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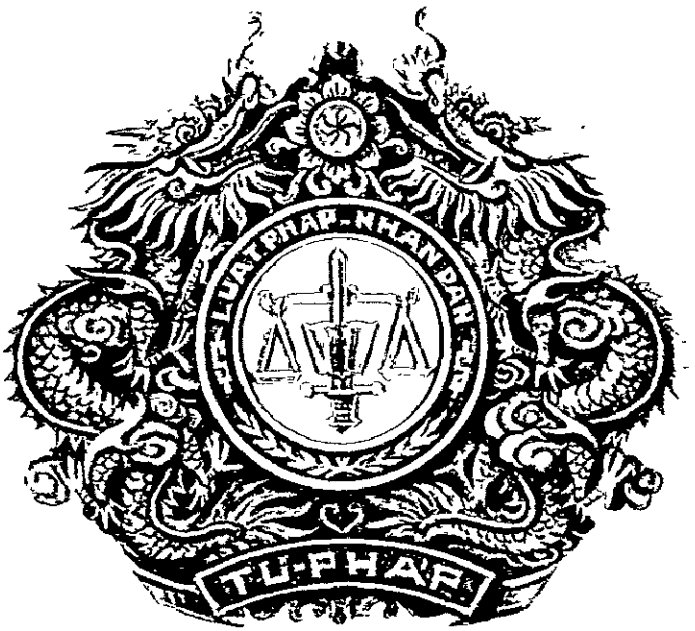
REPUBLIC OF VIETNAM

LEGAL SYSTEM



MINISTRY OF JUSTICE

SAIGON

MAY 1967

ADDENDUM

Since publication of this Book, a Supreme Court Law was enacted and nine Justices of the Supreme Court elected by the National Assembly on October 17, 1968. The law provides for 15 Justices to serve a term of six years with the right of re-election. The additional six justices to bring the court to its full complement will be elected three years later to provide for staggered terms of office. The chief justice is elected by and from among the members of the court. See Chapter V of the Constitution for the powers of the court. (page 260 of the text)

The organization of the Supreme Court completes the basic structuring of the government into three separate branches.

The five basic codes of the nation's civil law system are being entirely redrafted and should be ready for submission to the National Assembly early in 1969.

Saigon
October 24, 1968

Jointly Prepared By
The Ministry of Justice,
Republic of Viet-Nam,
and the
Legal Administration Branch
Public Administration Division
USAID - Saigon

May 1967

VIETNAMESE LEGAL SYSTEM

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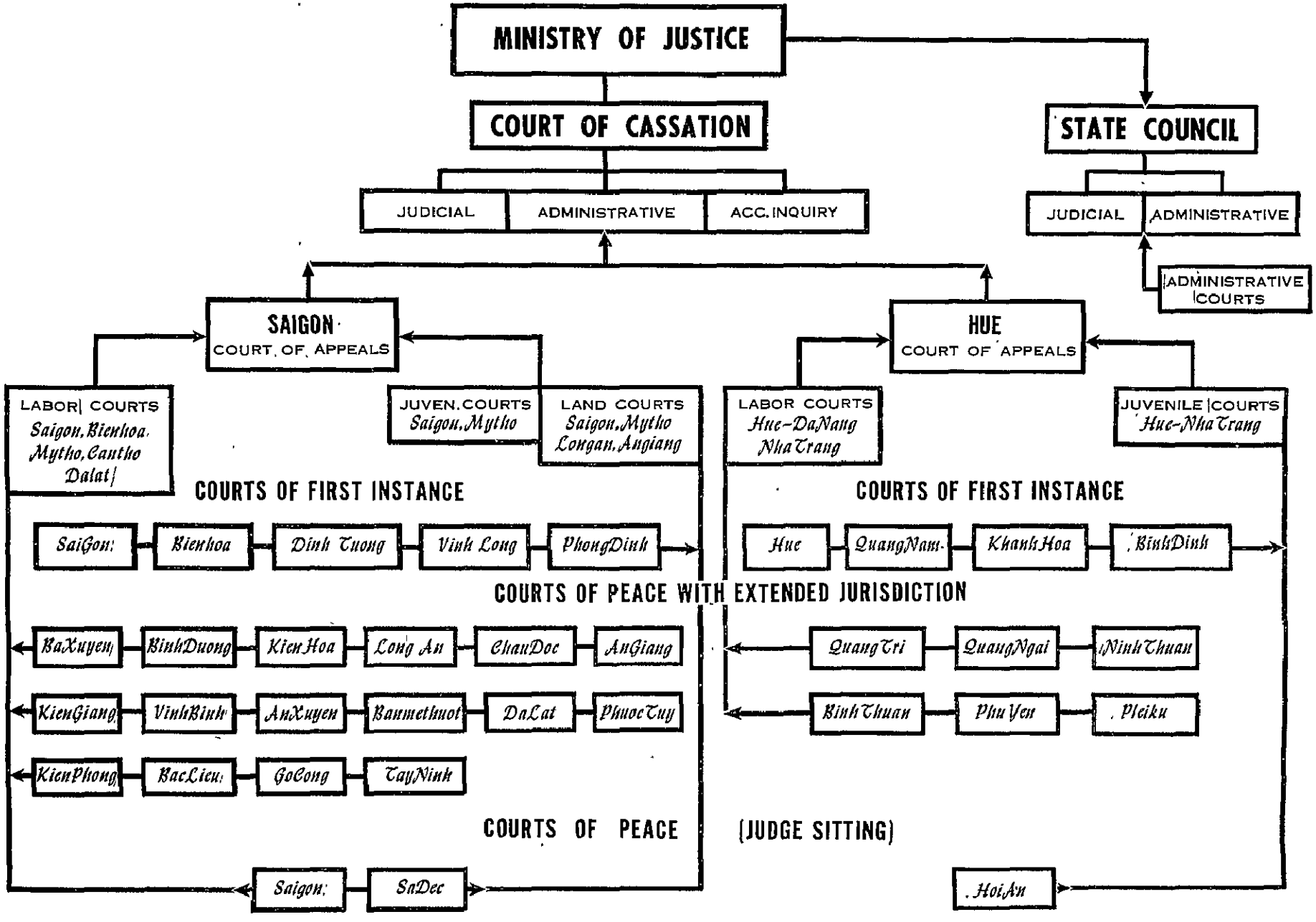
ORGANIZATION OF COURTS



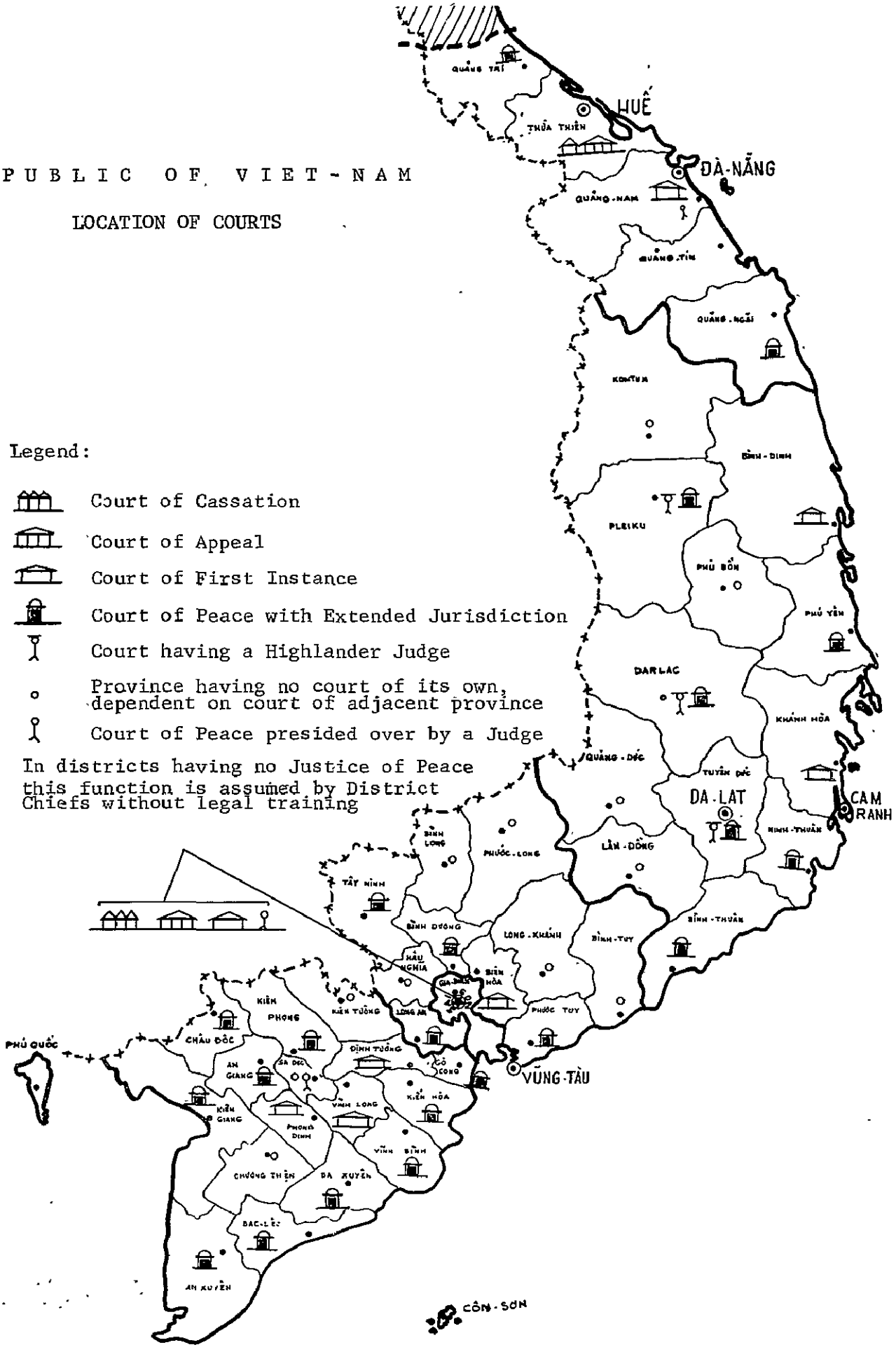
R E P U B L I C O F V I E T - N A M

LOCATION OF COURTS

Legend:

