permanent body of the NA. The NA Standing Committee includes of: The NA Chairman, NA Vice Chairmen and members. The NA decides the number of members of the NA Standing Committee. Members of the NA Standing Committee are not simultaneously members of the Government.

The NA Standing Committee performs duties and authorities that have been stipulated in the Constitution and the Law on the organisation of the NA as follows:

- To announce and preside at the election of deputies to the NA; organise the preparation, convene and preside NA's session;
- To interpret the Constitution, laws, ordinances; enact ordinances on issues assigned by the NA;
- To supervise the implementation of legal normative documents of the NA and the NA Standing Committee; supervise the operation of the Government, the Supreme People's Court, the Supreme People's Procuracy ...; supervise and guide the activities of the People's Councils; repeal wrong resolutions of People's Councils of provinces and cities under central authority; dissolve People's Councils of provinces and cities under central authority in case of that People's Council causes serious harm to the interests of people;
- To direct, regulate and coordinate the activities of the Ethnic Council and NA Committees; direct and ensure conditions for the activities of the NA deputies;

- When the NA cannot meet, to decide on the proclamation of war once the country is invaded and report such to the NA for consideration and decision at its nearest sessions; decide on general mobilization or limited mobilization; to proclaim the state of emergency throughout the country or in each locality;

- To perform the NA's tasks of external relations;

- To organise the referenda under decisions of the NA.

### *2.2.2. The NA Committees*

The Ethnic Council and Committees of the NA are NA's bodies that work in collective mode and make decisions by majority. The NA elects the Ethnic Council including of the Chairman, Vice Chairmen and members. The NA elects Committee of the NA. The Ethnic and each Committee have a number of members working in full-time mode.

According to the 1992 Constitution, the Ethnic Council has the task of doing research and giving recommendations to the NA on ethnical issues; perform the right of supervision over the implementation of ethnical policies, programs and plan of socio-economic development of mountaneous regions and area inhabited by ethnic minority people's.

The Ethnic Council and Committees of the NA have the tasks of doing research and verifying bills, recommendations on laws, ordinance drafts and other drafts, reports assigned by the NA or the NA Standing committee; submit to the NA Standing Committee their opinions on laws and ordinances making programs; perform the right of supervision within the duties and power prescribed by law; recommend on issues within the scale of operation of the Council and the Committee. The number of Committees and the tasks and power of each Committee has been prescribed in the Law on the organisation of the NA.

### *2.3. Operational modes of the NA deputies; the relationship between the NA deputies and voters and constituencies*

The NA deputies are persons elected by voters, representing the will and aspiration of people, representatives of not only people in their constituencies but also people through out the country. The NA perform their tasks in NA's sessions, between two NA's sessions.

The tasks and power of the NA deputies are prescribed in articles 87, 97, 98 and 100 of the Constitution. They are:

- The NA deputies have to closely contact with electors, being supervised by electors; gather and honestly reflect opinions and aspirations of electors to the NA and relevant state bodies; contact and report to electors about the performance of their tasks and NA's activities; reply the requirements and recommendations of electors; consider, urge and monitor the settlement of complaints and denunciations of citizens; guide and help citizens to perform these rights. The NA deputies disseminate and mobilize people to implement the Constitution, laws and resolutions of the NA.

- The NA deputies have the right to interpellate the President, the NA Chairman, the Prime Minister, the Ministers and other members of the Government, the President of the Supreme People's Court and the Director of the Supreme People's Procuracy.

- The NA deputies have the right to require state bodies, social organisations, economic organisations, armed force agencies to answer issues that the NA deputies concern.

- Without the approval of the NA and during the interval of two NA's session, without the approval of the NA Standing Committee, it is not allowed to arrest and prosecute the NA deputies. In case of flagrante delicto that the NA deputies are temporarily arrested, the police have to immediately report to the NA and the NA Standing Committee for the consideration and decisions.

- The NA deputies have to spend time on implementing the tasks of the representative. The NA Standing Committee, the Prime Minister, Ministers and other members of the Government and other State organs are responsible for providing necessary documents that the deputies require and facilitate the NA deputies to perform the tasks of representatives.

In order to perform the tasks to electors that prescribed in the Constitution, before NA's sessions, deputies contact electors to gather electors' opinion on issues related to the contents of sessions. After the sessions, the deputies contact to report electors on the result of the session; disseminate and interpret Resolutions of the NA, mobilize and together with people to implement those Resolution. At least once per year, the NA deputies have to report to electors on their activities and those of the NA, reply requirements and proposals of electors. The NA deputies have to reply all received requirements and proposals of electors. The NA deputies regularly receive people; receive and transfer complaints and denunciations of citizens; help people monitor and urge the settlement of complaint and denunciations. When receiving complaints and denunciations, the NA deputies are responsible for considering and requiring leaders of competent organs or organisation; monitor and urge the settlement; notify complainants and denoucers of the result.

### **3. Regulations of the 1992 Constitution and relevant legal documents on state power allocation, cooperation and supervision mechanism represented in the relationship between the NA and other state bodies in the state apparatus**

The 1992 Constitution was amended and supplemented in 2001 that defined our country as the socialist republic rule-of-law state with principle state power is unified and there is the allocation and cooperation between state bodies in the implementation of legislative, executive and justice rights.

The impact level of these principles on the relation between the NA and other state authorities is not merely between these organs but also affects state and society organisation mechanism and management efficiency in general. After

all, other state authorities are NA's bodies established and prescribed functions, duties and power by the NA in order to participate in the implementation of unified state power. Thus, "the NA is both a state authority and a special organisation of people through out the country. Therefore, in the relation with other state authorities, the NA as well as the NA deputies are subjects of state power, thus, that can be considered as subjects of national management" (22).

The relationship between the NA and other state institutions is specifically defined through following aspects:

- *In terms of organisation:* The NA has the right to elect and dismiss leaders of state authorities (the President, Vice President, NA Chairman, NA Vice Chairmen and members of the NA Standing Committee, the Prime Minister, the President of the Supreme People's Court, Prosecutor General of the the Supreme People's Procuracy); the operational term of state authorities established by the NA is co-extensive with that of the NA.

Being elected and dismissed by the NA, it can be seen that the existence of other central state authorities depends on the confidence of the NA.

- *In terms of content authorities:* The NA performs constitutional and legislative rights; the Government performs executive rights; the Supreme People's Court and the Supreme People's Procuracy performs judicial rights.

Just because of specifically allocated tasks, it is considered in the relation with each other that each state authority established has its own scale of authority and the independence in organising the implementation of assigned duties and power.

- *In terms of liability regime:* The NA has the supreme authority of supervision over activities of other state authorities.

The 1992 Constitution generally prescribed the organisational model, functions, duties and power of the NA, the President, the Government, People's Councils, People's Committees, the Supreme People's Court, the Supreme People's Procuracy. One of important amendment and supplement of the Constitution in 2001 is the regulation on the principle of allocation and cooperation between state authorities in the implementation of legislative, executive and judicial rights in accordance with the objective of building the socialist republic rule-of-law state. This is an important advance in the awareness of state power organisation methods, in order to overcome difficulties and shortcomings in the practical organisation and operation of the state apparatus. Basing on regulations of the Constitution, the organisation and implementation of state power has improved towards democracy and higher specialization; the effectiveness of the operation of the state apparatus has been gradually improved.

### ***3.1. The relationship between the NA and the President***

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22. Nong Duc Manh – *Continuous improvement of the quality, efficiency and effectiveness of the operation of the NA in new period*, The Communist Magazine, No.17 (9-2000)

This is the relationship between the highest representative organ of people, the highest state authority and the President – the head of state on behalf of the Socialist Republic of Vietnam on domestic and foreign affairs.

According to regulations of the 1992 Constitution, the NA has the right to elect, remove and dismiss the President, Vice Presidents. The President is elected within the NA deputies. The term of the President is the term of the NA. When the term of the NA expires, the President continues his duties until the new NA elects a new President. This regulation of the Constitution is concretized in Article 87 of the Law on organisation of the NA: “*The NA shall elect the President among NA deputies on the basis of the introduction of the NA Standing Committee*”<sup>23</sup>.

In the relationship with the NA, the President has to be responsible for reporting his work to the NA and reply the interpellation of NA deputies. The NA has the right to abrogate documents adopted by the President which are incompatible with the Constitution, laws and resolutions of the NA.

The President is responsible for promulgating the Constitution, laws and resolutions within at least 15 days from the approval unless the President questions to review ordinances approved by the NA Standing Committee.

According to the 1992 Constitution, three among 12 tasks of the President have to be based on resolutions of the NA or the NA Standing Committee. Specifically, according to the resolution of the NA on election, there are 3 out of 12 tasks of the President have to be based on resolutions of the NA or the NA Standing Committee. Namely, to appoint, remove or dismiss Deputy Prime Ministers, Ministers and other members of the Government on the basis of resolutions of the NA; to proclaim decisions on declaration of the state of war, to proclaim decisions on amnesties on the basis of resolutions of the NA or the NA Standing Committee; to proclaim decisions on general of local mobilisation, to declare a state of emergency on the basis of resolutions of the NA Standing Committee; in the case where the NA fails to convene, to proclaim a state of emergency in the whole country or localities<sup>24</sup>.

### ***3.2. The relationship between the NA and the Government***

According to Article 109 of the 1992 Constitution, *the Government is the executive body of the NA, the highest administrative state body of the Socialist Republic of Vietnam*. The NA elects, removes or dismisses the Prime Minister; approves proposals of the Prime Minister on the appointment, removal or dismissal of Deputy Prime Ministers, Ministers or other members of the Government. The term of the Government is co-extensive with that of each legislature of the NA, when the term of a given legislature of the NA expires, the Government will perform its duties until the new NA forms a new Government

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<sup>23</sup> See Par.7 Art.87 of the 1992 Constitution

<sup>24</sup> See Par.4, Par.5, Par.6 Article 103 of the 1992 Constitution

Being formed by the NA, the Government is responsible for ensuring the implementation of legislative documents, the Government is organised and Works according to principles and regulation prescribed by the NA, responsible to the NA and reports on operation to the NA. The Prime Ministers and other members of the Government are also responsible to the NA for the sectors and field under their management. The NA performs the supreme right of supervisión over the whole operation of the State including the Government. Documents promulgated by the Government have to be in accordance with the Constitution, laws and resolutions of the NA and have to be suspended or abrogated in case of signs of unconstitution or law violation. Members of the Government can be dismissed by the NA. All these regulations express the predominance of the NA in the relationship with the Government and being in accordance with the principle, the power organisation model of our country – the Socialist state under the leadership of a major party – the Communist Party of Vietnam

The relationship between the NA and the Government is not reflected only in the above-mentioned points but also during the process of duties and power implementation, the Government participates in the relationship with a number of NA's organs: the NA Standing Committee, the Ethnic Council and NA's Committees.

According to the 1992 Constitution, when the NA does not convene, the Government has to report its activities to the NA and being supervised by this organ. Documents promulgated by the Government have to be in compatible with ordinances and resolution of the NA Standing Committee. Some activities of the Government can be conducted in case of approval or guidance of the NA Standing Committee, typically the law making activities. Pursuant to Article 14 of the Law on promulgation of legal normative documents, the Government has the right to promulgate “independent” decrees to regulate necessary issues but lack of conditions to be law or ordinances in order to meet requirements of national government, economic and social management. The promulgation of these decrees have to be approved by the NA Standing Committee. According to present law making process, law projects drafted by the Government before being submitted to the NA have to be considered and commented by the NA Standing Committee.

The relationship between the Government and the Ethnic Council, NA's Committees is clearly recognized in the implementation of the right of supervision of the Council and Committees.

The NA is the unique legislature, the Government is the executive organ that implement the execution and management state affairs. However, the operation of these two organs is not absolutely seperated but cooperative and alternate. Although legislature is a special authority of the NA, the Government actively participate in this process, particularly in the period of initiation and submit law projects; moreover, the Government can promulgate “independent” decrees including contents that ought to have been regulated by laws. The NA

also performs a number of tasks the nature of which is the task of an executive organ. Finally, the effort of the Government is important in organising the implementation in order to let the law come into force.

### ***3.3. The relationship between the NA and the Supreme People's Court, the Supreme People's Procuracy***

#### *3.3.1. The relationship between the NA and the Supreme People's Court*

This is the relationship between the highest representative body of people, the highest state power with the highest judicial body. This relation is recognized through the fact that the Supreme People's Court is formed by the NA according to the 1992 Constitution and the Law of organisation of the Supreme People's Court. Namely, the NA has the right to elect, remove and dismiss the Chairman of the Supreme People's Court among NA's deputies according to the suggestion of the President. The term of the Chairman of the Supreme People's Court is co-extensive with that of the NA.

The Chairman of the Supreme People's Court has to be responsible and report the operation to the NA, when the NA does not convene, he has to be responsible and report the operation to the NA Standing Committee.

The NA implements the supreme right of supervision over activities of the Supreme People's Court in the implementation the Constitution, laws and resolution of the NA, the right to examine the operation report of the Supreme People's Court. The NA deputies have the right to interpellate the Chairman of the Supreme People's Court and the Chairman has to reply the interpellation before the NA or the NA Standing Committee or reply by texts.

The Supreme People's Court has the right to submit law projects to the NA and the NA has the right to discuss, approve or abrogate those projects.

The NA Standing Committee also has the right to supervise over the operation of the Supreme People's Court, the right to suspend the implementation of documents of the Supreme People's Court contrary to the Constitution, laws and resolutions of the NA and submit to the NA to abrogate those documents, the right to abrogate documents of the Supreme People's Court contrary to ordinances and resolutions of the NA Standing Committee.

#### *3.3.2. The relationship between the NA and the Supreme People's Procuracy*

This is the relation between the NA, the highest representative body of people, the highest state power body and the Supreme People's Procuracy, the organ implement the right of prosecution and supervise over judicial activities. This relation is represent through the fact that the NA has the right to elect, remove and dismiss the Prosecutor General of the Supreme People's Procuracy among NA deputies according to the suggestion of the President. The term of the Prosecutor General is co-extensive with that of the NA.

The Prosecutor General is responsible and reports on the operation to the

NA; when the NA does not convene, he has to be responsible and report to the NA Standing Committee.

The NA implements the supreme right to supervise over the operation of the Supreme People's Procuracy in the implementation of the Constitution, laws and resolutions of the NA; the right to examine the operation reports of the Supreme People's Procuracy. The NA deputies have the right to interpellate the Prosecutor General, the Prosecutor General has to reply the interpellation before the NA or the NA Standing Committee or reply by texts.

The NA has the right to abrogate legal documents of the Supreme People's Procuracy contrary to the Constitution, laws and resolutions of the NA. Therefore, documents promulgated by the Supreme People's Procuracy have to be in based on and in accordance with the Constitution, laws and resolutions of the NA.

The Supreme People's Procuracy has the right to submit law projects to the NA and the NA has the right to discuss, approve or abrogate those projects.

The NA Standing Committee has the right to supervise over the operation of the Supreme People's Procuracy; the right to suspend the implementation of documents of the Supreme People's Procuracy contrary to the Constitution, laws and resolutions of the NA and submit to the NA to abrogate those documents, the right to abrogate documents of the Supreme People's Procuracy contrary to ordinances and resolutions of the NA Standing Committee.

### ***3.4. The relationship between the NA and the State Audit***

At present, the State Audit is an independent institution stipulated in the Law on State auditing but not stipulated in the Constitution. Therefore, the relation between the NA and the State Audit has also not been stipulated in the Constitution and the Law on organisation of the NA.

According to the Law on State auditing, the NA elects, removes or dismisses the General State Auditors and regulates the organization and operation of the State Audit. The State Audit helps the NA supervise the implementation of public finance, particularly national budget.

The State Audit has an important role in national government, through professional activities to ensure the efficiency and the effectiveness and the transparency in the operation of organs and organisation of national budget, money and assets utilization.

“Lima Declaration of Guidelines on Auditing Precepts”<sup>25</sup> and “Mexico Declaration on Supreme Audit Institution”<sup>26</sup> of the International Organisation of Supreme Audit Institution acknowledged the necessity and contents of the State Audit needed to be regulated in Constitutions. Accordingly, the utilization of national budget, money and assets of any organisation has to be ensured by an independent organisation through professional activities about the public and

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<sup>25</sup> Lima Declaration approved in the IX Congress of INTOSAI October, 1977.

<sup>26</sup> Mexico Declaration approved in the XIX Congress of INTOSAI in October, 2007.

transparency, to ensure national resources to be effectively utilized and limit the corruption, the waste and other negative activities. At present, the majority of countries in the world have regulations on the State Audit in the Constitution<sup>27</sup>, accordingly, at different levels and quantities, the principle of independent operation and not being subject to interfere from other power institutions of the State Audit have been recorded.

The international experience shows that basing on the relation with other institutions in the state apparatus, presently there are 3 models: Independent audit institution (Germany, France, Spanish, Italia ...), Audit Institution belong to the executive body (China, Japan, Sweden ...), Audit institution belong to the legislature (The US, Russia, England). Depending on the regime of politics and state power organisation, the definition of the model of the Audit Institution is different in different countries.

According to present Law on the State Audit, it can be identified that Vietnam is choosing the Audit agency Model close to independent audit model established by the NA. This model has the certain reasonableness in the condition of united state power with the assignment, coordination and control of power between organs in the implementation of legislative, executive and judicial rights. Because, being the highest state power organ, the NA needs an effective financial supervision instrument over the operation of entities using national money, assets and budget.

Over six years of implementation, although there has not been the comprehensive summary of the implementation of this regulations of the Law on the State Audit, the practice has shown that the present State Audit model has reasonable elements which are necessarily confirmed and inherited.

- *Firstly*, being an entity established by the NA, the legal position of the State Audit has not been recognized in the Constitution;

- *Secondly*, Article 13 of the Law on the State Audit states: *The State Audit is a professional agency specialized in state financial examination, set up by the National Assembly, operating independently and complying with the law only.* However, the present law recognizes the authority of the State Audit equivalent to a national administrative body having the function of promulgating legal normative documents with a broad management scale according to 16 tasks, which are stipulated in Article 15 in the Law on the State Audit. This has caused certain limitations when the State Audit established by the NA as a professional organ not in the executive branch but having the function of state management.

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<sup>27</sup> According to preliminary statistics, in 72 surveyed countries, 68 countries identified that the State Audit is a constitutionalized institution. Among which, there were 23 countries identifying that the State Audit belonging to the legislative branch, 7 countries identifying the State Audit belongs to the administrative branch, 5 countries identifying the State Audit belonging to the judicial branch, 11 countries identifying the State belonging to the President, 1 country identifying the State Audit belonging to the King and 21 countries identifying the State Audit is completely independent with other institutions of the State.

This fact has impacted on the assignment, coordination and control of the power between legislative, executive and judicial bodies;

- *Thirdly*, the present law has recognized the broad authority of the State Audit that caused duplicate and overlap relations with financial inspection that cause the difficulties for the operation of entities being subjects of inspection and audit.

### ***3.5. The relationship between the NA and the local authorities***

This is the relation between the NA and People's Councils and People's Committees at every levels. According to the 1992 Constitution, the NA implements the supreme right of supervision over all activities of the State. That means the NA not only supervises over central state bodies but also over all activities of the State in localities. However, being different from central state bodies, to the local state bodies, the supervision of the NA is only the supreme supervision over the implementation of the Constitution, laws and resolutions of the NA, the NA does not have the conditions to supervise over the whole activities of these bodies.

The NA regulated the organisation and operation of the local authorities through articles of the Constitution and the Law on organisation of People's Councils and People's Committees promulgated by the NA. Thus, the formation order, position, nature, functions, duties, powers and operation forms of local authorities are stipulated by the NA.s.

Documents promulgated by the People's Councils and the People's Committees have to be compatible with the Constitution, laws and resolutions of the NA; ordinances and resolutions of the NA Standing Committee. The NA Standing Committee has the right of supervision and operation guidance to the People's Councils at all levels. The NA Standing Committee has the right to abrogate wrong documents of provincial People's Councils, dismiss provincial People's Councils when these Councils cause serious harm to the interests of the people.

In order to implement the policy of decentralization together with the improvement of the responsibilities of local authorities in the revenues and expenditures of local budget, the 1992 Constitution stipulated the power of the NA in budget decision, accordingly, the NA only allocates annual central budget for ministries and factors and the level of addition from central budget to each central province and city. Thus, the People's Councils of provinces and cities under the central authority will have more autonomy and rights of decisions on the allocation of specific budget of their own localities based on their revenues according to the decentralization and additional levels from the central budget.