- Court of Cassation
- Court of Appeal
- Court of First Instance
- Court of Peace with Extended Jurisdiction
- Court having a Highlander Judge
- Province having no court of its own, dependent on court of adjacent province
- Court of Peace presided over by a Judge

In districts having no Justice of Peace this function is assumed by District Chiefs without legal training



FOREWORD

This brochure by its nature makes no pretense of being an exhaustive analysis of the Vietnamese judicial system. However, Chapters II to VIII will acquaint the reader with the basic outline of the country's judicial system, including criminal and civil procedures. The first and the last two chapters summarize the contemporary history of the Vietnamese judicial system and its future course in accordance with current developments now firmly under way.

This brochure is written at a time when our country is entering a new stage of constitutional development, providing new hopes and aspirations for the people. In the judicial field, we hope it will provide a forum to express the continuing efforts of all lawyers and the officials of the Ministry of Justice to modernize the administration of our law courts in response to the urgent needs of the country. It is hoped that these efforts will also contribute to the promotion of respect for law, so essential to the survival and development of a liberal democracy in its early stages.

Historically, Viet-Nam's legal systems were established dictatorially or by foreign rulers for the ultimate purpose of controlling and governing the people, rather than securing, defending and protecting their basic rights. Since the people did not

participate in the law-making process, there was little acceptance of and no confidence in the imposed systems.

It is high time to recognize the supremacy of law in establishing a democratic government. For this purpose, the legal system should be developed by the people and for the people, in compliance with the basic principles of the new Constitution.

Military achievements on the field of battle cannot be converted into true victories unless enthusiastically supported by a genuine, democratic system. In the absence of such a system, military achievements cannot be preserved. Our struggle to achieve democracy on emerging from foreign domination after the Second World War has been severely threatened by communist aggression. This annihilistic, dictatorial, anti-religious, anti-patriotic, anti-family doctrine, aimed at the enslavement of mankind, has caused a red tidal wave to arise from the depths of the Pacific Ocean which is impetuously beating the Vietnamese Coast and threatening all countries in this area and the whole Free World.

The Communists have expanded class warfare, under the guise of the people's liberation, in complete disregard of international law and fundamental human rights.

They have sent armed forces to invade free South Viet-Nam, seeking to annihilate by terroism all freedom of thought and liberty of self-determination, intending to replace these by

imposing unilateral collective dogmas, counterfeiting authority, and endangering all countries in the Pacific area and, indeed, the peace of the world.

The whole world is giving its special attention to the war in Viet-Nam because if the red tide succeeds in flooding here it will spread out to cover the whole Pacific area, inflicting untold miseries on mankind. We hope the Free World may derive from the Viet-Nam experience an adequate solution for thwarting the communists on other battlefronts.

The common concerns of the Allied Nations, and their great sacrifices willingly endured, have helped South Viet-Nam to halt the communists' military offensives. Nevertheless, the problem is to develop a lasting order based on law, with respect for people's liberty and self-determination. Emphasis must be placed on the word "liberty" because the people must be free to express their will. Otherwise, the principle of self-determination becomes an empty motto, one used by dictatorial regimes to screen the total suppression of human discretion and the right of choice.

We hope this brochure will serve as a bridge to link freedom-loving lawyers in mutual understanding and to encourage an exchange of writings and ideas. Our experiences with friendly nations will help to consolidate our judicial system, enriching it day by day, thus enabling it to keep abreast of progress in the community of nations.

Internally, in order to build a durable order for society, law should have three objectives: first, social justice to create equal conditions for people to develop their personal values; second, the common desires of the population to be expressed through a free and truly democratic system; and lastly, an adequate judicial system to promote respect for law.

Externally, mutual understanding should be the prerequisite condition of common ideals, a common policy of harmonious development to strengthen relationships between nations so that the coordination of activities, especially in the field of law, can foster and consolidate an everlasting peace not only for Viet-Nam but for all the world.

Peace should be built by law in liberty, not by force in the enslavement of mankind.

Saigon, 15 May 1967

Tran-Minh-Tiet

Minister of Justice

HON. TRAN-MINH-TIET, MINISTER OF JUSTICE

CHAPTER I

HISTORICAL CONSIDERATIONS

This brief history of the Vietnamese judicial system will discuss the following eras, and each period will be examined in terms of organization and relevancy:

I - Period under Chinese influence

II - Period under European influence

III - Period of renaissance

I. Period Under Chinese Influence

This period is divided into two phases.

A. Antiquity and Period Under Chinese Influence. (2879 B.C. to 939 A.D.)

In Viet-Nam the period of antiquity runs from the "Hong-Band" Dynasty, 2879 B.C. to 111 B.C., when the "Trieu" were defeated by the "Tay-Han" troops. The country was under Chinese domination from about 111 B.C. to 939 A.D.

In the first thousand years from the foundation of the Vietnamese nation, the life of the people was tinged with mythological legends summarily described in a few pages of history books. Based on their customs, which still exist among backward people in the world today, civil disputes were settled according to common sense and traditions by the family chief who had the greatest prestige in the region. Appeals could be brought to the head of the tribe.

Toward the end of the antiquity period the "Trieu" rulers (207 to 111 B.C.), being of Chinese descent, imported Chinese culture into Viet-Nam. Chinese civilization attained a high level, leaving other neighboring countries far behind. The government of men was replaced by the rule of law system. Thus one may presume that the judicial organization of that period would not differ much from that of the later generations. Administrators held the office of judge at the "Huyen" and "Quan" levels (sub-districts and districts of a province.)

Appeals of their sentences could be brought to the "Thai-Thu", the highest representative of the Chinese Emperor in Viet-Nam. The legal system provided for life, parole to limited area, partial reclusion, imprisonment, and fine. In addition, other punishments were also invoked, such as beating with a leather whip, exile, cutting off a foot, peeling the skin off the head, beheading and displaying the head on a pole in a public place, dismantling the body, cutting off arms and legs and gradually cutting away the flesh of the body until none was left on the trunk, cutting open the abdomen, and covering the wounds with salt. It was obvious that during this period and throughout the Chinese domination, ancestors of the Vietnamese people had to endure and suffer much from these atrocities. The power of the conquerors was based on the force of arms and it was from this power that the law stemmed. Consequently, such laws were designed to restrain, rather than to protect, the conquered people.

B. Period of National Independence. (939 to 1884).

1. The Judicial System and Its Characteristics.

The period of national independence, which commenced in 939 A.D. when General Ngo-Quyen defeated the Chinese invaders and drove them back into China, ended on June 6, 1884 when the "Nguyen" signed the "Giap-Than" treaty with France granting to the latter nation the right to establish a protectorate over Viet-Nam.

Although Viet-Nam regained complete sovereignty in the political area at the end of the Chinese domination, it could not rid itself of the Chinese influence which had lasted for a thousand years and had deeply penetrated every aspect of national life. For that reason the organization of the judicial system continued to be substantially similar to that of China. Important factors are:

- According to the Confucian concept (Confucianism constituted the foundation of society in the Eastern zone of Asia), the state was considered as a large family. The king was the supreme master, considering himself as "The Father and Mother of the People". He governed the nation and directed the troops, with the assistance of civilian and military officers. He himself tried important cases in the last resort.
- The principle of separation of powers in administrative and judicial matters did not exist. Administrative officials also assumed the role of judges because they represented

the power of the king, and, like the king, were considered as "The Father and Mother of the People." Because of this arbitrary power it was difficult to avoid autocracy and abuse, thereby causing countless cases of injustice.

- There was no special court, and the office of the administrative official was also used as a court when a case had to be tried.
- There was no distinction between criminal and civil cases.

Moreover, it must be noted that from ancient times up until the middle of the Seventeenth Century (the period of the reign of King "Than-Tong" of a later "Le" Dynasty, 1649-1662), no clear records exist on the organization of the Vietnamese judicial system. Since that period, the judicial organization has developed continuously.

(a) Judicial Organization Before 1649.

Starting from the "Dinh" Dynasty (968-980) through the early "Le" Dynasty (980-1009), the following "Ly" Dynasty (1010-1225), the "Tran" Dynasty (1225-1400), up to the reign of King Le-Thanh-Tong of a subsequent "Le" Dynasty (1460-1497), there was nothing clear on the matter. Under the rule of King Le Thanh-Tong, Viet-Nam was divided into twelve "dao" (subdivision corresponding to a province) and each "dao" was divided into several "phu" (district), and each "phu" into many "huyen" (sub-district) or "chau". In each "dao" there existed a "Do" service to take care of military

problems, a "Thua" service to handle administrative questions, and a "Hien" service to control judiciary matters. At the head of the "Hien" service was a chief and deputy chief. Under the supervision of the "Hien" service were placed the heads of the "phu", "huyen" and "chau" who were given the power to pass judgment on all cases brought to trial.