## II. EVALUATING THE IMPLEMENTATION OF THE 1992 CONSTITUTION OF THE NATIONAL ASSEMBLY

On the basis of the implementation of the 1992 Constitution and relevant legal documents, the organisation and operation of the NA in general and NA's agencies, delegations of the NA deputies and NA deputies in particular have made positive changes. These results have been recorded in operation reports, final summary reports and particularly in the Summary report on the implementation of the Constitution of the NA and NA's agencies which were conducted in the recent time. It can be generalized some basic features of the effect of the implementation of the Constitution to the organisation and operation of the NA as follows:

### **1. The position, role, organisational structure, operation mode and working regime of the NA**

Implementing regulations of the Constitution, the model of organisation and operation of the NA have more innovations that importantly contribute to the improvement of the efficiency and effectiveness of the state apparatus in general. These innovations have been changing the face of the NA of Vietnam in a positive way, better meeting the requirements of the Socialist rule-of-law State of people, for people and by people. This is shown in the following main features:

*Firstly*, the position and role of the highest representative of people, the highest state power body of the Socialist Republic of Vietnam of the NA have been more and more clearly confirmed. The 1992 Constitution defined that the NA is the highest representative body of people, the highest state power body of the Socialist Republic of Vietnam performing 3 fundamental functions of constitutionalisation, legislation and decision on important issues of the country and implementing the right of supervision over all activities of the State.

On the basis of regulations of the Constitution, from 1992 to present, the NA has issued, amended and supplemented several times the Law on Election of Deputies of the NA and directly guide the organisation of elections to help the election of deputies of the NA become more and more democratic, more and more improve the quality of deputies, the method to deploy the election more complete and science, the structure and elements of deputies more appropriate with more balance between the requirements of structure and quality of the deputies. The NA promulgated the Law on organisation of the NA in 1992, amended and supplemented this Law in 2001 and 2007 in order to create legal basis for the impulse of innovation of organisational structure of the NA. Simultaneously, in order to improve the operational efficiency, gradually overcome the formalism and limitations in activities compared with the previous NA, the NA in turn issued a number of legal normative documents related to organisational mode of the NA, NA's agencies, delegations of the NA deputies and NA's deputies, such as: Rules of NA's sessions (in 1993 and 2002); Rules on operation of the NA Standing Committee (in 1993 and 2004); Rules on

operation of the Ethnic Council (in 1993); Rules on operation of NA's Committees (in 1993) and merged two rules into the Rules on operation of the Ethnic and NA's Committees (in 2004); Rules on operation of the deputies and delegations of deputies to the NA (in 1993 and 2004); Law on supervisory activities of the NA (in 2003); Law on promulgation of legal normative documents (first issued in 1996, amended and supplemented in 2002, comprehensively amended in 2008).<sup>28</sup>

*Secondly*, the NA has made important adjustment in the regulation and performance of the tasks and power of the NA towards more clearly stipulating the authority of the NA in particular issues. Particularly, the 1992 Constitution (amended and supplemented in 2001) had significant supplement and adjustment in the authority of the NA in Article 84. Accordingly, the Constitution more clearly defined the right to decide the budget estimates and the central budget allocation (point 4); decide region policies (point 5); vote of confidence for those whose positions are elected or approved by the NA (point 7); ratify or annul international treaties directly signed by the President (point 13). The implementation of this authority in fact has made aggressive movements toward more and more substantive. Particularly for the right to vote of confidence for those whose positions are elected or approved by the NA although in recent time, this right has not been performed, that has created important legal instruments that help to enhance the efficiency and effectiveness of operational activities of the NA.<sup>29</sup>

*Thirdly*, the organisational model of the NA has been innovated and consolidated. The 1992 Constitution reestablished the NA Standing Committee replaced the State Council under the provisions of the 1980 Constitution and specifically defined 11 authorities of the NA Standing Committee (Article 91), contributed to improve the operational quality and effectiveness of the NA in the condition of irregularly working. The NA Standing Committee also established professional organs such as Deputy Operations Division, Legislative Operations Division, People's Aspiration Division and The Institution of Legislative Research to support its operation.

Other bodies of the NA also has had many changes. From 7 Committees stipulated in the Law on organisation of the NA in 2001, the XII NA, the number of Committees has increased to 9 (added the Judicial Committee and the Financial and Budget Committee). The tasks and authorities of Committees have been assigned more reasonably and appropriately with the ability and operational conditions of each agency. Thus the activities of the Ethnic Council and Committees have been more and more effective. This is reflected in the result of examining and contributing opinions on projects of laws and ordinances, investigating social-economic development plans, State budget estimates and other important contents before submitting to the NA and the NA

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<sup>28</sup> Summary report on the implementation of the Constitution of the NA Standing Committee

<sup>29</sup> Summary report on the implementation of the Constitution of the NA Standing Committee

Standing Committee; conducting annual supervisory programs on outstanding fields in the society concerned by the voters; therefrom giving more useful recommendations to relevant organs and organisations. Besides, the Ethnic Council and some Committees have actively suggested and performed the right of law initiative according to Article 87 of the Constitution that contribute to the development and improvement of the legal system in the assigned field.<sup>30</sup>

*Fourthly*, , the 2001 Law on organisation of the NA (which was amended and supplemented in 2007) regulated on operational method and working regime of the NA as follows: “The NA organises and operates under the principle of democratic centralism, works under the conference regime and decides by the majority. The effectiveness of operation of the NA is ensured by the effectiveness of NA’s sessions, activities of the NA Standing Committee, the Ethnic Council, NA’s Committees, delegations of the NA deputies and NA’s deputies”. Thus, basing on this regulation, the NA works under the conference regime, every decisions of the NA are based on opinions of the majority. In order to completely implement functions, duties and power based on the operation principle and working regime, in the recent time, along with the innovation of organisational structure, the NA ceaselessly pays attention to the improvement and renewal of operational modes of the NA, NA’s Committees, delegations of the NA deputies and NA’s deputies in order to contribute to improving the quality and effectiveness of the operation of the NA.

*The operation of the NA in sessions:* In sessions, the principle of working under the conference regime, deciding by the majority is observed. The consideration and approval of law, decision on social-economic development plans, decision on organisation of the state apparatus, the senior personnels, important national projects; the supreme supervision in sessions; the interpellation and responses to the interpellation are implemented properly according to processes, democratically, responsibly, concentratively, flexibly and effectively. The preparation from creating to implementing the agenda at the meeting has been continuously innovated and improved in order to promote the intelligence if deputies of the NA, to mobilize the practical contribution of relevant agencies and assistant apparatus. Through activities at the meeting, the NA increasingly affirms the position and role of the highest representative body, the highest state power organ of the Socialist republic of Vietnam ; contributing to consolidate and strengthen the attachment of people to the NA in particular and to the political system in general.

*The NA Standing Committee:* As a standing body of the NA, the Standing Committee of previous terms have constantly paid attention to the renewal of operational methods to effectively implement duties and power. The consideration of the issue of the jurisdiction is taken seriously, due process and procedures with high sense of responsibility. The NA Standing Committee

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<sup>30</sup> Summary report on the implementation of the Constitution of the Committee on Science and Technology, Committee on Economic.

highlights the requirement of improvement of working methods at meetings of the NA Standing Committee concentrating on the focus of the affair, reducing reporting procedures and explanation out of the focus; members of the NA Standing Committee are highly aware of giving opinions in a brief but sufficient and right to the point. In order to ensure the quality of the session based on the available time, the NA Standing Committee has constantly improve the method of discussion and comment on the projects and reports, particularly the bills, simultaneously, intensifying supervisory activities through dialogues such as explanation, interpellation and respond to the interpellation at the meeting of the NA Standing Committee. To gradually improve the effectiveness of the deployment and preparation of activities of the NA Standing Committee, in recent terms, the NA Standing Committee constantly focused on guiding the advisory and assistant agencies in studying the improvement of the method of organisation and conduction of NA's sessions in order to ensure to enhance the quality and shorten the time to conduct meetings.

In the direction and operation, the NA Standing Committee considers to intensify the guidance, reconciliation and coordination of activities with the Ethnic Council and NA's Committees, to encourage and create mechanisms to promote the role of the Ethnic Council and NA's Committees in investigating, coordinating to investigate and commenting on the projects of laws, ordinances and resolutions; better conduct the reconciliation and coordination of activities of the Ethnic Council and NA's Committees in the supervision, fieldwork research and external affairs...to ensure closely coordination avoiding duplication.

*The Ethnic Council and Committees of the NA* : Along with the renewal of operational methods of the NA and the NA Standing Committee, activities of the Ethnic Council and Committees of the NA in recent terms have been much renewed that contributes to improve the quality and effectiveness of operation of the Council and Committees. Specifically, the Ethnic and Committees of the NA have highlighted the leading and coordinating role of the NA Standing Committee to pay more attention to making operation plans and programs ; enhanced to coordinate between the Ethnic Council and Committees of the NA, as well as coordinate with agencies and organisations involved in the process of working deployment. Members of the Ethnic Council and Committees of the NA have been highly aware of their positions and roles, personal responsibilities for general working achievements of the Ethnic Council and Committees of the NA, from which to find the solution for more science, appropriate and effective deployment of implementing tasks and power.

*Deputies and delegations of the NA deputies*: In recent terms, the deputies of the NA have made great efforts to participate in common activities of the NA, particularly in NA's sessions; participate in many activities of agencies and delegations of the NA deputies of which the deputies are members; improve many activities as individuals in the process of performance of tasks and power prescribed by laws, namely, more regularly contacting with voters and people, renewing activities to contact with voters in accordance with the law,

strengthening the implementation of Joint resolutions on contact with voters of the NA Standing Committee and the Central Committee of Vietnamese Fatherland Front. Most of deputies regularly paid attention to grasp opinions and petitions of voters, detected practical urgent matters to suggest, discuss or implement the right of interpellation and supervision, fully participated in NA's sessions and being more active in doing researches and contributing opinions on the issues of the agenda of the NA, strictly observed rules of sessions of the NA ...

Delegations of the NA deputies have had many renewals on the method to implement activities of the delegations, increasingly better and more effectively performed their tasks and power in law making, supervision, voters and people contact, keeping the relationship and coordination with involved central and local agencies and organisation that importantly contributes to general operation results of the NA.<sup>31</sup>

*Fifth*, the relationship between the NA and other agencies and organisations on the political system has been constantly renewed to bring into play the general strength of the whole political system under the leadership of the Party. First, the relationship between the Party and the NA, in the light of reform policy, the Party itself has innovated its leadership methods, thus, the relationship between the Party and the NA has also been renewed to unify the will of the Party and the heart of the people, both promote leadership role of the Party and enhance the position and role of the NA – the highest state power body, the highest representative organ of the people.

The legal coordinative relations between the NA and competent state organs such as the President, the Government, the Supreme People's Court, the Supreme People's Procuracy have been more and more improved that facilitated the NA to implement its tasks and power more qualitatively and effectively.

The relationship between the NA and Vietnamese Fatherland Front and member organisations have been constantly consolidated and improved. Those relations have been consolidated not only by laws but also strengthened by coordination rules in contacting to voters, collecting and reflecting opinions and aspirations of people, in legislative and supervisory activities.<sup>32</sup>

## **2. The implementation of functions, tasks and power of the NA, NA's bodies, NA's deputies**

On the basis of regulations of the Constitution, the implementation of constitutional, legislative and supervisory activities and decision on important issues of the country has been regularly renewed and more and more effective<sup>33</sup>.

### ***Constitutional and Legislative activities:***

In constitutional activities, the 1992 Constitution were enacted in order to

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<sup>31</sup> Summary report on the implementation of the Constitution of the NA Standing Committee

<sup>32</sup> Summary report on the implementation of the Constitution of the NA Standing Committee

<sup>33</sup> Summary report on the implementation of the Constitution of the NA Standing Committee, Committee on Justice, Committee on economic, Committee on finance and budget

create necessary legal basis for comprehensive reform of the country proposed by the Sixth National Party Congress (in 1986). After nearly 10 years of implementation, a number of provisions of the 1992 Constitution has revealed some limitations which are no longer consistent with the actual situation of the country. In this situation, according to articles 83, 84 and 147 of the 1992 Constitution, the NA issued Resolution No.51/2001/QH10 December 25, 2001 amending and supplementing some provisions of the 1992 Constitution, institutionlizing guidlines and policies of the Party following the spirits of the Resolution of the Ninth Congress of the Party. Thereby, the NA created important legal basis for further reform of the state apparatus organisation; reform of the political system, to improve the efficiency and effectiveness of state management; promote democracy; build the Socialist Rule-of law State of people, for people and by people; build the socialist-oriented market economy being independent, autonomic on the basis of promotion of internal force and active international economic intergration ; implement industrialization and modernization of the country.<sup>34</sup>

In legislative activities, from 1992 to present, the NA has paid attention to improve the legislative activity based on the 1992 Consitution and thoroughly grasping guidelines and policies of the Party that achieve important results.

Legislative activities of the NA has created legal basis for the comprehensive reform and intensive and extensive international economic intergration of our country that focus on building the socialist-oriented market economy and building the Socialis rule of law state of people, for people and by people, maintaining the political stability, economic development, international intergration, the implementation of human rights and liberty and democracy rights of citizens to contribute to basically change our country into a modern industrial country in 2020. At present, legislative activities of the NA has fundamentally met the requirement of innovation, development and protection of the country.

In general, the number of laws and ordinances issued by the NA and the NA Standing Committee has increased with more and more improved quality. Specifically, the IX NA (1992-1997) issued 41 codes and laws, 43 ordinances; the X NA (1997-2002) issued 34 codes and laws, 40 ordinances. Implementing amended and supplemented provisions of the 1992 Constitution (2001) and strongly improving law consideration and approval procedures, the XI NA (2002-2007) has reached a record of approval of 84 codes and laws (more than double previous courses) including laws first issued in Vietnam such as: Law on supervisory activities of the NA, Law on State audit, Law on construction, Law on fisheries, Law on conclusion, accession and implementation of international treaties. With a shorten term of 4 years, the XII NA was able to approve 67 codes and laws, 14 ordinances.

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<sup>34</sup> Summary report on the implementation of the Constitution of the NA Standing Committee

Basically, legal normative documents issued in this period have high quality and relatively full coverage of areas of social life. Regarding contents, laws and ordinances have basically ensured the uniformity, consistency, feasibility, transparency, public and accordance with development requirement of the country. These documents closely followed and properly reflected practical social-economic life of the country. More and more documents after being issued can be immediately implemented without waiting for guiding documents that timely meet the requirement of social economic management and operation of the country.

Contents of issues regulated by laws have been more and more expanded, fundamentally covered all areas of life, from processes and procedures of legal normative documents promulgation to the economy, culture, education, science, technology, environment, national defense, security, foreign affairs, state apparatus organisation, administration, criminal, civil, judiciary, etc .... The NA stipulated the organisation and operation of the NA, the President, the Government, the Supreme People's Court, the Supreme People's Procuracy and local authorities; stipulated titles and ranks in the people armed force, diplomatic titles and ranks and other state level titles and ranks, stipulated medals and decorations and state honor titles. Many documents of economic law in: enterprises, investment, banking, credit, trade, real estate business, taks policy reform ... have been amended or supplemented or newly issued to ensure the conformity with conditions and goals of national development, the requirement of implementation of international commitments, accelerate the process of international economic intergration, particularly the fact that Vietnam joined the World Trade Organisation. The NA has spent much time, wisom and effort to study and issue laws on a number of important, complicated and sensitive economic relations such as: state assets management and utilization, public debt management, purchase and requisition of property, agricultural land use tax, resouces tax, personal income tax. At the same time, the NA has timely amended and supplemented legal institutions no longer appropriated in the following fields: banking, credit, tax, fundamental construction investment, corruption prevention, nationality, road traffic, publishing, intellectuall property, international treaties ... to meet the requirement of intergration and economic development, to ensure the security, social order and safety.

The enactment of the 2002 Law on amendment and supplement of a number of provisions of the Law on promulgation of legal normative documents and the Law on promulgation of legal normative documents in 2008 have contributed to creat important changes in legislation. The legislative process has been gradually renewed and improved by improving the quality, increasing the initiative, democracy, specific in legal documents. With the enactment of the 2008 Law on promulgation of legal normative documents, a number of stages in the legislative process have changed to ensure more scientific, democratic and closer. The adjustment of the time that the NA approves annual law and ordinance making programs in the early session of the last year instead of the

year-end session has created conditions for drafting and submitting agencies to have more time and initiative in preparing and drafting the document. The process of amending and supplementing the law and ordinance making program has been more flexibly conducted, thus the NA Standing Committee can consider to change the program and report to the NA in the nearest session. Besides, the issue of gender mainstreaming in legislative process has also been defined. Practice has proved that these adjustments are appropriate and timely reponse the requirement of social management by law. The NA Standing Committee is assigned to preside over the acquirement and improvement of law and ordinance projects to submit the NA for approval that helps increase the initiative from NA's organs to contribute to improve the quality and accelerate the progress of project improvement.

Regading legislative technique, the NA applied the method of promulgating a law to amend and supplement contents of some laws in order to timely meet the requirement of the life, save time, simplify procedures that ensuring the quality of the project.

In recent time, some Committees of the NA actively proposed and presided over bills drafting which have been submitted to the NA for approval (The Committee on science, technology and environment drafted the Law on electronic transaction; the Committee on social issues drafted the Law on domestic violence prevention), this shows that the legislative competence of the NA has been more and more enhanced.

The drafting and examination of bills are actively conducted with clearly division of leading agencies and coordinating agencies. In the preparation process, there has been the tightly cooperation between concerned agencies and organisations with the sense of community responsibility. NA's organs have actively researched, practically surveyed, consulted and refered to opinions of subjects direct impacted by documents, experts, scientists, voters' opinions, etc.... Therefore, investigation reports have had much higher quality that obviously express viewpoints, high argumentativeness, highly scientific and pratical basis. The revising and completing documents before submitting the NA for approval are seriously and cautiously guided and organised to implement by the NA Standing Committee.

Delegations of the NA deputies have a number forms of discusion and collection of contributing opinions of concerned local organs, organisation and individulas to bills. Deputies to the NA have always appreciated the sense of responsibility, initiactive study and active comment to improve the quality of issued documents.

The organisation to collect opinions of people, industries at different levels on bills has been paid attention to and gradually renewed the form of which are abundant and diversified including the promotion and utilization of the power of information technology and media. The collection of opinions on bills focuses on many subjects, particularly those directly impacted by legal documents that will

be enacted. The public of drafting documents in mass media, particularly websites, has created favourable conditions for people, agencies, organisations and enterprises to timely grasp the expectation of changes of policies and laws to contribute ideas to the law making and prepare conditions for the later implementation. The collection of opinions on the bill has been more and more effective representing the democratic and the caution in legislative activities, mobilizing the intelligence and consensus of the people, ensuring the clarity, public and transparency even in the expectation of policymaking.

The examination and approval of bills has been gradually renewed contributing to improve the quality and accelerate the process of examination and approval of bills.

The result shows high efforts and marks new advance of the NA, the Government, NA's organs and concerned agencies in law making that contribute to accelerate the improvement of the legal system of our country.<sup>35</sup>

### ***Supervisory activities:***

On the basis of the Constitution, the legal framework of supervisory activities of the has been further improves through the promulgation of the Law on supervisory activities of the NA in 2003. Basing on provisions of the Constitution, the Law of supervisory activities, the NA approved resolutions on annual supervisory activities programs, specified contents being directly supremely supervised by the NA in sessions and concrete contents being assigned to NA's organs for supervision.

Supervised contents of the NA and organs of the NA are rather abundant and comprehensive focusing on the area of socio-economy and state budget, the implementation of the Constitution, laws and ordinances. Supervising organisation methods of the NA have been more and more renewed and improved towards increasing supreme supervisory activities, examining reports of the Government combined with practical supervision in localities; both implementing regular supervision and thematic supervision.

The adoption of the NA of resolutions on annual supervisory activities including the selection of key and urgent issues in accordance with actual requirements that make supervisory activities better respond to demands of the life. The NA Standing Committee issues general plans and closely directs the implementation of annual supervisory programs of the NA. According to functions, tasks and assignment, the Ethnic Council and Committees of the NA actively implement the supervision for the preparation of reports to the NA Standing Committee and the NA. Delegations of deputies and deputies to the NA actively built their own supervisory plans according to general operation programs of the NA, concurrently, actively implement those programs according to prescribed tasks and power.