During this time the "Hong-Duc" code was promulgated. It has been well preserved and is available today.

(b) Organization From 1649-1884

This period falls into three phases:

1. From the rule of King Le-Than-Tong to the end of the "Le" Dynasty (1649-1788).

2. Period of the Nguyen-Tay-Son (1788-1802).

3. From the rule of Emperor The-To, founder of the Nguyen Dynasty who adopted "Gia-Long" as his dynastic title, to the time when Viet-Nam fell under the French domination (1802-1884).

Phase from the rule of King Le-Than Tong to the end of the later "Le" Dynasty (1649-1788): Under the rule of King Le-Than-Tong, there were six levels of jurisdiction:

The lowest court was presided over by a sub-district chief.

The next court was presided over by a "phu".

The third level in the court structure was at each "dao" (province), presided over by the chief "dao" administrator.

The fourth level was a court, organized for each province and designated by the name of "Hien-Ty", supervised by a judicial officer who had the duty to re-examine judgments of the third level court.

The fifth level was a court of appeal in each province, called "Toa-Giam-Sat" (censorate) headed by a "Giam-Sat" or a "Cai-Dao" whose duty was to review judgments delivered by the courts of lower level.

The sixth, and highest, level was a Supreme Court designated by the name of "Ngu-su-dai", placed in the capital of the country and composed of mandarins named "Ngu-Su."

It was obvious that the king rendered the ultimate verdict.

Phase under the Nguyen Dynasty, from Emperor The-To (Gia-Long) to the peace treaty concluded with France (1802-1884): The judicial organization under the "Nguyen" Dynasty compared with that under the later "Le" Dynasty, but with fewer levels of court. There were only three levels of jurisdiction.

The first was the "Huyen" and "Phu" (sub-district and district) conducted by a "Tri-Huyen".

The second level court was in the province, directed by an "An-Sat-Su" to try criminal cases, and by a "Bo-Chanh-Su" to try civil cases, both being under the supervision of the head of the province, who was either a "Ton-Doc" or a "Tuan-Phu".

The third, and highest, level was the Supreme Court (Tam-Phap-Ty) composed of high ranking mandarins from the "Dai-Ly-Tu", the "Do-Sat-Vien", and the Ministry of Justice. The duty of this court was to review verdicts with punishment from reclusion and above, such as exile, and the death penalty, which were traditionally submitted by provincial courts to the Ministry of Justice, or submitted by the complainants themselves.

Above all, the king settled cases in the last resort in accordance with the prevailing theological concept of the monarch through which the emperor retained all administrative, legislative and judicial powers.

Furthermore, during the early years of their reign, the Nguyen promulgated the "Hoang-Viet" Code, commonly known as the "Gia-Long" Code.

2. Laws in Application Prior to 1884.

From the "Dinh" Dynasty to the "Nguyen" Dynasty, passing through the early "Le", later "Ly", "Tran", and later "Le" Dynasties, the organization of this nation down through the various dynasties was shaped largely by its colossal Northern neighbors whose ancient civilization dominated Viet-Nam for almost one thousand years. These dynasties promulgated many written codes and laws, but unfortunately the country was invaded several times by foreign armies and was the scene of several internal wars, all of which contributed to the destruction of its archives and materials relating to judicial

institutions. At present there remains only the "Quoc-Trieu-Hinh-Luat" (national criminal code) promulgated in the dynastic year of "Hong-Duc" (1471-1497) under the "Thanh-Tong" reign of the later "Le" Dynasty and the "Hoang-Viet-Luat-Le" (Hoang-Viet laws and regulations) promulgated in 1812 by Emperor "The-To" of the Nguyen Dynasty, under the dynastic title of Gia-Long.

These two codes were commonly known as the "Hong-Duc" code and the "Gia-Long" code which, according to oriental, ancient judicial custom, did not distinguish between criminal and civil laws and were based on morality as well as legality. They were particularly concerned with safeguarding moral principles and virtues, and protecting national security and public order. According to these two codes, civil offenses were punished as severely as criminal offenses. For instance, failure to pay a debt was punished by beating with a truong, a piece of bamboo the knots and humps of which "are not smoothed away", 3.5 meters long, with one large end of 5.0 cm and the other end 2.5 cm. The "Hong-Duc" code excelled over the "Gia-Long" code in its many provisions concerning individual rights dealing with matrimonial property, succession, and cultural estates. The provisions concerning cultural estates presented a unique Vietnamese development not found in the ancient Chinese laws. The "Hong-Duc" code reflected faithfully the political and social situation of the Vietnamese people during the Fifteenth, Sixteenth and Seventeenth Centuries.

The "Gia-Long" code was strictly modeled on the laws of the Chinese ruling "Man-Thanh" Court, putting emphasis only on problems involving national security and the social order. This explains why, whenever needed, people quoted the provisions of the "Hong-Duc" code which, although rescinded, had still been considered as traditional law.

For more than twenty years, fundamental moral principles were crumbling and the people were losing faith and confidence. It was a period when the Confucian influence was strong. In the early part of the "Nguyen" rule, the legislature, under the leadership of General Nguyen-Van-Thanh, a cultured scholar and a talented military leader, sought to correct the troubled order, consolidate society, develop moral values, and elevate the national interest above all. As a result, laws dealt more with morality and did not distinguish between criminal and civil cases. Every offense was considered as a violation of the public order and requiring an appropriate punishment.

II. Period Under European Influence

A. Renovated Judicial System (1884-1945).

The "Giap-Than" Treaty, concluded on June 6, 1884, yielded to France the right to establish a protectorate over the central and northern parts of Viet-Nam known as Annam and Tonkin. The latter included part of what is known today as North Viet-Nam. The Southern part of Viet-Nam, Cochin-China, had already been "cut off"

from Viet-Nam and given to France as a colony by a treaty signed on June 5, 1862.

Later, in 1898, by a royal ordinance issued by King Dong-Khanh, the cities of Hanoi, HaiPhong and DaNang were transfered to France as "leased territories."

The establishment of the French protectorate over Viet-Nam resulted in fundamental changes in the areas of politics, administration, and justice. French rule over the country is considered to have ended on March 9, 1945 for on this date French colonial rule was overthrown by the Japanese and the administration of the country was entrusted to the Vietnamese government.

In this chapter, the judicial system established between June 6, 1884 and March 9, 1945 will be considered under two headings:

1. The organization of the Vietnamese courts.
2. The organization of the French courts.

<u>The organization of the Vietnamese courts (North Viet-Nam, Tonkin)</u>

In Viet-Nam there existed three different levels of courts, as follow:

- First level, for petty offenses, etc.
- Second level, for general trial courts
- Third level, for appeals

The judiciary organization was determined by the Tonkin Judiciary Organization Code promulgated in 1921.

At the head of the Vietnamese courts in North Viet-Nam at that time was a French judge whom the Tonkin Judiciary Organization Code designated under the title of "Quan-Nam-An-Thu-Hien-Bac-Ky", or Chief of Indigenous Justice in Tonkin. This role was entrusted to the Prosecutor General, the Director of the Indochinese Judiciary Service. This official did not depend on the Imperial Court at Hue but dealt directly with the Resident Superior of Tonkin who was concurrently "Kinh-Luoc-Su" representative of the Imperial Court (Ordinance dated July 26, 1897.)

The above-mentioned courts had jurisdiction in criminal, civil and commercial matters involving native born people in Viet-Nam, outside of the French colonies and leased territories.

In criminal matters the lowest court tried petty offenses and civil disputes concerning personal estates of not more than a stated value. Local native administrative chiefs presided over the court, with the assistance of a clerk.

The general trial court, commonly called a provincial court, was conducted by a French Province Chief who concurrently served as regular president of the court. This official could be replaced by a Vietnamese alternate president of the court having the rank of "Bo-Chanh-Su" or "An-Sat-Su" in the mandarinate. The provincial court usually included an examining magistrate chosen among the "Tri-Phu", Local Administrative Chiefs.

When the court was convened, in addition to the president there was an associate judge who was selected from the Vietnamese adminis-

trative mandarins, and a Vietnamese clerk. There was no representative of the prosecutor's office as in the French Court of Peace with Extended Jurisdiction. The provincial court was competent to judge petty offenses and criminal cases.

The highest court, called an appellate court, was a unique court in North Viet-Nam. In fact, its functions were assumed by the Second Chamber of the French Court of Appeals in Hanoi, which consisted of a French president and two associate judges, one being a French magistrate and the other a Vietnamese administrative official chosen from the "Tuan-Phu" and "Tong-Doc" (province chiefs.) There was, of course, a French official representing the prosecutor's office at the trial. The jurisdiction of the appellate court was very extensive because it was competent to re-examine cases of appeal and cassation, and to settle conflicts of jurisdiction. Lawyers were admitted to practice only in this court.

The organization of the Vietnamese courts in Central Viet-Nam

In Central Viet-Nam there also existed three levels of courts:

- First level courts
- Second level courts
- One third level court

All these courts were conducted by the Minister of Justice and controlled by the French Protectorate authority. These courts had jurisdiction in criminal, civil and commercial cases involving native citizens born in Viet-Nam but outside of the French colonies and leased territories.

The judicial organization in Central Viet-Nam presented some particular characteristics, such as:

(a) There was no prosecution staff in any court.

(b) Lawyers were not allowed to participate in court trials.