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<sup>35</sup> Summary report on the implementation of the Constitution of the NA Standing Committee

Supervisory activities at the meeting have been gradually renewed towards enriching supervised contents and strengthening democracy in discussion.

Interpellation and response to the interpellation are regularly and seriously conducted that shows the sense of high responsibility to the people; being renewed towards focusing on urgent social economic matters, closely reflecting the wish and aspiration of the people, clarifying the situation, deepening the reason, indicating the responsibilities and solutions. The methods of interpellation and operating the hearings have been improved by interpellating and responding the interpellation according to groups of issues; suggest the Prime Minister or Deputy Prime Ministers to directly respond to the interpellation of deputies of the NA; reduce time to present reports; increase time of dialogues between interpellant and interpellated persons to create an open and no-nonsense atmosphere; the quality of interpellation and respond to the interpellation has been further improved; contributing to overcome shortcomings and improve the quality and effectiveness of state apparatus. The hearings at the NA's sessions are lively broadcasted and televised, followed and welcomed by the people. After the interpellation, concerned persons and organs seriously considered issues raised by deputies. The summary of interpellation, following the implementation of promises of persons who responded the interpellation, informing concerned contents after the interpellation were more regularly conducted. At some meetings, basing on the practice, the NA promulgated resolutions on interpellation and response, therein required those who had the response have specific methods to effectively implement concerned issues and report the result to the NA in the next session. The organisation of explanation at the Ethnic Council and Committees of the NA initially achieved certain results.

Supervision of legal normative documents is an important content. In term XI, the NA supervised the promulgation of legal normative documents of the Government, the Prime Minister, Ministers, ministerial-level agencies, the Supreme People's Court, the Supreme People's Procuracy; approved the thematic Resolution of this issue. Through the supervision, the NA recommended the Government, the Supreme People's Court, the Supreme People's Procuracy opportunely abrogated inappropriate documents, opportunely promulgated documents guiding the implementation of laws, resolutions and ordinances; corrected the proper promulgation of legal normative documents according to the law.

The NA examined the report of the NA Standing Committee on the result of supervising the settlement of recommendations of voters all over the country. This activity has positively effected on the wish and aspiration of the people, contributed to consolidate the belief of the people in the Party, the State, concurrently, encouraging the people to continue further actively participate in state administrative activities. This is the basis for deputies of the NA to constantly interpellate and clarify responsibilities of Ministers and heads of industries, particularly, issues promised before the NA and voters.

Supervisory activities of organs of the NA were actively and initiatively conducted and had a number of positive changes. The NA Standing Committee, the Ethnic Council and Committees of the NA comprehensively supervised assigned areas; concentrating on renewing supervisory contents and forms, having the coordination between thematic supervision and regular supervision. The investigation of annual reports, the supervision over legal normative documents and settlement of complaints and denunciation, thematic supervision .. have been improved in terms of quality and effectiveness. The consideration and assessment in supervisory reports actually and objectively reflected the practical situation, specifying achieved results, opportunely discovering limitations and shortcoming in the mechanism, policies and laws, shortcomings in management and operation. The proposal and recommendations in supervisory reports are concrete, feasible and creates high consensus that positively impacts on supreme supervisory activities of the NA at the session as well as in improving policies and laws in areas undertaken by the Ethnic Council and Committees.

Delegations of the NA deputies have made many efforts in supervision in localities. Through the supervision, sound recommendations have been considered to resolve by concerned central and local ministries, industries and organs. Delegations of the NA deputies well coordinated in thematic supervision according to the supervision program of the NA, the NA Standing Committee, the Ethnic Council and Committees of the NA. A number of deputies of the NA positively participated in activities of Supervisory Missions of organs of the NA, delegations of the NA deputies, contact with voters, therefrom having conditions to better implement the right of interpellation and supreme supervision at sessions of the NA.<sup>36</sup>

***Decisions on important issues of the country:***

The consideration and decision of important national issues of the NA were democratically conducted and publicly discussed, particularly issues of national social economic development plans, decisions on state budget and national important work and projects and senior personnel of the State.

The efficiency and effectiveness of decisions have been more and more attended to aiming at national interests, ensuring the correspondence with guidelines and policies of the Party and the will and aspiration of the people. This is not only shown in the process of making decisions but also improved through supervisory activities over the implementation of resolutions of the NA that ensures decisions of the NA being seriously implemented.

The NA of different terms issued a number of resolutions on 5-year and annual social economic development plans. In recent years, in order to be in accordance with the social economic development of our country in present situation, there have been changes in the system of targets of the social economic development plan, the NA has more and more attended to targets in

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<sup>36</sup> Summary report on the implementation of the Constitution of the NA Standing Committee

the society, stable development, environmental protection and development quality. The NA also approved resolutions on state budget estimates and central budget allocation, approved annual national budget balance. Contents of state budget estimates and central budget allocation decided by the NA in recent time show that the role of the NA in the field of finance and state budget has been more and more enhanced; contributing to stabilizing the macroeconomic, impulsing high and stable development of the economic; intensifying economic structure transfer, better resolving issues of social security; performing the poverty alleviation; ensuring national defense, security and foreign affairs; actively and firmly maintaining and stabilizing macro-balances and state budget balance; maintaining national debit balance at an appropriate level; adequately and on schedule paying debts in accordance with commitments; promoting the assignment and decentralization that makes important and active changes in the management and operation of the state budget, simultaneously creating material conditions to opportunely settle arisen emergency issues; promoting the administrative reform in the management and operation of state budget; concentrating on budget publicity. The reality shows that the decisions on national financial and monetary policies have gradually expressed the role of the NA in the utilization of key policies and instruments to promote economic growth and ensure the macro-stability.

In deciding the policy of development of national important work and projects, basing on the Constitution, the NA has completed legal basis to more and more specifically and reasonably perform this power through the promulgation of legal normative documents on this contents (such as Resolution No.66/2006/QH11 dated June 26, 2006 of the NA on national important work and projects being submitted to the NA for the decision of investment policy which was replaced by Resolution No.49/2010/NQ/QH12 on national important work and projects being submitted to the NA for the decision of investment policy)

In recent time, the NA has decided the investment policy of national important work and projects such as: The project on planting 5 million hectares of forest, the project of gas – electric – fertilizer in Ca Mau and the project of oil refinery Factory No.1 Dung Quat, the project of Lai Chau hydropower plants, the project of nuclear power Ninh Thuan, etc.... With high sense of responsibility, basing on reports of the Government, the NA democratically discussed, comprehensively, seriously and thoroughly considered and decided not to approve the policy of investment in building the project of construction of high-speed railway Hanoi – Ho Chi Minh City; assigned to the Government to review and complete the overall planning of forms of transportation North – South, therefrom submitting to the NA for the specifically examination and decision in appropriate time.

A number of national important work and projects the investment policies of which were decided by the NA have promoted positive effects, promoted national social economic development. In general, the decision of the

NA on national important works have been increasingly standardized, the NA has carefully considered every aspects, ensuring the effectiveness, being economical in budget utilization.

Regarding the decision of the NA on senior personnel of the State, the NA of different terms elected heads of state agencies and approved the appointment of member of the Government; implementing the removal and dismissal of a number of titles elected or reatified by the NA; deciding the organisational structure of the Government; deciding to establish, merge or split some central provinces and cities; adjusting administrative boundaries of Hanoi and some central provinces and cities; issued Resolution on the pilot implementation of no organisation of People's Council at district and county.

The NA decided on issues to ensure the national defense and security; approve resolutions on ratification the "Treaty on land border between the Socialist republic of Vietnam and the People's Republic of China (June, 2000), "Agreement between the Socialist republic of Vietnam and the United States in bilateral trade relations (September, 2001), Agreement between the Socialis republic of Vietnam and the People's Republic of China on the delimitation of the territorial sea, the exclusive economic zone and continental shelf of two countries in the Gulf of Tonkin in 2004; Agreement between the Government of the Social republic of Vietnam and the Kingdom of Cambodia supplementing the Agreement on planning the border in 1985; ratified the Protocol on Vietnam joined the World Trade Organisation (WTO).

Basically, the implementation of tasks and power of the NA in deciding national important issues have achieved important results that provides the basis for the management and operation of the socio-economy, the maintainance of political stability, the improvement of international intergration.<sup>37</sup>

### **3. Limitations and shortcomings**

Beside the above-mentioned results, the process of implementation of the Constitution and the Law on organisation and operation of the NA has revealed certain limitations and shortcoming.

*First*, regarding legislative and constitutional function, although the right to make and amend the Consitution were recorded and implemented in pratice, the process for the NA to implement this right has not been adequately specified that has caused a number shortcoming and not consented in implementation process.<sup>38</sup>

In legislation, there are still areas of the social life that have not been regulated by the law; some laws and ordinances have just issued but the quality is not high, lacking of the feasibility, slowly coming into the real life. The process of making some laws and ordinances have not really followed the

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<sup>37</sup> Summary report on the implementation of the Constitution of the NA Standing Committee

<sup>38</sup> Summary report on the implementation of the Constitution of the NA Standing Committee, Committee on Law, Committee on finance and budget.

requirement of the life that led to many times amendment and supplement effecting to the stability of the legal system. Although the process of laws and ordinances making have been improved, there has been lack of synchronism and reasonability; a lot of contents have been regulated but the implementation of those has not been serious (specifically, the annual and termly implementation of law and ordinance making program, the guarantee of time of sending documents, the performance of responsibility of participation and coordination in investigation ...) that impact on the quality of consideration and approval of projects.<sup>39</sup> Investigation activities of some projects of the NA have not showed high argumentativeness.<sup>40</sup> The ensuring of the constitutionality and unification of the legal system of some law and ordinance projects and the interpretation of the Constitution, laws and ordinances have been limited.<sup>41</sup> Regulations in a lot of laws and ordinances still have the duplication and contradiction with previous enacted documents, many regulations have not been concrete. The right to submit law projects of deputies of the NA was not implemented because of lack of mechanism and conditions of guarantee and support to deputies to implement their rights.<sup>42</sup>

*Second*, in supervision, the implementation of the Constitution related to the supreme right of supervision of the NA practically meets with difficulties because of the present understanding of the supreme right of supervision of the NA is too broad that the current scale and subjects of supervision of the NA are very large and duplicated ; the supervisory activities are outspread and lack of conditions to concentrate on urgent issues ; the supervision just based on documents.<sup>43</sup>

Although, the Constitution and the Law on supervisory activities of the NA stipulated a number of supervisory forms of the NA, organs and deputies of the NA, in supervisory activities there have been still the inefficiency and ineffectiveness, limited sanction that have not met practical requirement.<sup>44</sup>

The supervision of important contents in budget management and utilization, administration reform and the settlement of complaints and denunciations of citizens have not been implemented much, there has had the confusion and lacked of close coordination between organs of the NA and

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<sup>39</sup> Summary report on the implementation of the Constitution of the Committee on Science and Technology, Committee on Law, Committee on Justice.

<sup>40</sup> Summary report on the implementation of the Constitution of the Committee on Economic.

<sup>41</sup> Summary report on the implementation of the Constitution of the NA Standing Committee, Committee on Law, Committee on Finance and budget; Announcement No.44-TP/TW dated 31/3.2008 of the Poliburo in some issues on the organisation and operation of the NA and the Party of the delegations of the NA deputies

<sup>42</sup> Summary report on the implementation of the Constitution of the Committee on finance and budget, Committee of Justice, the Deputies operation Division

<sup>43</sup> Summary report on the implementation of the Constitution of the Ethnic, Committee on finance and budget, Committee on Economic.

<sup>44</sup> Summary report on the implementation of the NA Standing Committee, Committee finance and budget, Committee on Law, Committee on Justice

investigation activities of concerned agencies.<sup>45</sup> There has been shortcomings in supervisory activities over legal norm documents belong to undertaken areas of the Ethnic Council and Committees of the NA.

The mechanisms of supervision and guarantee of implementation of the Constitution and treatment of infringement of the Constitution in the fields of legislature, execution and justice (protection of the Constitution) were assigned to a number of subjects to together implement mainly through the supervision and examination.. of competence subjects; when discovering the infringement of the Constitution, these subjects themselves or petition competence organs to process. The most important and popular activities to protect the Constitution are to consider and ensure the constitutionality, legitimate and unification of legal normative documents. However, in practice, the consideration and processing of those documents have not been absolutely implemented. The right to abrogate and suspend legal normative documents contrary to the Constitution have been nearly not implemented in practice. The effectiveness of petitions through the supervision and examination of organs, delegations of deputies and deputies to the NA and competence state organs were not high. Therefore, actual requirements are the necessity of continuous consolidation and improvement of the effectiveness of protection institutions of the present Constitution and laws, particularly improving the effectiveness of activities of organs of the NA in the performance of this task.

A number authorities of the NA such as the right of confidence vote for positions elected and approved by the NA ... having high advance regulated by the Constitution, however, that have not nearly actually implemented due to the lack of guarantee conditions (such as the procedure, process, apparatus organisation, finance ...)<sup>46</sup> Some other authorities, such as the decision on the general amnesty, the establishment or dissolution of special economic - administrative divisions and the referendum, were regulated in the Constitution, however, there were not mechanisms for the NA to implement.

*Third*, the 1992 Constitution stipulated the NA has the right to decide important issues of the country. However, some duties and authorities of the NA were not rationally regulated. Such as the definition of the scale and nature of 'social - economic development plans of the country', 'national financial and monetary policies', 'important issues of the country' were not coherent that leads to the fact that many important decisions in social - economic development orientation in terms of finance and budget which have greatly impacted on the life of people were not submitted to the NA for the consideration and decision.<sup>47</sup>

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<sup>45</sup> Announcement No.44-TP/TW dated 31/3.2008 of the Politburo in some issues on the organisation and operation of the NA and the Party of the delegations of the NA deputies

<sup>46</sup> Summary report on the implementation of Constitution of the Committee on Justice, Division on operation of deputies.

<sup>47</sup> Summary report on the implementation of the Constitution of the Committee on finance and budget

While there were different ideas claiming that a number of contents in resolutions promulgated by the NA having management characteristics such as ‘decisions in social - economic development plans of the country’, ‘decisions in national financial and monetary policies’, just have not ensured the flexible management of the Government of the market economy.<sup>48</sup>

The Constitution stipulated that the NA decides national financial and monetary policies, state budget estimates and state budget allocation and approved state budget balances. Nevertheless, the Constitution and laws have not had the mechanism for the NA to actually supervise, not passively approve state budget balances, state budget estimates and central budget allocation drafted by the Ministry of Finance and submitted by the Government. There were decisions on important issues of the country not properly reflect requirements of the life, low quality of the consideration of some decisions, low implementing efficiency, limited forecast in longterm decisions.<sup>49</sup>

*Fourth*, regarding the organisation of the NA, although organs of the NA have been improved, in comparison of the scale and characteristic of the operation of the NA, the number of Committees has not been correlative with the quantity of the assigned work. The fact that most of members of the Ethnic Council, Committees of the NA concurrently operate has caused certain difficulties for the Ethnic Council and Committees of the NA in the maintenance of collective working regime and decision by the majority.<sup>50</sup>

There still has been the slow implementation of the policy ‘enhancing the capacity, authority and duties of the Ethnic Council and Committees of the NA in the process of legislature, particularly the investigation law and ordinance projects aiming at the discussion, comment and completement of laws, ordinances and resolutions of the NA that being implemented by organs of the NA’.<sup>51</sup>

*Fifth*, according to Article 86 of the Constitution, the NA meets two sessions per year. This fact shows the irrationality because most of issues related to the authority of the NA emerging during the time between 2 sessions have to be submitted, discussed and decided in the next session of the NA. In present situation, this provision has not ensured the flexibility while the development of the country always quickly changes, domestic and international context have many unexpected changes and development that requires the state apparatus has prompt responses timely meeting actual requirement.<sup>52</sup>

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<sup>48</sup> Summary report on the implementation of the Constitution of the Committee on finance and buget, Committee of Justice, the Deputies operation Division

<sup>49</sup> Announcement No.44-TP/TW dated 31/3.2008 of the Poliburo in some issues on the organisation ad operatio of the NA and the Party of the delegations of the NA deputies. Summary report on the implementation of the Constitution of the Committee on finance and buget, Committee of Justice,

<sup>50</sup> Summary report on the implementation of the NA Standing Committee, Committee on Law, Committee finance and budget

<sup>51</sup> Summary report on the implementation of the NA Standing Committee, Committee on law

<sup>52</sup> Summary report on the implementation of the NA Standing Committee

*Sixth*, regarding deputies of the NA, it is necessary that a part of representatives of central agencies and organisations are introduced to be candidates of the local election. However, this issue also needs the innovation because the operation mode and the nature of tasks currently undertaken by central deputies hardly ensure the real close association between central deputies and voters of constituencies where they were voted.

On the other hand, because the NA of our country does not regularly works, most deputies of the NA concurrently hold official positions in the apparatus of the government or other agencies and organisations in the political system. This plurality is necessary and conformable to actual situation of Vietnam. However, it should limit in an appropriate proportion in order to prevent the interference of duties and authorities of deputies that causes the confliction of interests or the lack of conditions and wholeheartedness to effectively perform tasks of deputies.

Inheriting from regulations of previous Constitutions on the removal of deputies, the 1992 Constitution stipulated : Deputies of the NA are dismissed by voters of the NA and representatives of the People's Council are dismissed by voters or the People's Council while those deputies do not deserve to the confidence of people. Therefore, the people can directly conduct the dismissal of representatives of indirectly conducted through the NA or the People's Council. Nevertheless, the process of dismissal of deputies has not been regulated by any documents. In the Constitution and other legal documents, there are not any provisions stating what kind of violation activities of deputies of the NA and representatives of the Ethnic Council and People's Council do not deserve with the confidence of the people. Thus, in fact, it is difficult to implement the mechanism for voters to dismiss deputies of the NA and representatives of People's Councils. In recent years, there has been not any case that deputies of the NA are dismissed by voters.<sup>53</sup>

#### **4. Reasons of limitations and shortcomings**

There are many causes of those above-mentioned limitations and shortcomings including the following basic ones:

*First*, the 1992 Constitution were promulgated in the background that our country had just broken out of the crisis and only started changing from the centrally-planned economy to socialist-oriented market economy; not having the extensive international intergration; awareness and thinking about state management and social management institution and mechanism were not really comprehensive and profound. A number provisions of the Constitution on the implementation the principle all state power are belong to the people, the construction of socialist rule-of-law state, the principle of state power organisation ... that are rather new issues without the profound and adequate awareness therefore a number of the Constitution and laws on these issues were not concrete, the practical implementation were limited.

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<sup>53</sup> Summary report on the implementation of the Division of operation of deputies

*Second*, the interpretation of the Constitution, laws and ordinances were not concentrated on, simultaneously the concretization of provisions of the Constitution into laws and bylaws were not adequate that make difficulties for the practical implementation of these provisions. Besides, the consciousness of observing the Constitution and laws of a number of state agencies including a part of staffs and civil servants were not high that affected practical validity of the Constitution.

*Third*, after 25 years of reform, the social economic situations of our country have been extensive and comprehensive changes, international intergration of our country has been more and more intensive and extensive, the socialist democracy in the social life has been more and more extended, therefore, a number provisions of the 1992 Constitution were not inappropriate with the reality; there are new issues needed to be studied to supplement to the Constitution.

Thus, the research, amendment and supplement of provisions of the 1992 Constitution on organisation and operation of the NA at present are necessary to continue to specifically and extensively institutionalize guidelines and policies of the Party, inherit and promote reasonable and progressive provisions of previous Constitutions of our country and selectively acquire the quintessence of the constitutionality in the world, contributing to the building and improvement of the Vietnames socialist rule-of-law state of people, by people and for people.

### **III. ORGANISATION AND OPERATION OF THE NATIONAL ASSEMBLY IN THE CONSTITUTION AND LAWS OF SOME COUNTRIES IN THE WORLD**

In each country, the NA, a state institution, are named with different terms, such as: National Assembly (Thailand ...), Parliament (Denmark, Sweden, Finland, Norway ...), Congress (the US, Philippines), National Congress of the Communist Party (China) or Islamic Consultative Assembly (Iran) .... According to legal traditions, social economic conditions, political system organisation in each country, the NA has the structure of one House or two Houses.