The first level court was presided over by an administrative officer assisted by a clerk. The court had jurisdiction to judge misdemeanors and civil disputes concerning real estate, and legal statuses such as divorce, affiliation, etc. Thus these courts had more extended jurisdiction than the equivalent courts in North Viet-Nam.

The composition of the second level of courts depended on the size of the administrative area. In the provinces, the president was a province chief, assisted by one or two associate judges. This court had jurisdiction in the first instance over crimes, and appeal jurisdiction for misdemeanors as well as civil and commercial cases appealed from lower courts.

The third level, the highest, court, was changed by the reform of 1942. Prior to the reform, the president was the Minister of Justice and when a trial involved a member of the Imperial Family the associate judge was a representative of the Imperial Family. After the reform of 1942 the name of the court was changed to the Court of Appeals. It was composed of a president (not the Minister of Justice) and three associate judges, all of whom were selected from among the mandarins (civil service class under Vietnamese

monarchy.) It was a court of last resort. It was divided into two sections: one for crimes and misdemeanors, and the other for civil and commercial affairs.

The organization of the French courts in Viet-Nam

French courts were set up not only in the French territory of Cochin-China and the three leased territories of the cities of Hanoi, Hai Phong and Da Nang, but also in territory under the French protectorate: the city of Vinh in Central Viet-Nam, Nam Dinh in North Viet-Nam, and all provinces where there was a French resident invested with judicial power.

The organization of these courts, based on the judicial system of France and of its ancient colonies, was more advanced than the system formerly applied in Central and North Viet-Nam. In criminal matters, from the Court of First Instance up, the principle of division of work was adopted, separating the functions of prosecution, investigation and trial within the court. Administrative and judiciary functions were separated, with special lists of judges for each. Moreover, the right to defense by lawyers was respected.

Nevertheless, due to the shortage of specialists and the scarcity of cases, a number of courts, such as Courts of Peace with Extended Jurisdiction, and Residential Tribunals, were not organized strictly according to these principles. In the Courts of Peace with Extended Jurisdiction, the roles of prosecution, investigation and trial were concentrated in the hands of the president, assisted, in

most cases, by an alternate judge. With regard to the Residential Tribunal (for the trial of French and alien citizens except Chinese) it was not started in the ordinary court area, although organized similarly to the Vietnamese courts. The president was a French Resident or a Deputy Resident, who were administrative officials. The various levels in the judiciary system were:

- Courts of Peace
- Courts of Peace with Extended Jurisdiction (including Residential Tribunals)
- Courts of First Instance
- Criminal Courts

Courts of Peace

There were two types of Courts of Peace: one presided over by a French judge, and the other by a Vietnamese judge. There were three Courts of Peace having French presidents: in Saigon, Hanoi, and Hai Phong, with the police chief serving as prosecutor at each. In criminal cases these courts tried petty offenses, and had very limited jurisdiction in civil and commercial matters and disputes concerning personal estates and individuals.

Courts of Peace directed by a Vietnamese judge were set up by a Decree of the Governor General of July 5, 1928. These courts officially functioned in Ca Mau, Go Cong, Sadec, Tay Ninh and Thu-dau-Mot. Their jurisdiction was similar to that of the French Courts of Peace but they dealt only with the native or assimilated people.

Courts of Peace with Extended Jurisdiction (including Residential Tribunals)

In South Viet-Nam there were three Courts of Peace with Extended Jurisdiction within the area of the Saigon Court of Appeal: the court of Baria, which also covered the territory of Vung Tau, and court of Bien Hoa which included the provinces of Bien Hoa and Thu-dau-Mot, and the court of Tay Ninh.

In the North (Tonkin) and Central Viet-Nam, there were two such courts: one established in Nam Dinh, which included three provinces, and the other in Vinh, which also included three provinces. These two courts were placed within the area of the Hanoi Court of Appeal. Their composition was simple, as previously explained. In criminal matters they tried misdemeanors, and all civil and commercial matters concerning personal estates, individuals, and real estate.

Outside the area of the Courts of Peace with Extended Jurisdiction, in the provincial cities there were Residential Tribunals, the functions of which have been explained previously.

Courts of First Instance

Courts of First Instance, with jurisdiction similar to the Courts of Peace with Extended Jurisdiction, were organized strictly according to the principles of separation of functions: prosecution, investigation and trial. The jurisdiction of these courts was determined similarly to Courts of Peace with Extended Jurisdiction.

Courts of Appeal

By a Decree issued May 19, 1919, Courts of Appeal were established at Saigon and Hanoi. Prosecution was entrusted to the Prosecutor General's Office under the Prosecutor General and several assistants.

It comprised a first president, presidents of chambers, and associate judges. There was a chamber of appeal for civil and commercial cases, and chambers of appeal for correctional cases. The chamber of appeal for civil and commercial cases was presided over by a first president, or by a president of chamber assisted by two associate judges. The Chamber for correctional cases was presided over by a chamber president, with two associate judges assisting.

In addition, there was a Chamber of Indictment, composed of three judges. This was a second-degree examining body which issued orders bringing cases of serious offense (crimes) for trial before the criminal court, and it pronounced final decisions on orders issued by the examining magistrates of the lower courts. Sessions of the Chamber of Indictment were convened behind closed doors and decisions were based on material in the dossiers.

The Chambers of Appeal periodically held open court. With several exceptions, its judgments could be appealed to the Court of Cassation in Paris.

The Criminal Court

Organized according to the unique principle of summary procedure, the criminal courts were convened in the justice courts every three months, with each session lasting several days. The court comprised a president and two assisting judges from the Courts of Appeal. Two people's assessors (jurors) were chosen by drawing lots from a list of notable citizens which the local authorities compiled once a year.

The court specialized in the trial of criminal cases. Final judgment could be appealed to the Court of Cassation in Paris. Contrary to the procedure adopted for civil and commercial cases, an appeal against a judgment in a criminal case effected an arrest of judgment.

According to regulations, all the French courts mentioned above were placed under the administration and disciplinary control of the Prosecutor General, who concurrently served as Director of the Judiciary Service of Indochina on the staff of the Governor General.

B. Laws Applied During the Period 1884-1945.

Due to its contact with the Roman-Greek civiliation, Viet-Nam abolished the punishment of "Tru-di tam-toc" (death penalty pronounced against the three families closely related to the offender: all the relatives of the families of the offender's father, mother, and spouse. This dire punishment was imposed in

cases of treason, and in attempts on the life of the ruling monarch. The new law also applied the principle of distinction between civil and criminal matters, and individualized offenses and punishments. In brief, the new law liberalized the outmoded and drastic judicial system, particularly in the colony of Cochin-China and in the leased territories.

Conversely, the French authorities complicated the legal system in Viet-Nam by creating special laws for each region of the country for the secret and cruel purpose of dividing and weakening the Vietnamese people. Following are the laws applicable in the courts of each region of Viet-Nam.

Laws applicable to the native or assimilated people

In criminal matters, there existed a renovated criminal code promulgated on December 31, 1912, and a French Code of Criminal Procedure.

In civil and commercial matters, there existed the summary of civil legislation promulgated in 1883, parts of the Gia-Long Code, the Hong-Duc Code, and, as required, the French Civil Code, the French Commercial Code, and the Code of Civil Procedure promulgated on March 16, 1910.

Laws applicable to French nationals and assimilated people

In criminal matters, the French criminal Code and the French Code of Criminal Procedure.

In civil and commercial matters, the French Commercial Code and the French Code of Civil Procedure.

The law in North Viet-Nam (Tonkin)

For the native and assimilated people from November 1, 1918 there were four codes:

- Judicial Organization Code in North Viet-Nam
- Code of Civil and Commercial Procedure
- Code of Criminal Procedure
- Criminal Code

In civil cases only, before 1931, the courts applied the Gia-Long Code. On March 30, 1931 a new civil code was promulgated.

For French nationals and assimilated people, the French courts applied the French Criminal, Civil and Commercial Codes.

The law in Central Viet-Nam (Annam)

For the native and assimilated people:

In criminal cases, the Hoang-Viet Criminal Code, promulgated in 1933, replaced the Gia-Long Code. A Code of Criminal Procedure was enacted in 1935. In that year, also, a Commercial Code was enacted, and a civil code was promulgated on July 13, 1936.

For French nationals and assimilated people, the French courts applied the French Criminal, Civil and Commercial Codes.

Conclusion

The new codes issued in Central and North Viet-Nam during the period compared favorably with those enacted in most advanced countries. This was attributable to several years of contact with French culture. Nevertheless, the organization of the Vietnamese

judicial system still presented many shortcomings, with no definite distinction between the administrative and judicial hierarchies, with no special magistracy. Within the court, there was no separation of the functions of prosecution, investigation and trial, all of these being entrusted to a single official.

III. The Period of Renaissance. (From 1945 onward.)

This period can be divided into two phases:

- Transition period from 1945 to 1950.
- Creative period from 1950 onward.

A. Transition Period. 1945-1950.

Organization. On March 9, 1945 Japanese troops overthrew the French colonial rule under the command of Admiral Decoux, who was also Governor General of Indochina. On this occasion Emperor Bao-Dai, the last monarch of the Nguyen Dynasty, regained national sovereignty from the North to the South. The first independent government was proclaimed in the ancient capital of Hue, under the leadership of a Central patriot named Tran-Trong-Kim. The former governor of a North Viet-Nam province, Phan Ke Toai, was named representative in Hanoi of the king, and patriot Nguyen-Van-Sam, of South Viet-Nam, was appointed the king's representative in Saigon.