Being a state institution, the NA whose role are more and more important in the life of the State and society has a long history with different paces of development. This is the general development laws of the institution of the NA in the history of States and laws in the world. Although the NA in each country has its specific development path, generally, the important role of the NA in modern societies can be recognized through following criteria:

- The NA is the representative organs of people. The NA is elected by voter all over the country, therefore, the representation for the people is an extremely characteristic that rules the whole activities of the NA, reflecting the organic relationship between the NA and people. The representation of people allowed the NA to become a public forum that reflects interests of classes of people, optimally reconciling interest confliction between the centre and localities, between regions, ethnic groups and religions ...

- The NA is the legislative body. This is one of the most fundamental and important functions of the NA. The right of legislation of the NA originate from the nature and position of the highest representative body of people, thus, only the NA has the right to stipulate legal norms having highest legal validity and regulating the most fundamental social relations.

In the relation with remaining power branches such as the execution and justice, the role of the NA becomes more and more important because the NA has much abilities to impact and influence on these power branches. Being the place to gather, muster and represent general interests of the society, concurrently the NA is the forum to balance interests, overcome contradiction and conflicts between power branches.

- The NA institution becomes an international institution. This is the consequence of the intergration and cooperation process on the basis of diplomatic activities in the operation of the NA of different country, particularly the establishment of international and regional unions of NA. The wide dissemination and the recognition of ideas and principle of parliamentarism all over the world have really caused the operation of the NA of nations in the world to become a historical progressive factor.

Having such nature, position and role in the state apparatus in particular

and in the whole social life in general, the NA has particular organizational structure and operational methods to implement its functions and tasks. Hereinafter is the summary of organizational structure and operational methods of the NA in the world.

## **1. The organisational and operational models of the NA, organs and deputies of the NA according to the Constitution and laws of some countries**

### ***1.1. The organizational model of the NA***

Each country, depending on its political regime, has different choices of organisational structure of the NA. In summary, the issue revolves around the selection and allocation of authorities between classic structures: Houses (one House or two Houses), committees of parliamentary delegations of political parties (in the multi-party parliament). Because the characteristic of the irregular operation, the NA of socialist countries have the standing agencies (the State Council or Presidium of the Soviet Union or the NA Standing Committee).

- ***The organisational models of bicameral Parliament:***

The organisational model of bicameral Parliament (the House of Representatives and the Senate) are the model primarily organised for the United States in order to meet the requirement of balance interests between constituent territories of the federal state. The House of Representatives represents for the will and aspiration of people of the federation, elected by the whole voters of the Federation. The Senate represents for the will of states and senators of the Senate usually elected or assigned by the states. The Parliament of the US and the Parliament of Germany are typical examples of the organisational model of bicameral parliament of the Federal State... However, the model of bicameral parliament is not the typical model of the federal states, because there is also the federal state having the model of unique parliament (the United Arab Emirates); and there are quite a few unique state in the model of bicameral parliament such as Belgium, Nepal, Spain, Thailand, Italia, Pakistan, Algeria, the Netherlands, South Africa, Japan<sup>54</sup>...

The authority allocation of the Senate and the House of Representatives in different countries are different. The Senate representing for territories and classes usually acts as a controlling and counterweight institution with the House of Representatives; while the House of Representatives represents the will of the nationals and bears their pressure so it always shows the dynamic and reflects their daily interests.

The advantage of the organisation of the two-house parliament is the contribution to prevent the overload, hurry, hastiness of the House of Representatives because of the pressure of time and politics and resolve the

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<sup>54</sup> The Office of the Government, *The organisation and Operation of some countries*, Hanoi, 2002, P.115-117

contradiction of interests being able to occur in territories, social classes and ethnic groups in the same country according to the way prescribed by laws.

- *The model of organisation of one-house parliament:*

This model is usually commonly applied in countries just having been liberated from the colonialism, imperialism, such as Laos, Egypt, Cyprus, Cuba, Vietnam. The reason is the need of unifying the will of people serving the struggle to unify the country in the newly liberated countries and the lack of an aristocracy deserving the attention. The formalism in activities of the second house (the Institution of the nobility) in developed capitalist countries had no less influences in the establishment of the second house in the least developed countries. Besides, a phenomenon deserving attention is that a number of countries transfer from the mechanism of bicameral parliament to the unique parliament, such as the Sweden (transferred from the mechanism of the bicameral parliament which existed from 1866 to the mechanism of unique parliament through the Constitution amended in 1968/69), Iceland (transferred from the mechanism of bicameral parliament to the mechanism of unique parliament from 1991), Denmark (transferred from the mechanism of bicameral parliament to a constitutional monarchy of unique parliament from 1953). While, there were countries being back to the bicameral parliament mechanism such as Poland (back to the bicameral parliament from 1989). This proves that the establishment of the NA of one house or two houses in countries depend on different factors, such as conditions, historical background, culture, tradition, power relationships between the social classes in each period in each country, foreign influences, especially developed countries.<sup>55</sup>

The choice of the model of organisation of unique parliament is said to be the most appropriate one in the operation of the NA of the democracy mechanism, because the bicameral mechanism in which the Senate usually play the role of constraint that turns the NA to the obstacle that annulling the power of the people. Besides, there are reasons of social economic conditions, culture, tradition of each country, such as: because of small territories, just one house can settle the balance of interests in the country (Luxembourg, Monaco); because of the general trend in the region (the Nordic countries such as Finland, Sweden, Denmark); to avoid the complication and expenses (many countries); to fit the current political atmosphere and to facilitate the distinguish of power between different state bodies (some newly liberated in Africa)<sup>56</sup>...

### ***1.2. Chairman of the NA, Chairman of the House of representatives, Chairman of the Senate***

- *Chairman of the NA*

In almost all countries, the position of President has the party nature being

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<sup>55</sup> Office of the NA, tldd, P.117-118

<sup>56</sup> Office of the NA, *Science Report Theme 'The organisational structure and operational methods of the NA in the innovation period of the country', August/2004, P8-9*

elected through directed election in the NA. Normally, the Chairman of the NA is the leader of a political party in the NA. The assignment of the Chairman of the NA is considered the prerogative of the political party.

In Scandinavia countries, the Chairman of the NA is usually the representative of the ruling party in the Government. In some countries such as Malaysia, Singapore, Malta, African countries, ... the position of the Chairman of the NA is not necessarily elected. Other countries regulate that the Chairman of the NA is appointed by the President or the King. In countries having one-party system, the Chairman of the NA is usually a zealous member of the Party and faithful to ideas of his party. However, being the Chairman of the NA, the elected person has to be independent with political views of parties and his decisions have to be objective and comply with regulations of the Constitution and laws<sup>57</sup>.

- *Chairman of the House of representatives*

In almost all countries, the House of representatives elects the leader of the House (the Chairman) among parliamentarians of the House of representatives. In most of capital countries, the Chairman of the House of representatives is usually members of the political party holding the major seats in the House. In terms of countries in the previous socialist system, in fact, the Chairman of the NA has to be a member of the Communist Party. The Chairman of the House of representatives is usually the leader of administration in the House, the focal point of making plans and organising administrative work in the House, and being the focal point of explanation of the rule of the House of representatives.

The Chairman of the House of representatives is usually received the help of Deputy Chairmen and Secretaries in the performance of the power of organisation and management of the House. Deputy Chairmen are parliamentarians elected by the House of Representatives. The number of Deputy Chairmen of the House of representatives is different in different countries. At present, the election of the chairman and deputy chairmen of the House often occur in the first meeting of the term of the House of representatives.

- *Chairman of the Senate*

In some countries, the Chairman of the Senate is elected by the Senate or this position is associated with the executive apparatus<sup>58</sup>. In Canada, the Chairman of the Senate is appointed by the Government according to the suggestion of the Senate. In the US, the Vice President is naturally the Chairman of the Senate, Thus, being associated with the executive apparatus, the Chairman of the Senate rarely chairs the meeting of the Senate, the Senate has to appoint an Acting Chairman to chair the meeting<sup>59</sup>.

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<sup>57</sup> Tran Tuyet Mai, *The Chairman of the NA of some country in the world*, Legislative Research Magazine, 6/2000.

<sup>58</sup> In Argentina, the position of Chairman of the Senate is responsible by the Vice President or the provisional President

<sup>59</sup> Office of the NA, tldd, P.140

### *1.3. Committees of the NA*

In many countries in the world, committees of the Parliament are simply a set of parliamentarians assigned to do a number of work of the Parliament.<sup>60</sup>

Committees is the place providing parliamentarians intensive knowledge and skills and a necessarily organisational structure to settle complicated issues; ensuring a forum for the broad participation of groups of interests and voters. Committees are established because of different reasons including of the most fundamental and important reason is the requirement of improvement of operational effectiveness of the parliament. This is because of two reasons:

First, the establishment of a system of committees helps the work of the parliament be divided into many areas with different contents which can be parallel implemented. This helps maximum save working time of the parliament in the condition of limited working time. Regarding this aspect, the more the number of committees is and the more intensively committees participate in the operation of the parliament, the more the effectiveness of the parliament's work is improved;

Second, the organisation for parliamentarians to work following committees helps parliamentarians to be specialized and easily approach to the work appropriated with the ability and professional skills. Therefore, parliamentarians have the conditions to penetrate further into concentrated issues and better follow activities of the executive in assigned areas, being easier in establish relations related to their work.<sup>61</sup>

- *Organisational methods of committees*

The system of committees of the parliaments in the world are organised in different methods but the common ones are:

- Organisation according to functions of the parliament: Committee on Legislation, Committee on Budget, Committee on Investigation, Committee on Supervision, ...

- Organisation according to working areas: Committee on Justice, Committee on Economy, Committee on national defense and security, Committee on Foreign Affairs, Committee on Science and technology, Committee on Culture and Education, Committee on Social issues, ....

- Organisation according to subjects: Committee on issues of Indian, Committee on Veterans issues, Special committee on Ageing (the US), ....

- Organisation according to terms: the Standing Committee, Temporary Committee, Ad-hoc Committee.

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<sup>60</sup> National Democratic Institute, 'Committees in Legislatures: a division of labor', *Legislative Research Series*.

<sup>61</sup> Center of information, Library and scientific research, *Theme: The organisational structure and operation of the system of Committees in the Parliament in some countries*, Hanoi, 2006

- Organisation in the model of different method combination.

- *The number of committees of the parliament*

Being above mentioned, the form of the system of committees of the parliament aims at creating better conditions in monitoring activities of the execution, therefrom contributing to improve the effectiveness of the parliament's operation. In comparison with the number of ministries of the Government, there are three trends of organisation of committees as follow:

- First, the number of committees are more than the number of ministries of the Government (such as Achentina, Austria, the US, Mexico, Japan, New Zealand, Australia, ...). Follow this trend, each committee is responsible for monitoring one ministry, possibly a number of committees together monitor one ministry (in terms of one minitry manages a number of areas). Besides, the parliament organises a number of special committees monitoring a specific area or subject (such as: Committee on regulations, Committee on issues of Indian, Special Committee on Ageing (the US));

- Second, the number of committees are correlative with the number of ministries of the Government (Denmark, Greece, Mongolia, ...); each committee is responsible for monitoring of a correlative ministry in the Government;

- Third, the number of committees are less than the number of ministries of the Government (such as India, Indonesia, Italia, Malaysia, Norway, France, China, ...); each committee is responsible for monitoring one or some ministries of the Government<sup>62</sup>.

### **THE NUMBER OF COMMITTEES, MINISTRIES AND MINISTRY-LEVEL AGENCIES OF SOME COUNTRIES IN THE WORLD<sup>63</sup>**

<b>Number</b>	<b>COUNTRY</b>	<b>NUMBER COMMITTEES</b>	<b>OF</b>	<b>NUMBER MINISTRIES</b>	<b>OF</b>
1.	Argentina	29 (Senate) 28 (House of representatives)		08	
2.	Austria	19		11	
3.	India	19		49	
4.	Poland	20 (Senate) 20 (House of representatives)		16	
5.	Belgium	14 (Senate) 15 (House of representatives)		11	
6.	Brazil	18 (Senate)		27	

<sup>62</sup> Reference to Table 2 for details

<sup>63</sup> The statistics in this Table quoted from the Committee on foreign affairs of the NA, *The Parliament of countries in the world*, 1999 and some website about the Parliament and the Government in the world.

		20 (House of representatives)	
7.	Canada	10 (Senate) 20 (House of representatives) 04 (Inter-committee)	30
8.	Denmark	23	22
9.	Federal republic of Germany	14 (Senate) 24 (House of representatives)	15
10.	South Korea	16	24
11.	The US	20 (Senate) 22 (House of representatives) 04 (Inter-committees)	14
12.	Greece	24	22
13.	Indonesia	13	20
14.	Italia	12 (Senate) 14 (House of representatives)	21
15.	Malaysia	04 (Senate) 05 (House of representatives)	25
16.	Mexico	52 (Senate) 52 (House of representatives)	32
17.	Mongolia	14	13
18.	Norway	12	17
19.	New Zealand	17	11
20.	Japan	16 General Committees 02 (House of representatives)	10
21.	France	06 (Senate) 06 (House of representatives)	15
22.	Finland	14	17
23.	Thailand	13 (Senate) 15 (House of representatives)	20
24.	(China)	06	28
25.	Australia	23 (Senate) 10 (House of representatives)	16

#### ***1.4. Members of Parliament***

Members of Parliament are formed through different ways with different names. In terms of countries following the organisational model of one house, members are named Deputies of the NA or Members of Parliament or Representatives of Parliament. In terms of countries following the organization of bicameral model, members of the House of representatives are named the Congressman, members of the Senate are named Senators. According to regulations of some countries such as England, France, Japan, Poland, the term of members or the parliament is defined from the time of announcement of election

results. In China and Cuba, the term of members begins at the time the first session of new Parliament took place.

According to the law of each country, members of the parliament have different duties and authorities. In general, the main work of members is participating in activities of the Parliament, participating in sessions of the Parliament, discussing and deciding issues of the competence of the Parliament. In the country following the model of bicameral organisation, members have the right to participate in the sessions of other house they are not members of which, In sessions of the Parliament, members have the right to interpellate the Government, members of the Government, the right to discuss the confidence issue of the Government, members of the Government. Members of the Parliament also have the right to initiate the legislation, the right to submit drafts on resolutions ...

In order to ensure that the activities of deputies of the Parliament do not have problems, the laws of countries have regulations on the guarantee of their activities such as the right of imprescriptibility, the right of free political views, the right of non-salary allowances. The right of imprescriptibility is the most fundamental and important one in order to ensure the activities of the deputy avoid the inquiry of executive agencies under the false evidence. The Constitution of Germany stipulates: "Without the consent of Bundestag, it is not allowed to arrest or prosecute deputies, except that the deputy is arrested when he is committing a crime or within one day later". Besides, the law of many countries also stipulate that deputies is not responsible for their public statements at the sessions of the Parliament, For example, the Constitution of Japan regulates that at sessions of the Parliament, members of two houses do not have to be responsible for their opinions, speeches and decisions. Similarly, Article 71 of the Constitution of Spain also states, "when performing the tasks of deputies, Congressmen and Senators have the right not to be responsible for their political views and speeches". In order to ensure facilities for activities of deputies, countries stipulate that deputies of the Parliament are paid the non-salary allowances. This allowance is used to pay for the assistant staffs of deputies, travel costs to contact with voters, to consult references of experts in areas to serve the operation ... In France, members of the Parliament are received the allowance equal to triple of medium salary and an amount of one quarter of the allowance to pay for house renting, allowed to free travel by air in 40 times.

Corresponding with rights, deputies are obliged to attend sessions of the Parliament, attend meetings of Committees of which they are members, implement regulations on operation of the Parliament, not reveal confidential information of the Parliament ... In case that the deputy does not fully implement his tasks, he has to sustain discipline forms such as warning, fine and may be deprived of the right to delegate. The law of countries also have specific regulations on this issue. The operational rules of the Parliament of France stipulate a number of methods to treat deputies who violate rules and regulations such as reminder and a deduction of 25% of the salary of one month, reprimand

and a deduction of 50% of the salary of one month ... Paragraph 3 of Article 63 of the Constitution of Greece prescribes that within a month if the deputy is absent 5 times without any reason in the session, he will be deducted one thirtieth of the salary of each absence.<sup>64</sup>

According to working time and methods, it can divide the parliament of countries in the world into professional and nonprofessional ones. The basic characteristic of nonprofessional parliaments is that almost all delegates pluralistically work and receive an amount of working fee; the parliament does not regularly meet; the standing body is assigned rather large authorities. Professional parliaments have the structure of the majority of special responsible delegates who receive the salary for the implementation of tasks of delegates; Committees and Councils regularly operate; the process and procedure of operation of the Parliament are rather specifically prescribed.

The extension of operation of the parliament requires that delegates have to spend the whole time of a day on the work the parliament. Thus, delegates need a certain income to ensure the life of themselves and their families. Many countries apply smonthly payment for delegated instead of daily payment. In these countries, the work of delegates is considered a professional job and the delegate receive a monthly salary.

In countries the parliament of which is organized in bicameral model, the Congressmen are usually special responsible delegates; there is not the pluralistic of the function of legislation, execution and justice to avoid the confliction of interests when performing these functions. Specifically, the congressman is not concurrently the judge of the Court, particularly the Consitutional Court. However, the congressman in some countries, particularly those in the parliamentary regime, may concurrently holds the legislative and executive functions in some cases. For example, the congressman of the Federal republic of Germany can be a member of the Government and the professor teaching in universities or research institutions ... After finishing the term, if the congressmen are not elected to delegates of the next term, they can find their jobs. Moreover, finding a job for those who used to be congressmen is not difficult because generally they have capabilities and broad social relations.

The pluralism of senators is not as strictly required as congressmen, because the Senate in many countries only plays the role of participation in legislative activities and whereby implementing the examination and supervision. In the US, Canada and the Federal republic of Germany, the senator may concurrently hold a number of positions in judicial branch.

While in countries in the previous social system, almost all delegates pluralistically work. Specifically, delegates may be members of the Government,

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<sup>64</sup> Vu Hong Anh, LL.M., *The organisation and operation of the Parliament of some countries in the world*, National Political Publishing House, Hanoi, 2001, P.98

Judges or members of local authorities of all levels ... The limitation of pluralism is that delegates do not have enough time to concentrate on the operation of the Parliament that cannot avoid interests confliction when concurrently performing many functions. However, the pluralism makes the budget for activities of the parliament small; delegates may continue to do their different jobs if not being re-elected.

### ***1.5. Assisting apparatus and the position Secretary General of the Parliament***

Each Parliament, although being organised in the model of unique or bicameral parliament, forms the advise and assistant apparatus to perform its power and ensure its operation. Depending on social economic conditions, political regime, traditional factors, practices on the organization and operation, ... the Parliament of each country has different regulations on the model, name, tasks and power of the assistant apparatus. In countries following the model of bicameral parliament, each house has its own assistant apparatus. Generally, there are two kinds of office organization: general assistant office for the Parliament and organs of the Parliament; particular assistant office for delegates and parties.

The Secretary General of the Parliament is the one who is the leader of the office apparatus serving the Parliament. In countries with the Parliament following the model of bicameral parliament, each House has the individual Secretary General (England, Canada, Germany, Malaysia, Mexico, Australia, Thailand, ...); there is a case that each House has two Secretary General having the same legal position, one is responsible for the administration, other is responsible for the specialty (Argentina, France). In some countries with the organisational model of unique parliament, usually one position of Secretary General is formed (Austria, Denmark, Italia, New Zealand, Turkey, Sweden); particularly China has two positions of Secretary, one of sessions, other of the NA Standing Committee.

Regarding the procedure of appointment and election of the Secretary General, in can be divided into 5 basic groups as follows:

- Being elected by the Parliament (rather popularly);
- Do Chủ tịch Nghị viện bổ nhiệm; Being appointed by the Chairman of the Parliament;
- Being appointed by the leading Party;
- Being appointed by the executive organ, the President or the King;
- Being elected through examinations of the State, afther that the Chairman of the Parliament or the leading Party or the Prime Minister, State Council appoint<sup>65</sup>.