On August 22, 1945 Emperor Bao-Dai abdicated because of strong pressures exerted by the so-called revolutionary government headed by the Viet Minh front, in which the communist party was the leading

group, under the leadership of Ho-Chi-Minh. This party established a "Peoples' Executive Committee" in Central Viet-Nam at Thua-Thien, and another in South Viet-Nam at Saigon, which was renamed Ho-Chi-Minh City.

On September 23, 1945 the British occupation forces accompanied by French troops entered Saigon to receive surrender of the Japanese forces. Gradually the French forces regained control over key points in all the provinces of the South. Then they moved northward, under a peaceful co-existence pact signed by the French and the Viet-Minh on March 6, 1946, to Hue and Hanoi and several other cities of Central and North Viet-Nam. However, on December 19, 1946, the Viet-Minh broke the pact and fired on the French in Hue, Hanoi, and Hai Phong. In the ensuing battles several cities fell to the French.

On June 1, 1946 a temporary government was created in Saigon for the Republic of South Viet-Nam, headed by Dr. Nguyen Van Thinh.

On April 12, 1947 a temporary Executive Council for Central Viet-Nam was established in Hue, and on March 10, 1948 one was created in Hanoi for North Viet-Nam.

On May 23, 1948 a temporary Central Government was created in Saigon under the premiership of Brig. Gen. Nguyen-Van-Xuan.

After the signing on March 8, 1949 of the French-Vietnamese Treaty, former Emperor Bao-Dai returned to the country to assume the function of Chief of State.

Following the departure in 1945 of the Japanese troops, intensive preparations were made for the establishment of Vietnamese courts. Ordinance No. 4 was issued on October 18, 1949 establishing the Vietnamese legal system, and on March 1, 1950 all Vietnamese courts commenced functioning thereunder. Temporary courts were established by the Vietnamese and French authorities in the major cities of the country.

In South Viet-Nam, from March 9, 1945 to September 23, 1945 the French courts were temporarily replaced by Vietnamese courts, organized, however, according to the French judicial system. From September 23, 1945 on, French courts were re-established in Saigon, and at some of the provinces, such as My Tho, Vinh Long, Can Tho, Bac Lieu and Tra Vinh, and, later on, at Da Nang and Nha Trang in Central Viet-Nam, and at Hanoi and Hai Phong in Northern Viet-Nam. Vietnamese courts, reorganized in accordance with the ancient Vietnamese judicial system, were re-established in Hue and Hanoi and in some other cities of Central and Northern Viet-Nam.

During this transition period, only the laws promulgated prior to March 9, 1945 could be applied.

B. Creative Period. From 1950 onward.

This period, which began on March 1, 1950, marked a new era for justice in Viet-Nam. It followed ninety years of French domination, which had begun in early 1859 when the citadel of Saigon was surrendered.

The succession of events which occurred in the Indochina peninsula after the end of World War II generated strong pressures upon France. Even so, Viet-Nam's struggle in the political and diplomatic fields to regain national sovereignty was difficult and fraught with many obstacles. Negotiations had started on December 6, 1947 in Ha Long Bay between former Emperor Bao-Dai and French High Commissioner Bollaert, but agreement could not be reached. Discussions between them were resumed on June 5, 1948, with the additional participation of Brig. Gen. Nguyen-Van-Xuan, then Premier of the temporary Central Government of Viet-Nam, and a joint declaration was issued at the conclusion of this second round of negotiations.

On March 8, 1949 a treaty was signed recognizing Viet-Nam as an independent state within the French Union, and a judicial agreement accordingly signed on December 30, 1949 brought about the establishment of combined Vietnamese-French courts on March 1, 1950 to function alongside the Vietnamese courts organized in accordance with Ordinance No. 4 of October 18, 1949.

Organization. Combined Vietnamese-French courts were composed of Vietnamese and French judges who equally shared the judiciary tasks between themselves. These courts were organized according to the French judicial system, with two levels of jurisdiction and competence over criminal, civil and commercial cases involving

French nationals and assimilated French nationals such as the Chinese, and, temporarily, the Vietnamese and other foreign nationals in cases where they were involved.

Combined Courts of Appeal were set up at Saigon and Hanoi.

Combined Courts of First Instance were established in Saigon, My Tho, Can Tho and Nha Trang, in the jurisdiction of the Combined Court of Appeal of Saigon; and in Hanoi, Hai Phong and Da Nang, in the jurisdiction of the Combined Court of Appeal of Hanoi.

All verdicts on appeal pronounced by the Combined Courts of Appeal could be appealed to the Court of Cassation in Paris. A Vietnamese judge could be attached to the cognizance board of this highest court.

During this period, all the laws and regulations that had been officially promulgated in Viet-Nam by the French government and in full accordance with the existing French-Vietnamese agreement, could be enforced.

The Combined Vietnamese-French Courts were abolished on September 16, 1954 because their existence in fully independent Viet-Nam constituted an irreconcilable contradiction of the absolute sovereignty of Viet-Nam.

On that date, September 16, 1954, an agreement recognizing the full and entire sovereignty of Viet-Nam in the domains of legislation, administration and judicial organization was signed between Minister of Justice Bui-Van-Thinh, representing the Government of Viet-Nam,

and Deputy Ambassador Bordaz, representing France. This was the result of fruitful negotiations conducted in Paris during April and May, 1954 by a delegation of the Saigon Government, headed by Minister of Justice Nguyen-Van-Dam. It should be added that there was also political pressure resulting from the Geneva Agreement of July 20, 1954 concerning the cease-fire and the partition of Viet-Nam.

Thus, as of September 16, 1954, in all the national territory of free Viet-Nam, from Ben Hai to the tip of Ca Mau, there were only Vietnamese national courts functioning according to the prescriptions of Ordinance No. 4 dated October 18, 1949.

Laws applied are the fundamental ones promulgated before 1945 and the following principal legal texts:

<u>Laws having permanent character, such as:</u>

- Ordinance No. 4 dated October 18, 1949 relative to the judiciary organization, including articles dealing with criminal legal procedure.
- Ordinance dated April 2, 1956 determining the regulations on prices of commodities.
- Decree No. 11/58 dated July 3, 1958 relative to the organization of juvenile courts.
- Decree-Law dated July 23, 1964 regulating marriage, filiation, and common properties.
- Decree-Law No. 17 dated July 29, 1964 organizing circuit courts in the countryside.

Laws having occasional character, such as:

- Decree-Law No. 16 dated July 29, 1964 temporarily entrusting the function of Judges of the Peace to administrative District Chiefs in South Viet-Nam.
- Decree-Law No. 4/65 dated July 19, 1965 bringing before the military field courts for trial all violations in the economic domain, exchange, illegal import of goods, bribery, embezzlement, public disorder, and attacks on the police force.
- Decree-Law No. 3/66 dated February 15, 1966 bringing before Special Courts the trial of all offenses relating to speculation, illegal rise in prices, violations of customs tarriffs, bribery and embezzlement.

Conclusion

Since very ancient times, in all of the aspects of its national life Viet-Nam was under the strong influence of Chinese culture, especially of Confucianism. This was the social foundation of all Eastern Asian countries. Vietnamese law, stemming as it did from the Chinese, was therefore directed only at safeguarding the nation, consolidating the monarch's power. Its intent was to govern and control, not to protect the Vietnamese people.

During almost a century of French domination, during which the country was exposed for the first time to the influence of the Greco-Roman civilization, Viet-Nam modernized and to some extent

liberalized its laws and judicial system. Many new provisions were in conformity with true democratic principles. However, these modern legal concepts often conflicted with tradition and custom and therefore were neither supported nor respected for long by the people of free Viet-Nam.

THE MINISTRY OF JUSTICE, SAIGON

CHAPTER II

ORGANIZATION OF THE MINISTRY OF JUSTICE OF THE REPUBLIC OF VIET-NAM

The Ministry of Justice was organized according to Decree No. 149 of December, 1948 and Order No. 584-BPT/ND of December 19, 1952, modified by Order No. 505 of June 17, 1955. It has responsibility for:

- Drafting and implementing laws and regulations related to the organization and the functions of the courts.
- Drafting and implementing laws and regulations dealing with the training of judiciary personnel and the setting of judiciary personnel statutes.
- Drafting laws and regulations related to the legal profession and controlling its practice.
- Drafting and implementing laws related to civil, criminal and international matters, and studying all legal matters in the limits of its competency.

I. The Authority of the Minister of Justice.

The authority of the Minister of Justice was determined by Decree No. 25 of December 19, 1949. He has responsibility for the organizing and functioning of the judicial system, of accomplishing what is necessary to insure sound trials, of controlling the execution of public prosecution in order to punish any activity harmful

to public order and individual security, of protecting individual freedom and public and private estates. He is responsible for unifying the laws of the entire Republic.

The Minister of Justice is also the counsellor in law of the Government.

II. The Organization of the Ministry of Justice.

The Ministry of Justice is composed of the following offices:

- The Cabinet
- The Office of Personnel and Accounting
- The Office for Civil Affairs
- The Office for Criminal Affairs

The Cabinet.

It is placed under the authority of a Director. The latter has as assistants a chief of cabinet, one or two "charges de mission", one private secretary, two attaches, and several chiefs of bureaus.

The cabinet handles political matters, opens and distributes urgent and ordinary courier messages, correspondence with the President and other Ministries, monitors the implementing of the orders of the Ministry of Justice, files cabinet records, coordinates the work of different Directorates within the Ministry of Justice, decides on questions of a general nature, and reports monthly to the Government.

The private secretary's bureau deals with protocol, receptions, inspections, and the correspondence of the Minister of Justice.

The bureau charged with dealing with the National Assembly keeps in touch with the Assembly and with other Ministries to examine all subjects concerning the National Assembly and to answer questions raised by deputies of interest to the Judiciary.

The income declaration bureau checks the income declarations of the Judiciary staff and also contacts other Ministries concerning income declarations.

The dispatch bureau is in charge of receiving incoming mail and dispatching outgoing mail, both of which must be registered, and distributes orders and circulars of public nature. It is also responsible for permanent guard, mimeograph and telephone service.

The Office of Personnel and Accounting.

It is managed by a Director, assisted by a number of service and bureau chiefs. It appoints the personnel of the courts and pays their salaries and other expenses of the Ministry of Justice and the courts. This Directorate is composed of two services and five bureaus.

The Service of Personnel has two bureaus. One is responsible for permanent personnel, including management of judicial personnel and detached civil servants working in judicial establishments, such as judges, notaries, registrar chiefs, registrars, clerks, typists, orderlies, etc. This bureau is commissioned to perform the various activities relating to appointment, assignment, transfer,

confirmation, promotion, classification, dismissal, reinstatement and detachment.

The other bureau is responsible for temporary personnel, including mobile and daily employees and contractors. It is charged with elaborating or modifying judicial personnel statutes, organizing competitive examinations, and complying with all the formalities for retirement and for award and distribution of medals.

The Accounting Service has three bureaus. The Central Control and Liquidation Bureau prepares the budget of the Justice Ministry, makes delegation of payment, distributes expenses, verifies all accounting documents presented by the South and the Central Viet-Nam judicial services, provides for court expenditure, appoints agents, and manages the accounting relative to advance payments.

The Payment Bureau disburses the salaries of the Justice Ministry staff and of the courts, and deposits pension reserves of the permanent personnel.

The Materials Bureau manages all properties belonging to the Justice Ministry, buys and distributes materials to the courts, repairs court buildings, constructs new ones, liquidates all expenses concerning materials required by the courts, buys newspapers and law books, publishes a monthly judicial review, and checks legal costs in criminal matters.

The Office of Civil Affairs.

Placed under the authority of a Director assisted by a number of service and bureau chiefs, this Directorate deals with the establishing of courts, their functioning and jurisdiction, supervises all legal professions, engages in legal research, prepares law drafts related to civil and commercial matters and civil procedures, advises on law drafts and decrees prepared by other Ministries, and publishes judiciary reviews. It is composed of three services and seven bureaus.

The Judicial Administration Service has two bureaus. The Court Organization Bureau is commissioned to found and organize courts, modify their jurisdictions, publish all decisions relating to the disappearance of persons and of estates without heirs, publish notices from the Judiciary and those imposed by law, and supervises the functioning of the judicial machinery.

Its Legislation and Legal Profession Control Bureau establishes regulations relating to the profession of barristers (status and discipline), and of judiciary auxiliaries such as process servers, auctioneers, syndics, sequestrators and experts, and regulations pertaining to the establishment and abolition of offices, appointments, control and discipline.

The Civil Legislation Service has three bureaus. The Civil Affairs and Special Legislation Bureau controls civil status, engages in research work on customs and morals of people, examines

conflicts of jurisdiction, appeals to the Court of Cassation in civil matters for reason of legal utility, studies special legislation in connection with other Ministries (house, mine, labor force, requisition of public estates, etc.)

The Home Civil Legislation Bureau studies law drafts and decrees on civil and commercial matters and civil procedures, and advises other Ministries on their law drafts and decrees.

The Foreign and International Legislation Bureau works with other Ministries in the implementing of judicial agreements signed with foreign states, studies matters dealing with the status of foreigners, nationality codes, changes of name, naturalization, and claims concerning nationality.

The Service of Documentation, Publication, Translation and Records has two bureaus. The General Documentation and Publication Bureau selects decisions of the courts in order to establish case law and classifies these by category, publishes judicial reviews, and documents law books and usual legislative books.

Its Translation and Record Bureau translates laws and regulations from one language into another, keeps a record of and classifies laws, decrees and orders, and establishes nomenclature for these matters.

The Office of Criminal Affairs.

This Directorate is managed by a Director assisted by a number of service and bureau chiefs. He is charged with establishing general trends in the study of criminology, preparing criminal law

drafts and criminal procedure law drafts. He surveys prisons, checks the functioning of criminal sittings, examines requests for grace or for conditional release, and studies penitentiary regimes. This Directorate is divided into two services and five bureaus.

The Service for Criminal Affairs is composed of three bureaus. The Criminal Legislation Bureau deals with criminal matters, initiates proceedings against petty offenses, misdemeanours and crimes, checks the application of criminal procedures and the implementing of criminal trials, appeals to the Court of Cassation for reasons of law in criminal matters, examines conflicts of jurisdiction and the transfer of a case to another court on the ground of legitimate suspicion, appoints juries, and is in charge of problems dealing with judicial police, military courts and maritime cases.

The Bureau of Grace and Release on License examines and files documents on grace, amnesty, release on license, and criminal cases subject to rehearing, elaborates and carries out international and extradition agreements, compiles statistics on criminal, civil and commercial cases, takes up matters concerning legal costs and appraisements by experts.

The Central Police Register Bureau collects all data related to a person's record, checks the original, delivers the second and third copies to people not in the jurisdiction of the provincial

courts, and files the original record concerning confinement and expulsion of foreigners.

The Penitentiary Administration and Prisoner Re-education Service is divided into two bureaus. One is charged with studying the application of decisions relative to the carrying out of freedom-depriving penalties, determining the regime and term of penalties, researching legal and statistical documents, and managing the prisons.

The Prisoner Re-education Bureau studies legislation concerning juvenile delinquency, the creation of juvenile courts and protection of juvenile delinquents, collects statistics on such delinquents, and determines the regime they are to follow.

CHAPTER III

THE ORGANIZATIONAL DEVELOPMENT OF THE VIETNAMESE COURTS MARCH 8, 1949 TO DATE

INTRODUCTION.

Although the French-Vietnamese Treaty of March 8, 1949 had recognized Viet-Nam as an independent country, it had reserved for the French many judicial privileges and had established, in addition to the Vietnamese courts, several French-Vietnamese Joint Courts having jurisdiction in civil, commercial and criminal matters over French citizens, those of the French Union except the Vietnamese, and the Chinese who had previously signed a treaty with France on judicial jurisdiction.

The French-Vietnamese Joint Courts included two Courts of Appeal, one in Saigon and the other at Hanoi; seven Courts of First Instance, at Saigon, My Tho, Can Tho, Nha Trang, Hanoi, Hai Phong and Da Nang; and three Commercial Courts, in Saigon, Hanoi and Hai Phong. In France there was one French-Vietnamese Joint Supreme Court (Court of Cassation), located in Paris.

The staffing of these courts was equally divided, with one half of the judges being French and the other half Vietnamese. Both French and Vietnamese were used as the official languages.

This complex and contradictory situation of the judicial service in an independent country lasted until September 16, 1954, when another treaty was signed. It deactivated these Joint Courts, thus marking the complete independence and sovereignty of Viet-Nam in the judicial field.

Since that date only national courts throughout the territory of the Republic are responsible for enforcing Vietnamese laws and regulations, and the Vietnamese language is officially used at the courts and in their verdicts.

By Ordinance No. 4, dated October 18, 1949, the Vietnamese courts were organized on the following principles:

- Decentralization of power between the Executive Branch and the Judicial Branch.
- Independence of the judges.
- Right of appeal to a higher court to effectively defend the rights of the parties at law.
- Division of the courts into two separate systems:

  The Judicial Courts (to try cases between private citizens), and

  The Administrative Courts (to try cases between private citizens and government agencies).

THE JUDICIAL COURTS.

The Vietnamese Judicial Courts include the Justices of Peace, the Courts of First Instance, the Justices of Peace with Extended Jurisdiction, the Courts of Appeal, and the Supreme Court or Court of Cassation.

In addition, there are a number of special courts, such as the House Lease, Labor, Juvenile, Land, Martial, and Special Front Courts.

COURT OF PEACE, SAIGON

THE JUSTICE OF PEACE.

This is the lowest court in the judicial system. There are two courts of this type in South Viet-Nam, one being in Saigon and the other in the chief town of Sadec. Where there are not yet Justices of Peace, the local Court of First Instance or the Justice of Peace with Extended Jurisdiction exercise the function of Justice of Peace, both in penal and civil matters.

In Central Viet-Nam there is as yet only one Justice of Peace. The court is at Hoi-An, in Quang-Nam Province, and is presided over by a judge. Formerly the low courts were headed by the District Chiefs, called "Phu" or "Huyen", the Central Vietnamese name for "district", but this designation has been changed and the new name of Justice of Peace is used.

Where there are no low courts and no Justice of Peace established, the local Court of First Instance, or the Justice of Peace with Extended Jurisdiction, exercise the function of Justice of Peace, as in South Viet-Nam.

The court of the Justice of Peace is presided over by a judge, assisted by a Court Clerk. There is no Public Prosecutor. However, the Attorney General or the Public Prosecutor in the court having jurisdiction over the Justice of Peace may request statements of defense in cases in which it is interested.

At the present time there are, as noted above, very few Justices of Peace, and pending the official appointment of more,

the Administrative District Chiefs have been temporarily assigned to function as Justice of Peace in and for their own districts.