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<sup>65</sup> Mr. Ugo Zampetti, Secretary General of the Parliament of Italia, The role of the Secretary General in the administration of Parliament, [http://www.asgp.info/Publications/CPI-English/2000\\_180\\_role\\_SG.pdf](http://www.asgp.info/Publications/CPI-English/2000_180_role_SG.pdf)

In countries each House of which also has the position of Secretary General, the election of the Secretary General is mostly conducted by the correspondent House (Argentina, Mexico, Russia). In other countries, the appointment of Secretary General is conducted by the Chairman of the correspondent House (Germany) or the Chairman of the Parliament but there must be the consent of the majority of members of the Parliament (Philippines) or the King on the basis of the suggestion of the Prime Minister (Malaysia) or the King on the basis of suggestions of Chairmen of correspondent Houses (Thailand) or basing on the coordination of the model of being appointed by the Queen and the Chairman of the House of representatives (in England, the Secretary General of the Parliament is appointed by the Queen, the Secretary General of the House of representatives is appointed by the Chairman of the House of representatives).

In countries organizing the Parliament in the unique model, the Secretary General is elected by the Parliament (China) or appointed on the basis of suggestion of the Federation Council and National Council (Austria) or on the basis of suggestion of the Chairman of the Parliament (Senegal). There are some cases that the Secretary General is appointed by the Chairman of the Parliament (Turkey, India, Namibia, Cuba) or appointed by the Chairman of the Parliament after discussing with Deputy Chairmen (Denmark). There is a case that the Secretary General is appointed by the Management Committee on the basis of suggestion of the Chairman of the Parliament (Italia).

- *Selection criteria of the Secretary General of the Parliament*

In some countries, the Secretary General of the Parliament has to be elected or appointed among delegates (China).

In some countries, the Secretary General can not be the delegate and not participate in any political party (Argentina, Indonesia).

In many European countries, the selection of the Secretary General of the Parliament is based on these following criteria:

- Straight and honest;
- Knowledgeable about the nature of the work and operational processes and procedures of the parliament;
- Able to manage the assistant apparatus of the Parliament;
- Able to solve relations, particularly the one with the Chairman of the Parliament<sup>66</sup>.

- *Functions, tasks and power of the Secretary General of the Parliament*

In almost all countries, the function of the Secretary General is to manage

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<sup>66</sup> Office of the NA, *The organisation and operation of the NA of some countries*, P.300, Hanoi, 2002

and operate administrative and technical work of the Parliament, monitoring procedures of working preparation of the Parliament; assisting, advising and consulting the Chairman of the Parliament and delegates in functional issues of the Parliament, particularly the operational process and procedure of the Parliament; maintaining the connection between the Parliament and the press, newspaper and concerned agencies and organisations.

Tasks and power of the Secretary General are shown in the following areas:

- ***Law making assignment:***

The Secretary General of the Parliament is the one who ensures that bills are submitted for consideration and approval at the Parliament according to processes and procedures (Canada); being responsible for the exact of legal documents before submitting (England); revising the law before being published (Malaysia). In Japan, the Office of the Secretary Committee of each House includes of 200 law staffs serving Committees in the investigation assigned bills.

The Secretary General is the assistant and consultant for the Chairman of the Parliament and delegated in issues related to law making assignment (Germany, Italia, Denmark, Senegal). Besides, the Secretary General of the Parliament of England is responsible for ensuring to transfer bills at the House of representatives and announcing the approval of bills of the Royalty.

- ***Administrative assignment:***

The Secretary General is responsible for operating the administrative apparatus of the Parliament (England, Argentina, Denmark, the Senate of Germany, Senegal, Mexico, Canada, Cuba); coordinate and managing administrative assignments of the Parliament under the overall guidance of the Chairman of the NA (Turkey, the House of representatives of Germany); coordinating administrative assignments supporting to Committees (Mexico); in countries where the Secretary Committee of the NA (or the Secretary Committee of the session) is established, the Secretary General operates the work of the Secretary Committee (Thailand, Japan, China, Sweden, Australia, Austria).

The Secretary makes plans and programs of sessions of the Parliament, the Chairman of the Parliament, Committees, organizing and serving these meetings (Argentina, Denmark, Thailand ...).

The Secretary General prepares documents, writes the minutes of meetings (Canada, Italia, Japan) and stores the minutes of sessions, documents of the Parliament (Sweden, Canada, Thailand, Malaysia, Italia). In Japan, the Office of the Secretary Committee of each House has 200 stenographers writing the minutes of sessions of the Parliament and sessions of Committees<sup>67</sup>.

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<sup>67</sup> Minh Duc, *The Parliament of Japan: the organisation serving parliamentarian*, Legislative research Magazine, No.9/2003

The Secretary General is the adviser to the Parliament and consultant to the Chairman of the Parliament in administrative procedures and rights of delegates (England); adviser to leaders of the Parliament, Ministers and delegates in procedures, practices and their rights (Australia) or issues related to the Parliament (Austria).

In other some countries, the Secretary General is the consultant to the Chairman of the Parliament (Canada, The Secretary General of The NA Standing Committee of China, Sweden, Senegal, Malaysia), supporting the Chairman of the Parliament in coordinating operational programs of the Parliament and organs serving the Parliament (Japan); supporting the Chairman of the Parliament in assessing the result of the vote (Thailand).

**- *Personnel assignment:***

The Parliament of some countries also assigns to the Secretary General the function of personnel management (Japan, Senegal, Mexico, Malaysia, Italia, Canada, Denmark, Indonesia ...). however, the scale of authorities of the Secretary General in this issue is different in different countries. Some countries prescribe that the Secretary General both has the right to recruit and dismiss its staffs. In other countries, the right to recruit and dismiss is limited to the person holding positions or the Secretary General can only send the petition in this issue to the leading Party.

In some cases, the Deputy Secretary General is also assigned the right to decide a number of issues of personnel if being delegated by the Secretary General or allowed by the Chairman of the Parliament or approved by the Professional Committee on supervision over personnel management.

In Japan, the total number of staffs of The Office of the Secretariat of the House of representatives was 1300 people, including 50 staffs responsible for serving meetings, 100 secretaries assisting Committees, 200 stenographers recording minutes of meetings of Committees, 200 law staffs assisting Committees in investigation of assigned bills, 200 guardians, 200 staffs managing material – technical facilities, 30 reception staffs, 20 drivers for the Chairmen of Committees and parties who were granted cars and drivers, 30 cleaners. It was similar to the Office of the Secretariat of the Senate<sup>68</sup>.

**- *The relationship with the mass media and other agencies and organisations:***

The Secretary General of the Parliament holds an important role in maintaining the connection between the Parliament and the commons. The parliament of countries allows the Secretary General to inform information and pictures of activities of the Parliament through the mass media to the public.

In almost all Parliament, there is the spokesperson informing activities of

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<sup>68</sup> Minh Duc, *The Parliament of Japan: the organisation serving parliamentarian*, Legislative research Magazine, No.9/2003

the Parliament to the public, the press and media. This person is recruited by the administrative division and directly responsible to the Secretary General (Estonia, Germany, England, Iran, Isarel, Italia, Nambia, Russia, Holand, Swiss, Slovenia). In Rumania, the Secretary General is the spokesperson of the Parliament, in Austria, the Secretary General is the one who maintains the connection with the mass media; In Mexico, the Secretary General is the one who announces dicussions; in Sweden, the Secretary General is the one who informs decisions of the Chairman of the Parliament.

Besides, the Secretary General is responsible for keeping the connection with other agencies responsible for serving the operation of the Parliament or related to the operation of the Parliament (Senegal, Italia).

***- The budget and finance of the Parliament:***

In most of Parliament, the Secretary Generals are responsible for submitting the budget or preparing budget projects to the Consulting Council for consideration (Germany, England, Denmark, Estonia, Phillipines, Turkey, Indonesia, Nambia, Rumani, Thailand, New Zealand, France ...).

Although, ther are differences between countries about the expenditures and budget of the Parliament, in countries without internal financial agency or independent auditing agency in the Parliament, the management of the expenditure and finance are assigned to the Secretary (New Zealand, Denmark, Mexico, Malaysia, England, Cuba ...). The Secretary General ensures the appropriate expenditures with the approved budget and is the reported about the financial balance in the year end.

***- Ensure of material – technical facilities, security and oder:***

In some countries, beside the task of administrative management, process and precedure maintanance in the operation in the Parliament, the Secretary General is also responsible for ensuring material – technical facilities serving every activities of the Parliament and delegates (Japan, Cuba, New Zealand, France ...).

The Secretary General is responsible for the safety and order in the operation of the Parliament. In order to perform this task, the Secretary must be the one to organise and coordinate activities and decide necessary methods in order to ensure the safety for the operation of the Parliament, the security in working places of the Parliament, internal security, to protect the travel of the Chairmand and Vice-Chairmen of the Parliament, ...

Thus, the main task of the Secretary Genera is managing the administrative apparatus of the Parliament and consulting the Chairman of the Parliament. In countries having the Secretary General in both two House, each Secretary General has the same tasks and power. In France, because of two secretaries in two Houses, the tasks and power of each Secretary General are: each Secretary General is responsible to the Chairman of the Parliament for the legislature, foreign affairs, information, sessions, Committees, researches, European issues,

minutes; one Secretary General directly supervised by three delegates is responsible for issues in finance, budget, accountance, insurance, assets, material – technical facilities. Secretary Generals of the NA of China are assigned as follows: The Secretary General in sessions is responsible for management of the Secretariat of sessions; The Secretary General of the Standing Committee is the assistant for the Chairman of the NA and operates the apparatus of the NA Standing Committee.

- *Working regime:*

In almost all countries, the Secretary General is not the member of the Parliament, not participate in parties. The Secretary General works as a special responsible officer and not concurrently hold positions contrary to his tasks, apart from teaching (Estonia, Argentina, Germany, England). In Japan, the Secretary General manages the administration, material – technical facilities, helps the Chairman of the Parliament in coordinating and cooperating activities of the Parliament with other agencies, ... Therefore, in order to concentrate in and being independent in working, the Secretary General is not a politician but an official in the highest administrative branch – the Deputy Minister.

However, in some countries, the Secretary General can pluralistically work (Andora, Congo, South Korea, the House of representatives of Jordan, India, Indonesia, New Zealand, Romania). In Namibia and South Africa, the Secretary General is also the Standing Secretary of a Ministry.

In China, the Secretary General is a deputy of the NA. Beside implementing tasks and power of the Secretary General, he has to perform the task of representation of voters.

Laws of countries define the position of Deputy Secretary General. He has the right to be on behalf of the Secretary General to resolve assigned issues. The number of Deputy Secretary Generals is different in different countries, usually from 1 to 4 people. The procedure of appointment of Deputy Secretary Generals is similar to the one of the Secretary General. The Deputy Secretary General is responsible to the Secretary General or leading Party for assigned work.

- *The term of the Secretary General of the Parliament*

**In some countries, the term of the Secretary General coincides with the one of the Parliament and can re-assume (China).**

When the Secretary General is elected and appointed in a certain term, the law of some countries state that if the Parliament is dismissed before the end of the term or the Parliament finishes the term but a new Parliament is not elected, the Secretary continues to work.

In some countries, the Secretary General is appointed for the whole life (until the retirement at the age of 60 or 70) not upon the term of the Parliament. In England, the Secretary General only resigns at 65 or because of personal expectation.

- *Dismissal of the Secretary General*

The power and precedures of dismissal of the Secretary General is similar to the election or appointment of this position. The dismissal of the Secretary General can be decided by the Chairman of the Parliament (Andora, Greece, Romania); can be decided through a Resolution of the Parliament (Phillipines, Chile, Finland, Germany ...) or by the command of the King on the basis of suggestion of the Parliament (England).

In Urugoay, in order to dismiss the Secretary, the Senate vote of unconfidence of the Secretary General, in case of the majority of simply approval votes, the Parliament promulgate the resolution on the dismissal of the Secretary General.

## **2. The relationship between the NA and institutions in the state apparatus according to the Constitution and laws of some countries**

Through the definition of the boundary of the authorities and legal position of each agency belong to legislative, executive and judicial branches, the Constitution and laws of countries have created the foundation for each branch to perform right assigned authorities, concurrently monitor, mututally assess and supervise. This relation reflects the principle of power decentralization in each country. Thus, there are differences between the organisation of state apparatus of countries following the “hard” power decentralization principle (usually in countries following the presidential republic regime or bicameral one) and countries following the prin the relationship between the NA and the Government (executive body) and the Court (judicial body) includes the “flexible” power decentralization principle (Parliamentary republic or parliamentary monachy countries).

### **2.1. The NA and the excutive body**

In general, in presidential republic countries, there is rather absolutely division of the power of legislation and execution. However, there are mutual supervision and counterpoise between these organs. Thereby, the President is elected by the people, concurrently being the leader of the executive apparatus; the president does not have the right of legislation but can impact on executive activities through the implementation of veto right when the Parliament approve the law not in accordance with policies of the executive; the Parliament is also elected by the people and hold the legislative right, however the executive activities of the Parliament usually bases on annual operational programs of the executive proposed by the President. In these countries, the Parliament does not have the right to propose to dismiss the Government, but he can impact on the executive through the right of decision on budget, budget allocation, approval of international treaties concluded by the Government; approval of member of the executive apparatus submitted by the President or dismissal of the President by the impeachment.

Being different from countries following the “hard” power decentralization

principle, in parliamentary republic or parliamentary monarchy countries, there are the subordination and connection between the Parliament and the Government, in which, the division of role and tasks is only formalism. The Parliament elected by the people is the legislation but the Government – the executive established by the Parliament also has the legislative right. Particularly, in countries where the party holding the major seats in the Parliament forms the Government, the important role of the Government to executive activities of the Parliament is more clearly shown. Contrarily, the Government formed by the Parliament performs the executive right, however, the Parliament has the ability of affection on the operation of the Government through the right to vote of distrust to the Government and the right to refuse the confidence to the Government

According to the Constitution and laws of some countries, the relationship between the NA and the executive can be mainly shown in some following points:

- *The NA participating in the establishment the Government*

The Parliament participates in the establishment the Government according different levels depending on social economic conditions and the institutional form of that country. Parties in the Parliament play important role in this process.

In some presidential republic countries, such as the US, Ecuador, the fact that the header of the State appoints Prime Minister has to be approved by the Senate, in Phillipines that has to be approved by a special committee including the Chairman of the Senate and representatives of each House.

In parliamentary republic countries, the header of the State usually appoints the header of the won party of party union to the position of Prime Minister and appoints other members of the Government on the basis of suggestion of the Prime Minister (Greece, India, Italiam Canada). In some countries such as: Germany, Japan, Spain, the Parliament directly elect the Prime Minister. In Sweden, the document of appointment of the Prime Minister is concluded by the Chairman of the Parliament and the King does not participate in the establishment of the Government.

In combined political institution countries, the header of the state usually appoints the Prime Minister among headers of the won party or party union and appoints Ministers according to the suggestion of the Prime Minister. In some countries such as Russia, North Korea, the President only appoints the Prime Minister with the approval of the Parliament. In France, when both the President and the Prime Minister do not get the major advocates in the Parliament, the Prime Minister has an extremely important role in the establishment of the Government; however, some positions of minister can only be appointed with the opinion of the Prime Minister.

After being established, for the Government to put into the operation, the law of some countries also stipulate a number of certain conditions. Such as in

Greece, Italia, the Republic of Czech, Poland, Turkey, Moscow ..., for the Government to directly start their work, the action program and members of the Government have to be voted of confidence of the Parliament. In Italia, the Government must get the advocate of both Houses within 10 days after the establishment. In the Republic of Czech, the Government must get the confidence of the House of representatives within 30 days after the establishment. Contrarily, in the countries in the North East European, the Government is not necessary to get the vote of confidence and can operate until the time the Parliament is not trusted anymore.

- *The Parliament limiting the power of the Government, monitoring and supervising the Government*

In countries the Government of which is established by the Parliament, the limitation of the Parliament to the power of the Government, the supervision and monitor of the Government are clearly shown in the fact that the Parliament can vote of confidence or distrust for the Government, members of the Government that originates from the fact that the Government have to be responsible for their operation before the Parliament.

- *Vote of confidence*

The vote of confidence usually happens when the Government itself proposes the issue of confidence to the Parliament to examine the confident level of the Parliament to the Government or to pressurize on the Parliament in the consideration and approval of a guideline, policy or law project. Meanwhile, the disadvantage of the vote of confidence at the Parliament may cause the collective resignation of the Government. For example, in 1990, the Prime Minister of Sweden proposed the “package petition” to the Parliament to vote and proclaim that if the Parliament did not approve the “package petition” the Government would itself resign without waiting for the procedure of vote of distrust. The Parliament of Sweden did not approve the proposal and the Government resigned by itself.<sup>69</sup>.

In some countries, the right to petition for the vote of confidence is usually stipulated for the header of the Government. For example, in Slovenia, the Prime Minister can send the document to the Chairman of the Parliament to propose the Parliament to vote of confidence of the Government. The vote is conducted not earlier than 48 hours, not later than 7 working days after the proposal being submitted. The Prime Minister can attach the vote of confidence of the Government to the approval of a bill; this means the attitude of the Parliament for the bill (approve or not approve) is also the attitude for the Government (confidence or distrust). In this case, the Prime Minister will raise the issue of vote of confidence before the Parliament votes on the bill. The Parliament will not particularly vote of confidence; instead, the result of the vote on the bill is

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<sup>69</sup> Minh Thy, *Two forms of voting of nonconfidence*, posted in website The representatives of the people (<http://daibieunhandan.vn/default.aspx?tabid=77&NewsId=95969>)

also the result of vote of confidence. If the Parliament votes on the approval of the bill of the Government, the vote of confidence of the Government is considered being approved. Contrarily, if the Parliament votes on the disapproval of the bill, the vote of confidence of the Government is considered unsuccessful. In the second case, the President, party groups or at least 10 delegates have the right to propose the candidate for the Prime Minister within 7 days. In Russia, the Prime Minister of the Russian Federation can actively raise the issue of the vote of confidence of the federal Government before the State Duma in case of appropriate reasons. That proposal document has to be immediately popularized among delegates of the State Duma. When the Prime Minister raises the issue of the vote of confidence at the time delegates of the State Duma are proposing or considering the petition on voting of nonconfidence, the petition on voting of nonconfidence will be firstly considered. When the State Duma approves the resolution on nonconfidences of the Government, but the President proclaims not to agree with the decision of the State Duma, the suggestion of the Prime Minister of the Government of the Russian Federation will be considered after 3 months from the date of submitting the suggestion.

The vote of confidence is a rather effective method to pressurize on the Parliament, in particular when the collective resignation of the Government can be cause the dismissal of the Parliament and the definement of a vote on new parliament. However, this is a great hazard, because if the Government does not achieve the necessary confidence from the parliament they will meet with difficulties, even they cannot implement the policy they are pursuing. Moreover, if the parliament is dismissed and the new one is elected, the old government will never hold the majority in the Parliament. Therefore, normally the Government of countries only uses this method when they firmly believe in the advantage of their balance of power at the time of the vote.

#### ***- Vote of nonconfidence on the Government and members of the Government***

The vote of nonconfidence on the Government, members of the Government is the activity showing the sympathy of the Parliament for the guideline, policy or a specific activity of the Government, members of the Government. If the vote of nonconfidence is approved, it can cause the resignation of the Government, members of the Government or the dismissal of the Parliament. In countries having two houses in the Parliament, the right of vote of nonconfidence on the Government is usually only belong to the House of representatives, because the House of the representatives is elected by the people that directly represent the people; the Government in the parliamentary regime is usually formed from the major party in the House of representative but not from the Senate.

The petition on the vote of nonconfidence on the Government is often raised after the results of the supervisory activities and the Parliament finds that the Government has not enough confidence to continuously perform the task.

However, in order to ensure the stability of the Government, the law of countries usually require the petition of the vote of nonconfidence has to be raised by a significant number of delegates, concurrently, that has to comply with close procedures. For example, in Russia, the State Duma can vote of nonconfidence on the Government of the Russian Federation in the case of at least one fifth of the total number of delegates propose. The petition is submitted to the State Duma Council has to attached to the draft of resolution of the State Duman, the list and signatures of approval of delegated to the State Duma. The State Duma has to consider the issue of nonconfidence of the Government within 1 week from the date of petition being raised. In Japan, the petitions of delegates on the vote of nonconfidence of the Government have to be submitted in writing with signatures of at least 50 delegates supporting, therein reasons of petitions are clearly stated. In the Parliament of Slovenia, after the session of interpellation about the operation of the Government or a Minister finishes, at least 10 delegates can require the Parliament to vote of nonconfidence of the Government or that minister. Petitions on the vote of nonconfidence after the interpellation finishes are always priorly voted before petitions on the assessment of the response to the interpellation of the Government.

Besides, to avoid a long governmental crisis because the Parliament can spend much time on forming a new Government, laws of some countries require a constructive vote of nonconfidence, this means the Parliament not only approves the resolution on nonconfidence but also defines the leader of the new Government, then the result of the vote will be recognized. For example, in Germany, Bundestag (the House of representative) can only show the nonconfidence of the Prime Minister of the Federation by electing the successor and suggesting the President to dismiss the old Prime Minister. The President is force to do that and appoint a new Prime minister.<sup>70</sup> In Slovenia, when voting of nonconfidence of the Government, delegates submitting the petition also concurrently propose the candidate of the new Prime Minister, and then the vote of nonconfidence is conducted<sup>71</sup>.

Besides, in some cases, the parliament is not necessary to raise the issue of nonconfidence to vote, they only represent their nonconfidence by not approving a special petition of the Government. Article of the Constitution of France states: “When the House of representative approves the critical petition or not approve the petition or proclamation on general policy of the Government, the Prime Minister has to submit the resignation to the President”.

Regarding the procedure, after the petition on vote of nonconfidence is submitting to the Parliament, the vote will not be immediately conducted, ministers of the Government are allowed to report, debate and argue about involved issues. Such discussion meetings can even last for several days. The

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<sup>70</sup> Art.67 Basic Law of Germany

<sup>71</sup> Hoai Thu, The voting of nonconfidence of the NA of Slovenia: The interpellation is the basis for the recommendation of voting of nonconfidence, Website The representative (website: <http://daibieunhandan.vn/default.aspx?tabid=132&ItemId=95967&GroupId=1013>)

petition of vote of nonconfidence cannot be conducted when there are changes in the number of supporting people in these discussion meetings. For example, in Russia, the Prime Minister of one of Deputies Prime Minister have the right to express their ideas in the meeting of the State Duma to discuss about the petition on vote of nonconfidence. During the discussion, the Prime Minister and other members of the Government can express to provide more information but not more than 3 minutes. Delegates to the State Duma put questions to the Prime minister and other members of the Government, express their ideas of consent to the vote of nonconfidence or not consent to the petition. In the meeting discussing about this issue, if the delegates who had the proposal on vote of nonconfidence decide to withdraw their name from the list of recommendations and the number of delegates recommending to vote of nonconfidence only is less than one fifth of total deputies to the State Duma, the issue of vote of nonconfidence will be excluded from the agenda of the State Duma without additional vote. The discussion ends when a request to terminate is approved by the majority of deputies voting.

Normally, the resolution of nonconfidence to the Government is approved when being approved by the majority of members of the Parliament (absolute majority or relative majority). Besides, because of extremely characteristic of the vote of nonconfidence, some countries still stipulate that the result of the vote of nonconfidence is recognized only that is consented by a certain number of deputies. For example, in Sweden, the parliament can proclaim that a minister does not achieve the confidence of the parliament when there is more than a half of deputies approving. The result of the vote of nonconfidence have to be consented by at least one tenth of the total deputies, then the vote of nonconfidence is just recognized. At that time, the minister not having the confidence will be dismissed. If the declaration of nonconfidence is related to the Prime Minister, the whole Government under the authority of the Prime Minister will be dismissed.<sup>72</sup> In Russia, the resolution on nonconfidence of the Government is approved when the majority of deputies of the Duma. When the President of the Federation does not agree with the decision of the State Duma about the nonconfidence of the Government and within 3 months, the State Duma again has to express their nonconfidence of the Government, the President or has to declare the dismissal of the Government or the dismissal of the Duma<sup>73</sup>. In

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<sup>72</sup> Le Anh, *Supervisory instruments of members of Parliament of Sweden*, posted in the website of the Center of Cultivation of elective deputies in the Deputies Committee of the Standing Committee

<http://ttbd.gov.vn/Home/Default.aspx?portalid=52&tabid=108&catid=434&distid=2683>

<sup>73</sup> Le Anh, *The procedure of voting of nonconfidence in National Duma of Russian*, posted in the website of the Center of Cultivation of elective deputies in the Deputies Committee of the Standing Committee

<http://ttbd.gov.vn/Home/Default.aspx?portalid=52&tabid=108&catid=434&distid=2052>).

Slovenia, when the Government does not receive the confidence of the Parliament, the President can again vote of confidence but only one time. If the first vote of confidence attaches to the approval of a bill, the second vote is not allowed to attach to the bill. If the Prime Minister is voted of nonconfidence or not successful in the vote of confidence, the Prime Minister has to inform in writing to the Chairman of the parliament about his resignation or one of the minister

*- The Congress judges executive officials (impeachment)*

The judgment of executive officials (also called impeachment) can be implemented both in parliamentary countries and presidential republic ones when through the investigation of the parliament (usually conducted by committees on investigation) there are evidences showing that State officials have been guilty of misuse of power. The impeachment firstly originated from England but is absolutely implemented in the US where it is appreciated that the Parliament has rather real power in comparison with other countries in the world. In this country, the impeachment is one power of the executive which is used to officially prosecute an official of the Government because of illegal activities taken during his term of office. In case of impeachment of federal officials, the House of representatives has the right to give the accusation of illegal activities that could lead to a trial at the court. The Senate also has the right to examine the impeachment and verify whether those officials are guilty or innocent. Being found guilty, federal officials will be forced to leave the state agencies <sup>74</sup>.

The impeachment is conducted in the form of a trial in which each party has the right to bring witnesses and conduct the interrogation. In the US, when conducting the impeachment, senators have to be sworn and the Chief Justice of the Supreme Court is the chairman of the trial.

In practice, although the impeachment has much democratic meanings, it is rarely used. Britain, home of the Parliament and this procedure, has been not using the impeachment for 200 years (last used in 1805). In the US, the impeachment is only limitedly used in case of extreme infringement.

## ***2.2. The Congress and Judiciary (The Court)***

In other countries, the judiciary (the Court) usually has a great independence of both organisation and operation, thus, the interaction between this body and others in the state apparatus, including the congress, is rather limited. Nevertheless, regarding the relationship between the congress and the judiciary, the Constitution and law of some countries stipulate that beside establishing the Government, the Parliament also participates in establishing the judiciaries in different forms. Article 2 Chapter 2 of the Constitution of the US states that the President has the right to appoint judges of the Supreme Court

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<sup>74</sup> General on the authority of the US. Chapter 4: the legislation, the power of the NA ([http://vietnamese.vietnam.usembassy.gov/doc\\_usgovernment\\_iii.html](http://vietnamese.vietnam.usembassy.gov/doc_usgovernment_iii.html))

([http://vietnamese.vietnam.usembassy.gov/doc\\_usgovernment\\_iii.html](http://vietnamese.vietnam.usembassy.gov/doc_usgovernment_iii.html))

according to the suggestion and with the approval of the Senate. In France, both houses appoint the majority of members of the senior Justice Court - the special judiciary having the authority to consider cases of treason of the President (Art. 67, 68 of the 1958 Constitution). In Germany, the two houses appoint judges of the Federal Constitutional Court, the House of representatives appoints half of members of Judge Appointment Committee - the body having the authority to appoint judges of the Federal Supreme Court. In Russia, the Federal Union (the Upper House) appoints judges of the Constitutional Court, the Supreme Court and the Federal Supreme Arbitration Court according to the introduction of the President.

Beside the certain participation in the establishment of judicial bodies, laws of some countries also prescribe a number of authorities of the parliament in deciding judicial issues. In principle, the decision on judicial issues is not a typical authority of the Parliament, because according to the principle of power division, the jurisdiction only belongs to the judiciary. However, in many cases, activities of the Committees on Investigation of the Parliament in some countries has gone beyond the limitation of supervision and been conducted similarly to the interrogation of investigative agencies in the judiciary system. Article 82 of Italian Constitution states: "The Committee on Investigation conduct the research and examination with the authority and limitation similar to the ones of judiciaries". In the US, all Committees of the Senate and some of the House of representatives have a great authority of investigation. The absence of witnesses in meetings of those Committees are considered disregarding the Parliament and may be subject to criminal liability (similar to the absence at the court). Laws of some countries also stipulate that the Parliament has the right to prosecute senior headers of the State. According to Article 103 of the Constitution of Bulgaria, the Parliament can accuse the President or Vice President for treason or infringement of the Constitution, then the case will be considered by the Constitutional Court. In some countries such as France, in order to judge the State headers, the Parliament establishes particular tribunals from its members. In Britain, the Senate is simultaneously the highest court and acts as a appellate court or trial (in terms of cases related to the nobility). Judgements of the Senate is final. The Chairman of the House of representatives is the header of British Court system.

#### **IV. RECOMMENDATIONS ON AMENDMENT AND SUPPLEMENT OF REGULATIONS ON ORGANISATION AND OPERATION OF THE NATIONAL ASSEMBLY**

##### **1. Requirement of the organization and operation of the NA in Vietnam in present conditions**

The 1992 Constitution created an important legal basis for the development of the Socialist rule of law State of Vietnam of people, by people and for people; initially establish the basis for the process of reform and innovation of state apparatus in accordance with the process of innovation of our country.

In recent time, the organisation and operation of the NA have been constantly renewed and improved; the operation of the NA in the fields of legislation, supervision and decision on important issues of the country have been increasingly effective and essential. Regulations on organisation and operation of the NA in the Constitution, the Law on organisation of the NA, the Law on supervision of the NA, the Law on election of deputies of the NA and other relevant legal documents fundamentally created relative adequate and steady legal framework for the organisation and operation of the NA in present period.

However, the comprehension of the rule-of-law State has not been expressed specifically and throughout the 1992 Constitution and laws on organisation of the state apparatus, particularly in regulation on functions, tasks and power of state agencies in general and the NA in particular. The organisation and operation of the NA and organs of the NA in practice have still faced shortcomings as mentioned above, not just met requirements in new situations.

The Resolution of the X National Party Congress clearly pointed out: *“Continue to reform the organisation and operation of the NA. Complete the election mechanism in order to improve the quality of deputies to the NA; reasonably increase the number of special responsible deputies, better promote the role of deputies and delegations of the NA deputies. Re-organise a number of Committees of the NA ... Better perform the task of decision of important issues of the country and supreme supervision function.”* The Political report in the XI National Party Congress constantly confirmed that it is necessary to: *“Reform the organisation and operation of the NA, ensure that the NA is really the highest representative organ of people, the highest state authority.”*<sup>75</sup>

Especially, the Credo for national construction in the transitional period to the socialism in 1991 (supplemented, developed in 2001) and other documents of the XI National Party Congress and the Resolution of the second meeting of the Central Committee of the Party term XI defined the requirement of amendment of the Constitution in general and the institution of the NA in the Constitution in particular in order to *confirm that the NA is the highest representative organ of*

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<sup>75</sup> Plenum Document of the XI National Congress P.248, National Political Publishing House, Hanoi, 2011

*people, the highest state authority implementing the right of constitutionality and legislation, well perform the function of supreme supervision and decision on important issues of the country; obviously determine the authority of the NA in deciding social economic development plans, national finance and monetary policy.*

Thus, the research on amendment and supplement of regulations on the NA in the 1992 Constitution has the significant of theory and high practical value to serve the continuous improvement of regulations of the Constitution in particular and the legal system on the organisation and operation of the highest state power organ of our country.

We propose that the amendment and supplement of regulations on organisation and operation of the NA need to thoroughly grasp the following viewpoints:

***Firstly, institutionalizing the party's views on reforming the organisation and operation of the NA; ensuring the objective of continuously promote the democracy*** right in the direction determined in the Resolution of the XI National Party Congress. Accordingly, regulations of the Constitution on the NA shall be amended and supplemented towards obvious expressing the sovereignty belongs to the people, particularly in the matter of the direct democratic rights of people, such as the election, the referendum, final decision on the Constitution ...; obviously determining the mechanism of direct and indirect utilization of state power of the people, the mechanism of supervision of the people over the NA.

***Secondly, to clarify the mechanism of allocation, coordination and supervision of power between the NA and other state bodies*** in the implementation of legislative, executive and judicial rights. Particularly, the amendment and supplement of regulations of the Constitution on the NA shall concentrate to clarify the mutual supervisory mechanism between the NA and the Government, the NA and judicial agencies, the relation between the NA and local state agencies.

***Thirdly, the reform of the NA must be conducted in the overall reform of the state apparatus.*** We found that the state apparatus is a unified system of state agencies from the central to local levels. In the condition of implementation of centralized state power in our country, each state agency has the important role and position. In the state apparatus, each agency has a certain independence but in a system with the mutual "allocation and coordination". Thus, considering the logic of the issue, the reform of organisation and operation of the NA must be conducted in the overall reform of the system of state agencies in order to create the efficiency and effectiveness of the whole governmental system. Simultaneously, the reform of the NA will directly influence and impact on the organisation and operational methods of other state agencies.

***Fourthly, reform must be conducted synchronously on the organisation and operation of the NA.*** Because of the requirement of the work and operation

of the NA, it is necessary to reform the organisation and operational methods of the NA. Concurrently, just the reform on the organisation will facilitate the full implementation of duties and power of the NA.

The organisation of the apparatus of the NA is a unified institution, bodies of the NA have close mutual relation. Concurrently, each structure participated at a certain extent on the performance of functions of the NA. Thus, it is necessary to consider the systematic in the organisation and operation of the NA in order to adequately promote the position and role of each structure in the apparatus of the NA.

To get the effectiveness, the reform of organisation and operation of the NA must start from clarifying the essential structure, the position, tasks and power of each structure in the overall general operation of the NA. The effectiveness of the process of reform on the operational structure of the NA heavily depends on the rationality and science in the determination of duties and power of each structure in accordance with functions, tasks and power of the NA.

## **2. Recommendations on amendment and supplement of a number of regulations of the Constitution on organization and operation of the NA in the Constitution**

On the basis of the thorough grasp of the above mentioned viewpoints on the reform of organisation and operation of the NA, we propose some specific contents of the amendment and supplement of some regulations on the NA in the 1992 Constitution as follows:

### **2.1. The National Assembly**

#### *2.1.1. The position and role of the NA:*

*Confirming that the NA is the organ implementing “the legislative right”. The regulation that the NA is the organ implementing the legislative right aims at institutionalizing viewpoints of the Credo on “allocation, coordination and supervision between organs in the implementation of legislative, executive and judicial rights”<sup>76</sup>.*

Simultaneously, it is necessary to remove the word “only” in the sentence “*The National Assembly is the only body vested with constitutional and legislative powers*” in the present Constitution. Because, on the one hand, the provision that the NA is the body implementing the legislative right, naturally, the legislation is under the enactment of laws is under the authority of the NA. On the other hand, the constitutional right is essentially the right of the people, thus, this authority is not completely the right of the legislative body but the right of the people.

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<sup>76</sup> The Credo on building the country in the transitional period to the socialist (supplemented and developed in 2001), Plenum Document of the XI National Congress, National Political Publishing House, Hanoi 2011, P.85

### 2.1.2. *The functions, tasks and power of the NA:*

- ***The legislative right***

- *Clarifying the comprehensive of the right of legislation of the NA.* Accordingly, it is necessary to determine the legislative right in the broad sense, including decisions on important issues of the country such as the decision on budget allocation, national finance and monetary policy, tax policy, the policy of investment in national important projects

In that sense, it is essential to amend to obviously and specifically regulate this issue that the NA can really perform its authorities in the implementation of a number of important decisions but not present formalistic decisions. National important issues need to be decided by the NA through the form of law promulgation, such as the law on annual national budget ...

- *Abrogating the provision on forming the program of law and ordinance building (Paragraph 1 Article 84 of the 1992 Constitution).*

One of big limitations of the Program of law and ordinance building at present is that the form and decision of programs have been still formalism, lacked of synchronism and feasibility that lead to the frequent adjustment of the Program, particularly the termly program of the NA.

In fact, the determination of the program on law and ordinance building for 5 years have proved the suitability in the present prompt social economic development, that requires the demand of law and ordinance building have to be immediately responded to ensure the requirement of state management, that lead to inappropriate programs adjusted many times. The law and ordinance building program must be continuously adjusted, but the NA meets only 2 times per year. Thus, in order to ensure the opportuneness, the Law on promulgation of legal normative documents had to stipulate the simple procedure to adjust the law and ordinance building program towards: The NA decides the program but the adjustment of the program is conducted by the NA Standing Committee. We think that this provision is not conformable with the development of the socialist rule-of-law state of Vietnam.<sup>77</sup>

Therefore, we propose to abrogate the authority of decision on law and ordinance building programs of the NA in paragraph 1 Article 84 of the 1992 Constitution to broaden the provision on this issue of the Law on organisation of the NA towards: not to set up the law and ordinance building program for the whole term of the NA because this program lacks of feasibility and always has to change; immediately, if the annual law and ordinance building program still remains, the program has to be basically renewed in such a way that ensuring the close cooperation between requirements of the Government in promulgating laws as the basis for the administration and organisation of the country as an executive

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<sup>77</sup>. Art.29 of the Law on promulgation of legal normative documents

body with authorities of the NA to implement the task of investigation and decision as a legislative body.

- *Research to broaden the scope of subjects having the right to submit law initiatives.* According to Article 87 of the present Constitution, the submissions of bills usually just originate from requirements of national administrative agencies or other subjects participating in national administrative activities, such as social political organisations, but have not paid adequate attention to requirements of managed subjects and the socialness of legislative activities. Thus, it is essential to research to broaden the scope of subjects having the right to submit initiatives on laws. Such as: the proposal of bills on tax may originate from the initiatives of business associations (taxpayer); the submission of bills on issues related to rights and obligations of a community may originate from initiatives of the People's Councils of provinces or cities under the central government. Concurrently, to build the mechanism for the implementation of bill initiatives. Such expansion ensures both the democracy and socialness in the legislation, makes the legislation more closely following social needs. When the scope of subjects having the right to submit initiatives on laws cannot be broadened, the mechanism of 'sponsored bills' should be applied, that means the bills drafted by organisations and interest groups in the society, when being 'sponsored' by a subject having the right to submit the bills, are also submitted to the NA, the NA Standing Committee for consideration.

- ***The right of supervision of the NA:***

This right derives from the legislative right of the NA. Thus, together with amending provisions of the legislative right, it is necessary to clarify the scale and objects of supreme supervision of the NA including which agencies and activities. Distinguish the supervisory authority of the NA over the Government, the Supreme People's Court, the Supreme People's Procuracy.

In that sense, we suggest to concentrate on amending the following provisions in the Constitution in order to contribute to continuously renew the supervision of the NA, improve the efficiency and effectiveness of the supervision of the NA:

- ***Firstly***, clarify the comprehensive on "the supreme supervisory right of the NA".<sup>78</sup>

Now, there have been any uniform understanding about what the supreme supervisory right of the NA is. The supervisory right of the NA is not independent but a derived one from the legislative right of the NA, therefore, it closely relate and supplement to the legislative right of the NA. Thus, how to determine subjects of supervision, objects being supervised and the scope of the supreme supervisory activities?

+ *Subjects of the supreme supervisory right.* The NA is the only subject of

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<sup>78</sup>.par.2 Art.84 of the 1992 Constitution

the supreme supervisory right or subjects of this right also include the NA Standing Committee, the Ethnic Council, committees of the NA, delegations of deputies and deputies to the NA?

We think that there are criteria to distinguish the supreme supervision of the NA and supervisory activities of organs of the NA, delegations of deputies and deputies to the NA: *Firstly*, the subject implementing the supreme supervisory right is the collectivity of deputies of the NA in the sessions; *Secondly*, the object being supremely supervised by the NA is not limited; *Thirdly*, the content of the supreme supervision is the supervision over the implementation of highest validity legal documents; *Fourthly*, the resolution of the NA on the result of the supervision has the highest validity among other reports and conclusions on examination, investigation and supervision<sup>79</sup>.

The NA implements the supreme supervisory right over all activities of the State, that means the supervisory authority of the NA comprehensively covers the whole operation of the state apparatus. Nevertheless, as a collectivity of deputies of the NA working in the session, the NA cannot effectively implement the supervision. The NA has to assign the implementation of that right to the NA Standing Committee, the Ethnic Council, Committee of the NA, delegations of deputies and deputies to the NA through the promulgation of provisions on the authority and scope of supervision of each subject. Thus, the subject of the supreme supervisory right is only the NA (literally a plenary session), the subject directly participating in the implementation of that right includes: The NA, the NA Standing Committee, the Ethnic Council, Committee of the NA, delegations of deputies and deputies to the NA.