The Justice of Peace has the following jurisdiction:

- Petty Offenses. The Justice of Peace tries cases of petty offense. His judgment may be final, or it may be appealed to the Court of First Instance or to the Justice of Peace with Extended Jurisdiction.
- Criminal and Minor Offenses. The Justice of Peace has power over only judicial police matters. When he is advised of a criminal or minor offense, he must report it to the Public Prosecutor of the Court of First Instance, or to the Presiding Judge of the Justice of Peace with Extended Jurisdiction. In the meantime, he opens an investigation and forwards the brief to the appropriate court above.
- Civil Cases. (See chapter on "Legal Procedures in Viet-Nam.")

THE JUSTICE OF PEACE WITH EXTENDED JURISDICTION,
and
THE COURTS OF FIRST INSTANCE.

These are courts at provincial level, located in the cities, the chief towns of the provinces, or in the municipalities. Most of the provinces in the Republic of Viet-Nam now have one or the other of these courts.

In principle, the jurisdiction of each lies within the territorial limits of the province where it is located. Only in

COURT OF PEACE WITH EXTENDED JURISDICTION, QUANG-NGAI

special places where no offices are available do the courts have jurisdiction over two or three provinces at the same time.

For example, Bien Hoa has a Court of First Instance which also has jurisdiction over Long Khanh and Bin Tuy. The Quang Nam Court of First Instance also has jurisdiction over Quang Tin and the City of Da Nang. The Justice of Peace with Extended Jurisdiction of Dalat also has jurisdiction over the provinces of Lam Dong and Tuyen Duc.

The Court of First Instance and the Justice of Peace with Extended Jurisdiction are both provincial courts at the same level (first instance) and have similar jurisdiction. The one difference is that the Court of First Instance is more important. It has at least three judges, each with a different function: the Presiding Judge renders judgment, the Prosecutor has the power of prosecution, and the Examining Judge makes inquiries into the cases. The Justice of Peace with Extended Jurisdiction has a Presiding Judge who performs the three above functions himself, although he may be assisted by an additional judge.

THE COURT OF FIRST INSTANCE.

Organization. At the present time there are nine Courts of First Instance in the Republic of Viet-Nam. Five are in South Viet-Nam, at Saigon, Dinh Tuong, Vinh Long, Bien Hoa, and Phong Dinh, and four are in Central Viet-Nam, at Hue, Khanh Hoa, Quang Nam, and Binh Dinh. Each court has one Presiding Judge, one Prosecutor, one

Examining Judge, and one Chief Clerk, assisted by many clerks and employees. Depending upon the docket, each court may also have one or several alternate Presiding Judges and Magistrates, one or several Examining Judges, and one or several Deputy Public Prosecutors.

The Presiding Judge and the Magistrates. The Court of First Instance includes the Presiding Judge, the Alternate Presiding Judge, the Magistrates, and the Examining Judge. The Examinining Judge has the responsibility for making inquiries into the cases; the Presiding Judges and the Magistrates preside over the trials and render judgment.

In principle, the Presiding Judge presides over all sessions of the court. However, if many magistrates are available he may delegate power to them to preside over the sessions and the magistrates are free to try the cases according to their own judgment and conscience.

The Presiding Judge is the direct supervisor of the magistrates in a Court of First Instance.

The Prosecutor. In a Court of First Instance the prosecution is the responsibility of a Prosecutor, assisted by one or several deputies. The powers of the Deputy Prosecutors are those delegated to them by the Chief Prosecutor. Following are the powers of the Prosecutor.

Penal cases: under the direction and control of the Attorney General, the Prosecutor has the responsibility of prosecuting criminal

and minor offenses occurring within the Court's jurisdiction. He assures enforcement of the law, and execution of the sentences of the Court. In criminal or minor offenses, the prosecution is always by the Chief Prosecutor.

Civil cases: The Prosecutor is the Chief or the Secondary Prosecutor in civil cases. He acts as Prime Prosecutor when representing children or grandchildren in suits against their fathers or grandfathers if the patriarch refuses the representation or is absent. He is the Secondary Prosecutor in other civil cases, and always has the right to require that briefs and documents be submitted to him for his reading. There are matters which must be brought to the attention of the Prosecutor's Office, such as those having to do with public order, with national properties, civil status records, tutorship, lawsuits where juveniles are involved, or persons whose presumptive death is being reported.

Administrative cases: The Prosecutor supervises the work of the Clerk's Office in his court and in that of the Justice of Peace within his jurisdiction. He is also responsible for supervising the judicial police officers and ensuring that their professional responsibilities are properly performed.

The Examining Judge. He has the responsibility of making inquiries into the cases. He may directly take cognizance of cases in flagrant delicto. In other cases he takes cognizance only upon the request of the Prosecutor, or upon the complaint of the

plaintiff. Such a complaint is filed at the office of the Examining Judge but it must be forwarded to the Prosecutor's office so that a prosecution order may be issued.

Operations.

Open Court Session: When the Court of First Instance holds open sessions, the Presiding Judge or a Magistrate shall preside, assisted by the Prosecutor or a Deputy Prosecutor and the Chief Clerk or a Deputy Clerk. The Presiding Judge has the right to punish anyone who creates a disturbance or causes trouble during a Court session. If the offender refuses to leave the room after being requested to by the Court, he may be detained for twenty-four hours upon order of the Presiding Judge.

General Assembly: All offices of the Court of First Instance meet in General Assembly and in closed doors to decide on the Court's internal administrative matters, such as setting up the schedule, or calendar, for the court, or to express views on a law bill. The Prosecutor has the right to attend the meetings but has no voting right.

Room for Deliberations: This is the place where the Court meets to consider and deliberate on important matters before pronouncing sentence. It is also where the Court holds sessions to judge cases, such as approval of adoption, house leases, etc. The Presiding Judge, the Prosecutor and the Chief Clerk hold court sessions in the Deliberations Room.

Jurisdiction.

Civil Cases: See chapter on "Legal Procedures in Viet-Nam."

Criminal Cases:

Court of Petty Session. The Court of First Instance tries minor offenses, and is called the Court of Petty Session. It includes the Presiding Judge of the Court of First Instance or a Magistrate who presides, the Prosecutor of the Court of First Instance or a Deputy Public Prosecutor for prosecution, and a Clerk to keep the records.

The defendant and the plaintiff have the right of lawyers to represent them.

A Presiding Judge may not sit in judgment on a case he has previously prosecuted.

In principle, the Court of Petty Session has jurisdiction over all cases of minor offense. However, minor offenses pertaining to criminal cases shall be judged by the Criminal Court.

There are minor offenses which are tried by special courts, such as the Martial Court.

The Court of Petty Session also has jurisdiction to review decisions rendered on petty offenses.

Criminal Court of First Instance. According to the judicial organization of the Republic of Viet-Nam, established by Ordinance No. 4, October 18, 1949, criminal offenses, like minor offenses, are to be tried by two levels of jurisdiction.

Criminal offenses are judged in the first instance by the Criminal Section of the Court of First Instance or the Criminal Section of the Justice of Peace with Extended Jurisdiction.

The Criminal Court of First Instance is comprised of one presiding judge, two judges as assessors, one judge as prosecutor, and one clerk to keep the records.

The two assessors are appointed by the President of the Court of Appeal from among the magistrates of the Courts of First Instance or of the Justice of Peace located near the court concerned. They may also be officials of the Administration, appointed by the Minister of Justice, who live near the court.

The Criminal Courts of First Instance hold hearings every other month, although extraordinary hearings may be held if necessary. The President of the Court of Appeal fixes the calendar for the Criminal Courts of First Instance and for the Justices of Peace with Extended Jurisdiction within his jurisdiction, and appoints the assessors.

The magistrates hear criminal cases in the first instance and pass judgment according to the majority on matters pertaining to the delicts of the accused, the aggravating and extenuating circumstances, the penalties to be imposed, and the damages requested.

THE JUSTICE OF PEACE WITH EXTENDED JURISDICTION.

Like the Court of First Instance, the Justice of Peace with Extended Jurisdiction is a court of first instance, on provincial level, headquartered at the province's chief town or at a municipality. It is different from the Court of First Instance in that it is less important and does not have a prosecutor.

At present there are twenty-two Justices of Peace with Extended Jurisdiction in the Republic of Viet-Nam. There are fourteen in South Viet-Nam, at Kien-Hoa, Vinh-Binh, Ba-Xuyen, Kien-Giang, Tay-Ninh, An-Giang, Phuoc-Tuy, An-Xuyen, Long-An, Chau-Doc, Binh-Duong, Kien-Phong, Bac-Lieu, and Go-Cong. There are five in the Central Viet-Nam Lowlands, at Ninh-Thuan, Binh-Thuan, Phu-Yen, Quang-Ngai, and Quang-Tri, and three in the Central Viet-Nam Highlands, at Dalat, Ban-Me-Thuot, and Pleiku.

Organization.

At each Justice of Peace with Extended Jurisdiction there is only one presiding judge. He is sometimes assisted by an alternate magistrate. There is no prosecutor. When one is necessary, the attorney general having jurisdiction over the court may assign a judge under his jurisdiction to act as public prosecutor at the Justice of Peace with Extended Jurisdiction.

In civil matters on which the law requires the prosecutor's office to be informed, the Justice of Peace with Extended Jurisdiction may render judgment without having to wait for the presence of a prosecutor at the trial. In criminal matters, the attorney general

may require that the briefs on all cases under investigation by the Justice of Peace with Extended Jurisdiction be submitted to him for his reading, and he may do everything that the Prosecutor's Office of the Court of First Instance can do.