+ *The objects being supervised*: We think that the NA implements the supreme supervisory right over the whole operation of the State, however, to ensure the feasibility of this provision, it is essentially to distinguish the authority of supervision of the NA and the People's Council. Accordingly, the NA should only directly supervise over organs and header of organs elected or approved by the NA such as the President, the NA Standing Committee, the Government, the Prime Minister, ministers and other members of the Government, the Supreme People's Court, the Supreme People's Procuracy, the State Audit ... The local supervisory activities are essential to reasonably decentralized to the People's Councils at all levels to avoid the overlap, duplication and hard feasibility.

Especially, regarding the supervision over judicial agencies, we think that the Constitution needs to be amended towards ensuring the independence of the Court, respecting the principle the Supreme People's Court is the highest judicial body and during trials, judges and people's assessors are independent and subject only to the law.<sup>80</sup>

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<sup>79</sup> Statement to the NA on the Bill on supervision of the NA, dated November 29, 2002

<sup>80</sup> About the content of supervision to the judicial body see the specific recommendation at part 2.5 of the report

+ *The scope of supervision:* The present Constitution prescribes that the NA supervises over “documents” of competence state bodies (literally including legal normative documents and legal applicable documents). While the Law on supervision stipulated this authority of the NA within the legal normative documents. We think that the provisions of the supervisory authority over all documents is too broad, thus, it is suggested that this provision in the Constitution should be amended in such a way that the NA only supervises over “legal normative documents” of the objects being supervised.

- ***Secondly***, the supervision and protection of the Constitution:

According to the present Constitution, the protection of the Constitution in our country is assigned to central state institutions including the NA, the NA Standing Committee, the President, the Government, the Prime Minister. This is the decentralized mechanism, at the same time, excluding tasks and authorities of other important institution of the State and the political system such as the President, the Supreme People’s Court, the Supreme People’s Procuracy, the Fatherland Front of Vietnam in ensuring the respectation and observance of the Constitution. Meanwhile, the functions, tasks and powers of these organs are closely related to the Constitution and there are many opportunities and abilities to detect, settle or propose to settle cases not in accordance with or infringing the Constitution.

In this mechanism, the protection of the Constitution in our country in recent time has achieved certain results that contributes to improve the quality and the effectiveness of the operation of the state apparatus, ensure the constitutionality, legitimate and unification of the legal system, protect state interests, rights and legal interests of organisations and individuals. However, in the process of operation, this mechanism has revealed some shortcomings and limitations as mentioned in section 3 part II of this Report.

Political Report of the X National Party Congress defined that it is essential to “*build and improve the mechanism of examining and supervising over the constitutionality and legitimate in the operation and decisions of public authorities*”; “*build the ruling mechanism on the violation in the legislation, execution and judiciary*”. Next, the Resolution of the Fifth Central Committee of the Party term X confirmed that one of effective methods to protect the supremacy and integrity of the Constitution is “*to build the ruling mechanism on the violations of the Constitution in the legislation, execution and judiciary*”.

Therefore, we propose to establish specialized agencies protecting the Constitution (according to the model of Constitutional Council or the Constitutional Court) with the function of examination and conclusion in order to help the NA opportunely detect the ability of regulations and decisions contrary to or violates the Constitution.

- ***Decision on important issues of the country:***

It is essential to define the power of the NA in deciding important issues of

the country with the power of the Government in the management and administration. Particularly in decision on the social economic plan of the country, national financial and monetary policy, national important projects, establishment, mergence, division and adjustment of administrative boundaries... to what extent can the power of the NA and the power of the Government be?

It can be said that the decision on important issues of the country is one of three fundamental functions of the NA, however, in recent time this function has not been basically, scientifically, effectively and efficiently regulated. While the function of legislation and supervision are regulated by laws, at present, the function of decision on important issue of the country has not been adequately and comprehensively regulated by any law. In this area, the NA issued Resolution No.66/2006/QH10 dated June 29, 2006 on national important projects submitted to the NA for the decision of investment policy; the process to approve a number of decisions of the NA on important issues of the Country is only regulated in the Rule of sessions of the NA and in a some other documents. Thus, the 1992 Constitution should be amended and supplemented in such a way:

- To legalize the function of the NA of decision on important issues of the country;

- To consider to additional stipulate that the NA approve decisions on important issues of the country in the form of law, particularly in decision on the budget;

- To clarify the authority to “decide the social economic development plan of the country” in paragraph 3 Article 84 of the Constitution. Accordingly, it is suggested to amend that the NA “decides objectives, targets, policies and basic tasks of the social economic development of the country” in order to better define the relationship between the NA and the government in the social economic development, accordingly, the NA decides general and basical orientation targets of the development process of the country, as a basis for the management and administration of the Government.

- *To clarify the power of the NA in decisions on referendum.*

In our country, the present Constitution has a regulation on the decision of the NA on referentdum (Article 84). However, to realize the ability to perform rights of people in the referendum, we think that the Constitution needs to clearly stipulate the prucedure of referendum. Accordingly, the Constitution should clearly define the subject who can propose the NA to discuss and decide this issue. Basing on some countries’ experience, the referendum can be discussed and decided by the NA when a certain percentage of members of the Parliament require (1/10 in Sweden (Article 15 Chapter 8), 1/5 in the Republic of France (Article 11) ...). In present condition of our country, we suggest that the Constitution should stipulate the rate of 1/5 (ie. 20% equivalent to the extent able to be proposed to consider to vote of confidence). The specific method and process of referendum stipulated by laws.

At the same time, the Constitution should define contents of referendum in order to ensure the mechanism of direct performance of power of people.

### *2.1.3. Working principles of the NA*

The amendment of regulations on working principles of the NA will be an important content to ensure the publication, transparency and effectiveness in the operation of the NA, as follows:

- **Firstly**, it is essential to clearly confirm that the NA works in the confederal mechanism, decides by the majority and opinions of the minority are acknowledged. At present, Article 6 of the Constitution stipulates that the NA operate according to the principle of democratic centralism. However, we think that in the operation of the NA, the principle of working in the confederal mechanism and deciding by the majority should be more priority because each deputies of the NA has the same position and all are directly elected by voters.

On the other hand, although working according to the principle of decision by the majority, the NA should ensure the right of the minority opinion to have opportunities to be expressed. Thus, it is necessary to add to the Constitution the regulation on the principle to protect the minority opinion in the operation of the NA and organs of the NA.

- **Secondly**, to supplement provisions on quorum and result of voting calculated basing on present deputies. In order to ensure the principle of confederal operation mode, decision by the majority, it is necessary to define the principle of ensuring the essential number of deputies for a valuable session. Besides, at present, the voting rate to approve decisions of the NA is based on the denominator of total number of deputies of the NA. We think that this regulation is not reasonable, because the deputy absent at the meeting will greatly impact on the general result of voting of the NA (their absence is equal to a vote not voting). While, according to operational principle of the NA, issues must be thoroughly discussed before voting. It is absolutely unreasonable when the deputy absent in the meeting is allowed to express ideas as a deputy voting.

- **Thirdly**, it is necessary to supplement the principle of public operation of the NA. This is the essential condition to ensure the supervision of people over activities of the NA. Thus, we suggest to supplement the principle that the NA publicly meets, the public are allow to hear, except for contents unanimously conducted to privately meet.

## **2.2. The National Assembly Standing Committee**

### *2.2.1. Clearly define the position and role of the NA Standing Committee between who meeting*

In the organisational structure of our country, the NA Standing Committee is defined the Standing body of the NA. However, in practice, the NA Standing Committee is performing different tasks and authorities, even in the time of session of the NA.

In order to improve the role and the principle of collectively working of the NA, we recommend to amend regulations of the Constitution to clearly determine the role of the NA Standing Committee of a Standing body of the NA, having the essential function of implementation a number of tasks and power of the NA when the NA does not meet and the function of determining the working program of the NA. In this way, to have the formal validity, decisions of the NA Standing Committee on the fields of competence of the NA when the NA does not meet have to be submitted to the NA for approval in the next session.

### *2.2.2. The structure and organisation of the NA Standing Committee:*

According to the current Constitution and the Law on organisation of the NA, the NA Standing Committee has certain powers not only when the NA does not meet, but also when the NA is meeting, including remarkable tasks and powers in legislation and supervision. With the number of members in recent terms of the NA, the NA Standing Committee had to implement a huge amount of work but the number of member is not much. To a certain extent, this will more or less affect on the effectiveness of the implementation of tasks and powers of the NA Standing Committee.

Thus, in order to ensure that the NA Standing Committee has enough ability to fulfill its tasks, in a long term, it is necessary to research the ability to appropriately enhance the number of members of the NA Standing Committee in comparison to the present one (beside the research on arranging a structure of specialized positions, this enhancement may be associated with headers of new established Committees of the NA, headers of Committees of the NA which are upgraded from organs of the NA Standing Committee to Committees of the NA ...). Besides, it is necessary to research the structure of the NA Standing Committee to achieve better effective allocation of members in charge of different work.

At the same time, it also necessary to clarify the relationship between the NA Standing Committee and the Ethnic and Committees of the NA.

### *2.2.3. Specific tasks and powers of the NA Standing Committee:*

- *The power of promulgation of ordinances:* it is suggested not to stipulate the power of promulgation of ordinances of the NA Standing Committee.

The current Constitution stipulates that the NA Standing Committee has the power to issue ordinances that originates from the position of a standing body of the NA Standing Committee. This can be seen in the fact that the NA Standing Committee implements the authorization in legislation of the NA. Nevertheless, at present, the legal system of our country has been relatively complete, the legislative process has ensured the prompt enactment of laws in simplified procedures or one law amending many laws; thus, to ensure the rule of law in the legislation, it is suggested not to stipulate the power of promulgation of ordinances of the NA Standing Committee.

- *The power of interpretation of the Constitution:* It should be considered

whether the NA Standing Committee will be continuously assigned the task of interpretation of the Constitution, laws and ordinances. Because if the Constitution is amended in the direction to establish specialized organ to protect the Constitution, the power of interpretation of the Constitution should be assigned to this organ.

- Consideration should be given to the issue of supervisory power of the NA over the operation of the local government (paragraph 5 Article 91 of the 1992 Constitution) because of following reasons:

According to the current Constitution, the NA is the highest representative of people; the NA Standing Committee has the power of supervision over the operation of the People's Councils at all levels.

We recognised that the design of the relationship between the NA and the People's Councils at all levels like that has irrational points. The NA is the body representing the national interests, elected by people of the country, however it cannot become the highest representative body having the supreme right of supervision over the People's Council at all levels. Essentially, The People's Council at all levels are directly elected by the local people, receiving the authorization of people to resolve local issues. Thus, in the relationship between the NA and the People's Council, the Constitution should only stipulate that the NA Standing Committee can instruct and exchange operational experience with the People's Councils of all levels, abolish the supervisory power over the People's Council of the NA Standing Committee.

- *The authority to adjust the boundaries of administrative units under the provincial level:* we suggest that the adjustment of boundaries of administrative units is an important issue, not only related to changes in administrative boundaries but also the issues of organisational structure, human resources and finance to implement, particularly to ensure to express the will and aspiration of people. Thus, decisions on administrative boundaries at all levels have to be approved by the NA. Because the NA of our country does not regularly operate, the amount of work in sessions is quite huge, the project of assignment of this power to the NA Standing Committee has certain reasonable factors. Accordingly, it is necessary to transfer this power of the Government in the current Constitution to the NA Standing Committee; assign to the NA Standing Committee the decision on establish, merge, divide and adjust boundaries of administrative units under the central provinces and cities according to the suggestion of the Government.

### ***2.3. The system of Committees of the NA***

Continuing the direction of enhancing the role of Committees of the NA, we suggest to amend and supplement a number of specific contents of the Constitution as follows:

- ***Firstly***, the NA shall decide the number and structure of Committees of the NA in each term of the NA and can adjust in case of necessity. This also

ensures the correspondence with the power of the Prime Minister in adjusting the structure of the Government in each term. Besides, because there is not any difference of substance between the Ethnic and Committees of the NA, we also suggest to name these organs as Committees of the NA to ensure the simplicity and understandability in provisions of the Constitution.

- **Secondly**, in order to confirm and improve the power of the Ethnic and Committees of the NA in requiring to supply information and supplement provisions, Committees have the right to require subjects to provide information through documents, investigation; hearing.

- **Thirdly**, in order to be in accordance with the requirement of supervision over the appointment of senior positions in public service apparatus of the execution and judicial titles, it is essential to supplement the provision that Committees of the NA have the right to organise hearings to consider these personnels

- **Forthly, the number of Committees of the NA:**

Through practical activities of the NA, it can be seen that the enhancement of the position and role of the NA in above mentions aspects requires not only to improve the quality of deputies of the NA, but also improve the organisational apparatus. In current conditions, when the demand of building legal document has been increasing and the implementation of the supreme right of supervision of the NA needs to be more regularly conducted, it is essential to establish organs having sufficient ability to help the NA to effectively implement in those aspects.

In addition to the strengthening and consolidation of the personnel structure of the NA, in recent time, there have been many workshops and suggestions in the establishment a number of organs of the NA. The amendment of the Law on organisation of the NA in 2007 with the settlement of the division of 2 Committees into 4 with the reason that it is essential to do practical tests, when the plan is ripe, it will be considered to decide whether to continue to divide or establish other committees

Thus, it is significant to do the research on the reform of the organisational reform of the NA towards dividing or establishing additional some Committee to help the NA better perform its function and tasks in some working areas. It is also suggested that the establishment of new Committees have to ensure the number of Committees of the NA to be corresponding with the number of ministries of the Government in order to improve the specialization and the closeness and effectiveness of the investigation and supervision of each ministry.

Practical activities in recent time also show that the demand of particularization of tasks and powers of organs of the NA has been urgently defined. While each year the NA regularly meets in two sessions, the number of specialized deputies is not much, it should be concentrated on the improvement of working abilities of organs of the NA during the time between two sessions. However, the mere improvement of the standing part and increase of the number

of specialized deputies of Committees has only met the immediate requirement that is to resolving the overload of work but still not absolutely settle the basic reason of the reduce of efficiency and effectiveness in operation of those Committees. The important issue is that beside the improvement of quantity and quality of specialized members in Committees of the NA, it is necessary to clearly define specific working areas of each Committee. Thus, the Committees – fundamental “pillars” in the operation of the NA – have condition to intensively consider concrete issues and the consultation and assistant to the NA are really improved in terms of the qualify and quality.

#### **2.4. Deputies of the NA**

- *To increase the number of specialized deputies of the NA in charge of operation in organs of the NA and delegations of the NA deputies:*

The Resolution of the VIII Conference of the Central Committee of the Party Session VII pointed: *“The long term orientation is that the NA changes to regular operation”*<sup>81</sup>.

At present, the NA does not frequently operate, regulary meeting two sessions per year and each session lasts about one month, the organisation of standing bodies of the NA following the orientation of specialized operation is one of urgent requirements.

Although the current number of specialized deputies to the NA term XIII has remarkably increased in comparison with previous terms, that number is still a little in comparison with requirements and tasks of the NA. This is one of fundamental reasons in case of being remedied that will facilitate the NA and organs of the NA to better implement practical requirement and tasks. Therefore, the continuously raised issue “reasonable increase of the number of specialized deputies to the NA” is conformable with actual trends.

The improvement of quantity and quality of specialized deputies to the NA is an important requirement to reform and improve the efficiency and effectiveness of the operation of the NA. In order to better meet this requirement, the Constitution should determine some basic contents of the proportion and criteria of specialized deputies to the NA, being the basis for the Law on organisation of the NA and the Law on election of the deputies to the NA to concretize these contents in following aspects:

+ It is necessary to clearly determine the criteria of candidates of deputies to the NA. The NA should have a proper proportion of deputies as economic and legal experts who have been working in organs of the NA and the Government to help the NA to research and decide issues of this areas.

+ It is essential to prepare the personnel for specialized deputies to the NA right from the preparation for the election. To obviously define criteria, rights,

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<sup>81</sup> The Communist Party of Vietnam, *Plenum Document of the Eighth Central Committee Congress term VII*, National Political Publishing House, Hanoi, 1995, P.27

obligations and concrete contents operation of specialized deputies of the NA; harmoniously combine the representative and professionalism in activities of deputies to the NA. To distinguish the power of specialized deputies and non-specialized deputies so that the specialized deputies can recognized their position and role. To create all favourable conditions for deputies to the NA to effectively working such as: workplaces, vehicles, documents, communications... On the other hand, it is necessary to pay attention to the issue of ensuring the working arrangement for specialized deputies after the expiration of the term of the NA.

*- Additional regulations on the right of immunity of responsibility of deputies to the NA:*

According to the 1992 Constitution, deputies to the NA are entitled to the right of imprescriptible, more specifically the right not to be arrested and prosecuted without the consent of the NA or the NA Standing Committee when the NA does not meet. However, a more important right to ensure the effectiveness of the operation of the NA is the right of immunity of responsibility that has not been regulated in the 1992 Constitution. This is a prerogative of deputies to the NA of not bearing criminal and civil responsibilities (still bearing political responsibility) for their speech and voting in the NA in order to facilitate for deputies to freely express their viewpoints in discussions and debates in the NA. With its importance, this right is regulated by the majority of constitutions of countries and referred in the 1946 Constitution of our country. Thus, we propose to supplement this right in regulations of the 1992 Constitution.

*- Regulating cases to avoid confliction of interests of deputies to the NA:*

In order to ensure supreme interests of the country, according to the rule of Parliaments of many countries in the world, deputies to the NA have to comply with the ethical rules issued by the Parliament to avoid interest conflictions when deputies to the NA participate in considering and approving decisions of the NA. We also propose to supplement this content in the 1992 Constitution.

Specifically, we claim that in order to ensure the effective of the operation of the NA, it is necessary to supplement regulations to limit the pluralism of deputies to the NA that may lead to interest conflictions when participating in the decision at the NA. For example, the deputy to the NA cannot hold concurrently positions of administrative staffs of the Government (excluding ministers), because these persons cannot concurrently be under the administrative supervision of ministers and implement the political supervision over activities of ministers. Moreover, according to the Constitution of many countries, deputies of the NA cannot hold concurrently the business but only being allowed to participate in teaching at universities. Deputies to the NA and their partners cannot attend contracts or sign contracts with public agencies.

*- Reforming the mechanism of election of deputies to the NA to ensure that the people cannot elect deserving delegations representing legitimate rights and*

*interests of people, on behalf of the people to implement the highest state power:*

Recent regulations on election organisations have not ensure the independence and objectiveness in election. Because members of the Central Electoral Council, the Electoral Committee at all levels pluralistically work, many members are also candidates. Moreover, these organisations are not formed by the NA that are not in correspondent with the principle all state power belong to the people. Thus, in order to ensure the principle all state power belong to the people as well as being in correspondent with international rules, it is essential to establish an independent agency in charge of election (the National Electoral Committee) in order to ensure the independence, democracy and objectiveness of the election.

The tasks of this agency are to determine election areas, organise electoral activities as well as the registration, update the list of voters and educate voters about the election during the time between election terms.

The supplement of the institution of the national electoral agency will create the constitutional basis for the amendmend, supplement of the Law on election of the NA in terms of agencies in charge of election, the mechanism, process and procedure of election of deputies to the NA.

*- Clearly regulating the mechanism of divesting of mandates of deputies:*

Paragraph 2 Article 7 of the 1992 Constitution states: *“Deputies to the National Assembly may be divested of their mandate by electors or by the National Assembly and deputies to the People's Councils may be divested of their mandate by electors or the People's Councils when they are no longer worthy of the people's confidence”*. The dismissal of elective deputies is one form of implementation of the people's right as masters. The people can directly implement the regime of dismiss elective deputies or indirectly implement the regime through the NA and the People's Council. The right of dismissal originates from the principle the State belong to the people, the power of people is the supreme and orignal right.

However, the above provision is only seen as a principle of the relation between the deputies to the NA and the NA and electors, between deputies to the People's Council and the People's Council and electors, the provision does not directly regulate the right to dismiss elective deputies of electors (here the right to dismiss elective deputies exists under the “hiding” or “passive” state). Although reflecting the intensive democracy and the position of the master of the country of the people in general and electors in particular, to what extent this provision has not represented the initiative and responsibility of electors in the election and supervision over activities of elective deputies.

On the other hand, although there was the provision of the right of electors to dismiss the elective deputies, in fact there has been not any legal document stipulating the dismissal. Concretely, the dismissal of mandate of deputies to the NA by electors was generally refered to in the Law on organisation of the NA.

Right the Constitution as well as other legal documents do not contain any provision stating that deputies to the NA, deputies to the People's Council commit "mistakes at what level" that can be considered undeserving the confidence of the people. Thus, with a few provisions in the Constitution, the Law on organisation of the NA, the Law on election of deputies to the NA, we do not have adequate legal basis for the implementation of the regime of dismissal of elective deputies. Therefore, the Constitution needs to obviously define the responsibility for ensuring of the State: ensuring the legal basis (issuing a separated document on the regime of dismissal) and ensuring the method to implement the legal basis that the elector can effectively perform this political right.

***2.5. Clarifying the mechanism of power assignment, coordination and supervision between the NA and agencies implementing legislative, executive and judicial rights according the Credo in 1991 (amended, supplemented in 2011)***

Basing on the proper, adequately and transparently determination of the power between agencies implementing legislative, executive and judicial rights, in order to obviously define the mechanism of power supervision between agencies in the Constitution, the key issue is to identify the mutual relation of power between these agencies, as follows:

***\* The NA and the President:***

The Model of President in the 1992 Constitution is inherited and acquires advantages of the model of President in the 1946 and 1959 Constitutions. Accordingly, the President is the header of the State, on behalf of the the Socialist republic of Vietnam in domestic and foreign affairs. The 1992 Constitution defined in principle the legal position, tasks and power of the President; the role of the President in the relation of assignment, coordination between state agencies in the implementation of legislative, executive and judicial rights. The President institution in the model of state apparatus organisation in the 1992 Constitution has contributed to ensuring the model of state apparatus organisation to better meet requirements of the rul of law state, improve the effectiveness of the operation of the state apparatus.

Thus, basing on the inheritance of the President model of the 1992 Constitution, the amended Constitution needs to continue to identify the relationship between the NA and the President in following aspects:

- The President is elected by the NA, being responsible and report the work to the NA, under the supervision of the NA. The NA stipulates the organisation and operation of the President.

- In the reverse relation with the NA, the President has the right to submit initiatives of law, annouce the Constitution, laws and ordinances; propose the NA Standing Committee to reconsider ordinances before annoucing; supplement the right of the President to propose the NA to reconsider approved laws.

The supplement of the mechanism that the President proposes to reconsider approved laws aims at adding a new mechanism to supervise over the legislative activities of the NA, expressing the role of the President in supervising over the power of agencies implementing the legislative, executive and judicial rights.

- More obviously and properly distinguishing the power of the NA, the President in concluding and accessing international treaties.

**\* *The NA and the Government:***

The mutual supervisory relation between these two organs is concretely represented in following contents:

- *Firstly*, the Government, the Prime President are responsible and report the work to the NA, the NA Standing Committee, under the supervision of the NA. At present, the Constitution of country adequately stipulate instruments that the NA can use to supervise over the Government and the right of the NA to vote of confidence of positions elected or approved by the NA is case of necessity.

However, regarding the right to vote of confidence, we claim that essentially this is a form of voting of nonconfidence because this procedure originates from the NA, representing the attitude of the NA for elected or approved positions. Thus, it is necessary to amend relevant provision to clarify this issue. Concurrently, the Constitution also needs to clearly define the procedure of voting of nonconfidence prescribed by law.

Besides, the Consitution should also clearly stipulate the right of Committees of the NA in applying the form of hearing to collect information serving activities of the NA including the supervision.

- *Secondly*, it is necessary to supplement the supervisory mechanism of the NA over the Government in the direction: when the Prime Minister appoints senior titles in his public service apparatus it is essential to be approved by Committees of the NA (under the form of hearing).

- *Thirdly*, in the contrary impact, in order to create conditions for the Government in active organising the work, the Government has the priority right in submitting bills, proposing the working program of the NA. Even the Government can apply the method of submitting its proposals by the shortened legislative approach, ie. the Government can request the NA to consider that issue in a certain time. This originates from the basic reason aiming at ensuring that the Government can raise issues which are necessarily governed by law to the NA for consideration and adoption.

- *Fourthly*, the bills not being submitted by the Government and affecting on national budget have to be suggested by the Government before being submitting to the NA. The Constitution and laws of many countries prescribe the right to submit the bill on state budget is the extensive right of the Government. This is because the budget is an instrument to implement national policies. The

Constitution reserves for the executive agency the right of national policy planning so the execution must be the priority in building details of the budget. Moreover, the Government is also the sole organ capable of exactly understanding needs of organisations and national programs of budget as well as the revenue of those activities.

**\* *The NA and the People's Courts:***

The mechanism of mutual supervision between the NA and the Court is shown in some following points:

- *Firstly*, the Court must have the independent position in the relation with the legislative body. According to current provisions, the Chairman of the Supreme People's Court is elected by the NA and the NA has the right to supervise over the operation of the Court. However, that provision has not been in correspondent with the principle of organisation of the rule of law State that the Party and our State are heading towards. Besides, the Judicial Reform Strategy that the Party and our State have determined the focus of the reform is to ensure the independence of judicial agencies. The principle of ensuring the independence of the Court during trials is the most essential condition for the Court to ensure the justice for the people.

Thus, we propose the project that the NA do not implement the supervision over judgments of the Court (the monitor and supervision of judgments of the Court are presently assigned and necessary to continuously assigned to the People's Procuracy). The right of supervision of the NA over the Court should only be remained through two contents: through building laws to create the legal framework for the operation of the Court and the basis for the Court to issue judgements; implementing the right to approve senior personnel of the Court (through the hearing and approval at the Committee on Justice of the NA).

- *Secondly*, the right to interpret laws and ordinances should be stipulated belonging to the Court. However, that provision has inappropriate points as follows:

The procedure of interpretation of laws and ordinances closely connects to the process of protecting the law, having the characteristic of judicial activities. Only through the process of applying laws in fact the need of interpretation of laws has just arised. Simultaneously, through judgements of the Court, it can supplement the lively reality of the process of applying laws in practice.

In essence, the NA Standing Committee is only the standing body of the NA, cannot be on behalf of the NA to interpret the will of the NA in legal normative documents, particularly in the Constitution. Moreover, the condition of working time also does not allow the NA Standing Committee to regularly perform this function (at present, this authority is only perform 02 times).

Thus, in this amendment of the Constitution, we suggest not to stipulate the interpretation of laws and ordinances within the authority of the NA Standing Committee.

- *Thirdly*, it is necessary to supplement the authority of the NA in “*approving the appointment, removal and dismissal of ... Judges of the Supreme People’s Court*”.

The addition of this authority comes from the fact that Resolution No 49-NQ/TW of the Poliburo on the Judicial Reform Strategy to 2020 identified that the Court is the center of the judicial system and trial is the focus of judicial activities. In order to be in corresponding with the requirement and tasks of the judicial reform according to the spirit of the Resolution of the Party; to ensure the Court to be on behalf of the Socialist Republic of Vietnam in trial, improve the independence in the operation of judicial bodies, enhance the role, position and honour of judicial titles, particularly Judges of the People’s Court, thus, the above mentioned supplement of the authority of the NA to the Court is necessary.

***\* The NA and the People’s Procuracy:***

The definition of the relationship between the NA and the Procuray greatly depends on the fact that the amended Constitution will improve the model of People’s Procuracy in which orientation.

Resolution No49-NQ/TW dated June 2nd, 2005 on “*the Judicial Reform Strategy to 2020*” raise the requirement: *The Procuracy is organised in appropriate with the organisational system of the Court; Doing research on changing the Procuracy to the Prosecution, improving the responsibility of prosecution in investigative activities, etc ...*

In the process of researching the judicial reform, there have been a number of different viewpoints about the position of the Procuracy in the state apparatus. *It is argued that*, The Procuracy is an institution in the judicial branch because the remarkable function is to implement criminal prosecution, on behalf of the State to accuse defendants at trials, closely attached to the procedures of the Court. Another opinion claims that the prosecution is within the authority of the execution because the function of maintaining and protecting the social order are within the scope of management and administration of the execution. When finding the infringement upon the interest of administration and management, the executive bodies have the right to prosecute the offender before the Court. Therefore, the execution must manage the prosecution to actively prevent and detect crime.

There have been a number of viewpoints about this issue that needs to be continued to comprehensively and thoroughly research to clearly prescribe the position of the Procuracy in the Constitution and relevant laws. In order to ensure the stability and lastingness of the Constitution and the unity of different institutions in the Constitution, deriving from the principle that the NA is confirmed the highest state power body, the system of bodies of the Government, the Supreme People’s Court, the Supreme People’s Court all are established by the NA and under the supervision of the NA, we propose to determine the relationship between the NA and the People’s Procuracy in the following

direction:

- Continue the inheritance of regulations of the 1992 Constitution, confirm that the Prosecutor General of the Supreme People's Procuracy is elected by the NA, responsible and report the operation to the NA, the NA Standing Committee. The NA stipulates the organisation and operation of the People's Procuracy, supervising over the operation of the Supreme People's Procuracy. The Supreme People's Procuracy has the right to submit the bills to the NA, submit ordinance projects to the NA Standing Committee.

- When the Constitution amends in the direction that the Prosecution is formed in the executive brance, the NA can supervise over the operation of this organ as of agencies of the Government.

**\* *The NA and the State Audit:***

The State Audit is an important organ in national management, through professional activities to ensure the efficiency, effectiveness and tranparency in the operation of organisations and agencies using budget, money and assets of the State.

With the regulations of the present Law on State Audit, it can be identified that Vietnam is choosing the model of Audit agency close to the model of Auditor of the legislation, being a professional agency established by the NA. This model has certain reasonability in the condition of uniformed state power having the assignment, coordination and supervision of power between organs in implementing the legislative, executive and judicial rights. Because, being the highest state power body, the NA needs effective instrument of financial supervision over the operation of agencies using money, assets and budget of the State.

However, being formed by the NA, the legal position of the State Audit has not been identified in the 1992 Constitution. Thus, the amended Constitution this time should identified the legal position and operational principles of Auditting agencies in the Constitution to create the basis for the stipulation of specific issue in the law.

Deriving from the principle "*The State power is unity with delegation of power to, and co-ordination among State bodies in exercising legislative, executive and judicial rights*", therein, the NA is defined the highest representative body of the people, the highest state power body, we propose to supplement to the Constitution groups of provisions expressing the relationship between the NA and the State Audit as follows:

- To supplement the authority of the NA in the election, removal and dismissal of the State Audior General; stipulation of the organisation and operation of the State Audit;

- To supplement the mechanism of supervision of the NA to the State Audit, specifically, the State Audit is under the supervision of the NA, the NA

Standing Committee: the State Auditor General is responsibly and reports the result of auditing and operation to the NA, when the NA does not meet, being responsible and reports the operation to the NA Standing Committee, concurrently responsible for providing information, explaining to the Ethnic Council, Committees of the NA.

***\* The NA and the specialized Constitutional Protection agency:***

Basing on the recommendation on the establishment of a professional organ protecting the Constitution as above mentioned, we suggest that the Constitution needs to clearly identify tasks and power of this organ and the relation between this organ and this NA as follows:

- Being the highest representative body of the people, the highest state authority, the sole body elected by electors in the whole country, the NA has the constitutional, legislative and supreme supervisory rights and the right to decide important issues of the country, keeping the right to consider, conclude and settle the constitutionality to documents issued by the NA, documents of agencies under the supervisory authority of the NA.

- In terms of documents issued by the President, the NA Standing Committee, the Government, the Prime Minister, the Supreme People's Court, the Supreme People's Procuracy, the constitutional protection body provides the NA with highly professional basis to better exercise the authority of the NA in the supervision of these documents.

- Essentially being an institution having high speciality, regularly operating and being specialized, the constitutional protection agency is the most appropriate agency executing the function of interpreting the Constitution. Thus, it is essential to transfer the authority of interpretation of the Constitution prescribed in paragraph 3 Article 9 of the Constitution to the constitutional protection agency.

- To supplement the authority of the NA in the election, removal and dismiss of the header of the constitutional protection agency; regulate the organisation and operation of the constitutional protection agency.

- To supplement the mechanism of supervision of the NA to the constitutional protection agency.

***\* The NA and the national electoral agency***

As being mentioned in Section 5.2.4 of this Report, one of effective solutions to improve the regime of election of deputies to the NA, to ensure that the people can choose deserving deputies representative for legitimate rights and interests of the people, on behalf of the people to exercise the highest state authority is to establish the national electoral agency.

The advantage of provision of the electoral agency according to this model is: to ensure the exercise of the principle all power is of the people through the fact that the people exercise their direct democratic rights, accordingly, the right

of election is performed by an independent and professional organ and the NA; to ensure the independence and objectiveness in guiding and managing the election; to ensure the professionalization in the organisation of the election, the unity in guiding and managing the election in the whole country.

The additional of this institution to the Constitution is necessary to concurrently conducted with the clarity of the relationship between the NA and the national electoral agency as follows:

- To supplement the authority of the NA in the election, removal and dismissal of the header of the national electoral agency; regulate the organisation and operation of the national electoral agency;

- To supplement the mechanism of supervision of the NA to the national electoral agency.

**\* *The NA and the local authorities***

In the framework of the Constitution, we suggest to clarify some issues in the relationship between the NA and the local authorities:

- ***Firstly***, the supervision:

According to the current Constitution, the NA is the highest representative of the people; the NA Standing Committee has the authority of supervision of the operation of the People's Councils at all levels.

As being mentioned above, we believe that the design of the relationship between the NA and the People's Council at all levels like that has a number of irrational points. The NA is the representative body for national interests, elected by the people in the country but not because of that it is the agency standing over other institutions of the State, herein the People's Council. Thus, the issue of the right of supervisory authority of the NA to the People's Council should not be raised. Because, essentially, the People's Councils at all levels are directedly elected by the local people, receiving the authorization from the people to resolve the local affairs. In the present condition of improving the autonomy and self-responsibility of the local authorities, the responsibilities of the NA Standing Committee should only be stipulated in guiding activities of the People's Council, the function of supervision to this subject should not be prescribed.

In that spirit, paragraph 6 Article 91 of the current Constitution should be amended towards abolishing the authority of the NA Standing Committee in the supervision activities of the People's Council.

- ***Secondly***, ***the decision on budget***:

Paragraph 4 Article 84 of the current Constitution states that *the NA decides on estimates of the State budget and allocation of the Central budget, to ratify State budget finalisation reports.*

Going to distinguish between central and local budget in order to enhance the autonomy and self-responsibility of the locality in terms of the issue of budget,

we propose to amend this authority as follows: “The NA decides on central budget estimates and allocation; approves central budget balance, examines summary reports on state budget estimates and balance”. Accordingly, the issues of local budget should be assigned to the locality to actively decide and implement, self control and self responsible for as authorized by law.

In summary, the obvious identification of the Constitution of the relationship between the NA and the President, the Government, the Supreme People’s Court, the Supreme People’s Procuracy, the State Audit, the constitutional protection agency, the national electoral agency will ensure the actual effective implementation of the principle “*assignment, coordination and supervision of power*” between these bodies that contributes to the building the Socialist rule of law State of Vietnam of the people, by the people and for the people.

## REFERENCES

### Documents of the Party

1. The Communist Party of Vietnam, *Plenum Document of the Eighth Central Committee Congress term VII*, National Political Publishing House, Hanoi, 1995
2. The Communist Party of the Vietnam, *Plenum Document of the VIII National Congress*, National Political Publishing House, Hanoi, 1995
3. The Communist Party of the Vietnam, *Plenum Document of the IX National Congress*, National Political Publishing House, Hanoi, 2001
4. The Communist Party of the Vietnam, *Plenum Document of the X National Congress*, National Political Publishing House, Hanoi, 2006
5. The Communist Party of the Vietnam, *Plenum Document of the XI National Congress*, National Political Publishing House, Hanoi, 2011
6. The Communist Party of Vietnam, the Credo on building the country in the transitional period to the socialist (supplemented and developed in 2001), Plenum Document of the XI National Congress, National Political Publishing House, Hanoi 2011
7. The Communist Party, *Report summarizing the theoretical and practical issues through 20 years of innovation (1986-2006)*, National Political Publishing House, Hanoi 2006

### 1.2.

### 1.3. *Legal normative documents*

8. The 1992 Constitution, amended and supplemented in 2001
9. The Law on organization of the NA
10. The Law on supervision of the NA
11. The Law on national security
12. The Law on promulgation of legal normative documents
13. Rule of sessions of the NA
14. Operational rule of the NA Standing Committee
15. Operational rule of the Ethnic Council, Committees of the NA

### Books, magazines and other documents

16. Legislative Operation Division, *The process and procedure in the operation of the NA*, Hanoi, 2005.
17. Final Report term X, XI, XII of the NA.
18. Final Report on the implementation of the Constitution of the Government

19. Summary report on the implementation of the Constitution of the NA Standing Committee, the Ethnic and Committees of the NA.
20. National Institution of Administration, *General theory of State and Law*, Hanoi, 2006.
21. National Democratic Institute, ‘Committees in Legislatures: a division of labor’, *Legislative Research Series*.
22. Nong Duc Manh – *Continuous improvement of the quality, efficiency and effectiveness of the operation of the NA in new period*, The Communist Magazine, No.17 (9-2000).
23. Tran Tuyet Mai, *The Chairmand of the NA in some country in the world*, The magazine of legislative Research, 6/2000.
24. The Center of Information, Library and Scientific Reseach, “*the organizational structure of Committees of the NA: The development process and requirements of innovation*”.
25. The Center of Information, Library and Scientific Reseach, *Theme: the organizational structure and operation of the system of Committees of the Parliament of some countries*, Hanoi, 2006.
26. Lima Declaration approved in the IX Congress of INTOSAI October, 1977.
27. Mexico Declaration approved in the XIX Congress of INTOSAI in October, 2007.
28. The office of the NA – *The NA of Vietnam, the theory and practical issues*, Justice Publishing House, Hanoi, 2005.
29. The Office of the NA – The Centre of information, Library and scientific research, 60 years of the NA of Vietnam, National Publishing House, Hanoi, 2005.
30. The Office of the NA, Science Report Topic “*The organizational structure and operational mode of the NA in the period of innovation of the country*”.
31. The Office of the NA, scientific topic: *Building the model of organizational and operational mode of the NA and the Government in the social rule of law of the people, for the people and by the people in our country*, Hanoi – 2005.
32. The Office of the NA, Summary Report “*The process of formation, development and role of the NA*”.
33. The Office of the NA, Summary report “*The organization of supervision of the NA*”, 2004.

34. The Office of the NA, *Summary reports of sessions 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> of the NA term XI, the interpellation and response to the interpellation of deputies to the NA*.

35. The Office of the NA, *The Organisation and operation of the NA in some countries*, Hanoi, 2002.

36. Committees on foreign affairs of the NA, *The Parliament of some countries in the world*, Hanoi, 1999.

37. Vu Hong Anh, LLM, *The organization and operation of the Parliament in some countries, in the world*, National Political Publishing House, Hanoi, 2001.

38. Minh Duc, *The Parliament of Japan: the organisation serving members of the Parliament*, Magazine of legislative research, No.9/2003.

39. Minh Thy, *Two forms of voting of nonconfidence*, website The representatives of the people

(<http://daibieunhandan.vn/default.aspx?tabid=77&NewsId=95969>)

40. Hoai Thu, *Voting of nonconfidence of the NA of Slovenia: Hearing is the basis to propose to vote of nonconfidence*, Website of the electric Newspaper

(website:

<http://daibieunhandan.vn/default.aspx?tabid=132&ItemId=95967&GroupId=1013>).

41. Le Anh, *Supervisory instruments of members of Parliament of Sweden*, posted in the website of the Center of Cultivation of elective deputies in the Deputies Committee of the Standing Committee.

<http://ttbd.gov.vn/Home/Default.aspx?portalid=52&tabid=108&catid=434&distid=2683>

42. Le Anh, *The procedure of voting of nonconfidence in National Duma of Russian*, posted in the website of the Center of Cultivation of elective deputies in the Deputies Committee of the Standing Committee.

43. General on the authority of the US. Chapter 4: the legislation, the power of the NA ([http://vietnamese.vietnam.usembassy.gov/doc\\_usgovernment\\_iii.html](http://vietnamese.vietnam.usembassy.gov/doc_usgovernment_iii.html))

44. Websites of the Parliamen and the Government of some countries.

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