The office of the Clerk is headed by a Chief Clerk, assisted by several clerks and secretaries, as in the Court of First Instance.

The Presiding Judge has all the powers of the Presiding Judge of the Court of First Instance. In addition, he also does the work of the Prosecutor and of the Examing Judge in a Court of First Instance.

If an alternate magistrate is available, the Presiding Judge may delegate to him the power to preside over the Courts of Petty Session, or to make inquiries into cases. When he presides over a Court of Petty Session, the Alternate Magistrate has full power to render judgments according to the laws and to his own conscience. In making inquiries, the Alternate Magistrate has the full power of an Examining Judge in a Court of First Instance. However, he acts only under delegation of power by the Presiding Judge, who may at any time recall the file and personally make inquiries or commence legal proceedings if necessary.

Operation and Jurisdiction.

The Justice of Peace with Extended Jurisdiction functions differently than a Court of First Instance. At the former, even in criminal cases, the Prosecutor's seat is vacant during trial,

COURT OF APPEAL AND COURT OF FIRST INSTANCE, SAIGON

in open as well as in closed sessions, except when the Prosecutor General deems it necessary to assign a Prosecuting Judge from another court. During the hearing, the Presiding Judge has police power over the audience.

There is no difference as to jurisdiction between the Justice of Peace with Extended Jurisdiction and a Court of First Instance.

THE COURT OF APPEAL.

Courts of Appeal are at the regional level. There are now two Courts of Appeal in the Republic of Viet-Nam, one in Saigon and the other in Hue. Prior to the partition of Viet-Nam by the Geneva Agreement of July 20, 1954, there was a third, located in Hanoi, with jurisdiction over all the provinces in North Viet-Nam.

The Court of Appeal at Saigon has jurisdiction over all of the provinces in South Viet-Nam and some of the Central Viet-Nam Highlands: Lam Dong, Tuyen Duc, Dalat (city), Darlac (Ban Me Thuot), and Quang Duc.

The Court of Appeal at Hue has jurisdiction over all the provinces in the Central Viet-Nam Lowlands, and Pleiku, Kontum and Phu Bon in the Highlands.

Organization.

Each Court of Appeal has a President of the Court, one or two Senior Judges, and several Assessors. Prosecution is the responsibility of the Attorney General, assisted as necessary by one or two Deputy Attorneys General, and one or several attaches

to the Prosecutor's Office. The Clerk's Office is headed by a Chief Clerk, assisted by a number of clerks and employees.

The President of the Court of Appeal.

The President of the Court of Appeal has control over all the Senior Judges and Magistrates, not only in the Court of Appeal but also in all courts under its jurisdiction.

He may recommend, appoint, transfer or promote the magistrates. He may also make recommendations for disciplinary action to be taken against them.

He may assign a judge to be a provisional Presiding Judge at the Court of Appeal or at a provincial court within his jurisdiction.

He must personally inspect, or assign the Senior Judges of the Court of Appeal to inspect, the courts under the jurisdiction of the Court of Appeal, either periodically or unexpectedly, to control the operations of these courts. After such inspections he must make a report to the Ministry of Justice.

Whenever a complaint is received against a Presiding Judge or a Prosecuting Judge, he must either investigate it personally or delegate the responsibility to a Senior Judge or an Assessor.

The Attorney General.

The Attorney General has two responsibilities: he is the Director of Judicial Service, and is in charge of the Prosecutor's Office.

In his capacity as Director of the Judicial Service, to which he is assigned by the Minister of Justice, the Attorney General handles all administrative affairs of that service. He gives his opinion on all appointments and transfers of Prosecuting Judges, makes recommendations for appointment of clerks and all personnel of the Judicial Service, makes efficiency reports and recommendations for promotion or discipline of the Prosecuting Judges, the Clerks and personnel of the Judicial Service.

At the Court of Appeal, all prosecution powers are vested exclusively in the Attorney General. The Deputy Attorney General and the Assistant Attorney General only execute such powers when they are authorized by the Attorney General to do so. The Attorney General has the right to express his opinion personally at court hearings and in criminal sessions, although at the Court of Sppeal sessions he usually assigns the Deputy or Assistant Attorney General to represent him.

The Attorney General has control over the operation of the Prosecutors at the Courts of First Instance under his jurisdiction.

On matters having to do with the Government, the Attorney General, upon request of the Minister of Justice, prepares the brief for submission of the case to the competent court.

The Attorney General also has the right to control inquiries made in criminal cases at the courts under his jurisdiction. He may appeal all judgments of the Examining Judge to the Court of Indictment.

He establishes files for amnesty, extenuation, and conditional releases, makes recommendations therefor, and submits them to the Minister of Justice.

He may assign a judge under his jurisdiction to act as Public Prosecutor at a Justice of Peace Court with Extended Jurisdiction.

Within his own jurisdiction, he sees to the enforcement of laws, decrees and regulations in effect. He has the right to execute criminal or civil sentences in matters pertaining to public order. He also has the power to requisition use of the Armed Forces as provided by law.

Like the President of the Court, the Attorney General must personally inspect, or assign Judges in the Court of Appeal to inspect, the courts under his jurisdiction, either periodically or unexpectedly, and after each inspection he must make a report to the Minister of Justice.

The Attorney General has the responsibility for controlling and supervising the management of prisons and disciplinary centers under his jurisdiction.

He also supervises all personnel in charge of the judicial police, all judicial police officers, and certifies documents signed by the notaries under his jurisdiction.

Composition.

Usually, the Court of Appeal includes the First Court and the Second Court. However, due to the requirements for service,

the Minister of Justice may establish one or several additional courts within the Court of Appeal.

The First Court is presided over by the President of the Court, assisted by two Assessors. The Second, and any additional Courts, are presided over by a Senior Judge assisted by two Assessors.

The courts within the Court of Appeal share the responsibilities of reviewing civil, commercial or criminal decisions rendered by the Courts of First Instance and by the Justice of Peace with Extended Jurisdiction within the jurisdiction of the Court of Appeal.

There is, in addition, a Court of Indictment within the Court of Appeal, presided over by a Senior Judge assisted by two Assessors. It has jurisdiction to make inquiries into criminal cases, decide appeals from orders of Examining Judges, and receive petitions for restoration of civil rights.

General Session of all the courts within the Court of Appeal.

This session of the Court of Appeal is presided over by the President of the Court with all Senior Judges and Assessors present. The Attorney General is the Public Prosecutor. The Chief Clerk of the Court of Appeal keeps the records. This General Session is for witnessing the taking of oath by the Senior Judges, or for trial of a judge accused of a minor or a criminal offense.

General Assembly of the Court of Appeal.

At the General Assembly, all Presiding Judges and Prosecuting Judges of the Court of Appeal are present. It is held in the Deliberations Room, presided over by the President of the Court. The Attorney General sits opposite the President of the Court and announces the purpose of the General Assembly. The General Assembly pronounces judgment on petitions for appointment, and on violations of discipline committed by public officers (lawyers, notaries, process servers, auctioneers) under the jurisdiction of the Court.

The Criminal Section of the Court of Appeal.

The Criminal Section of the Court of Appeal is headed by a Senior Judge, assisted by two Assessors selected from among the Judges in the Court and by two People's Assessors selected from among the Vietnamese citizens. These People's Assessors must be at least thirty years of age, with clear police records, and have their full civil and citizen's rights. They must not have been working in any judicial agency (courts, Ministry of Justice, Notary's office,) nor may they be in the active military service or in the priesthood.

Judges of the Criminal Section of the Court of Appeal and the People's Assessors decide according to the majority on all matters relating to the crime, to the aggravating or extenuating circumstances, and the application of penalties.

The Criminal Section holds hearings once every three months. Decisions of the Criminal Sections of the Court of First Instance, and of the Justice of Peace with Extended Jurisdiction, may be appealed to this Criminal Section of the Court ofAppeal.

COURT OF CASSATION

THE COURT OF CASSATION.

After the signing of the French-Vietnamese Treaty of 8 March 1949, by which Viet-Nam regained its judicial sovereignty, a Supreme Court having jurisdiction over all of Viet-Nam was established by Ordinance No. 5 of 18 October 1949. The Court consisted of the Judicial, Administrative and Accounting-Inquiry Sections.

Each year, upon recommendation of the Minister of Justice, a Chief Justice and an Attorney General of the Supreme Court were appointed by decree of the Chief of State. Their term of office was one year. The Chief Justice was selected from among the Presidents of the Courts of Appeal of Hanoi, Hue and Saigon. The two not selected became Assessors to assist the Chief Justice in the Judicial Section. The Attorney General was selected from among the three Attorneys General of the three Courts of Appeal.

In practice, from 1950 to 1954, only the Judicial Section was operative. In 1954 the Accounting-Inquiry Section was abolished. After the Geneva Agreement of 20 July 1954 partitioned the country at the Seventeenth Parallel, and after the French-Vietnamese Joint Courts were deactivated, on 16 September 1954 the Supreme Court was reorganized. In application of the principle of decentralization of power between the Executive and the Judicial Branches, a Court of Cassation and a Council of State were established along the line of the French judicial system to replace the Judicial and Administrative Sections of the old Supreme Court.

In 1955 the Court of Cassation was established. It has jurisdiction over all of South Viet-Nam. Its office is at 76 Hong Thap Tu, Saigon.

Organization.

The Court of Cassation includes one President, one Deputy President, and six Assessors.

The Prosecutor's Office is headed by an Attorney General, assisted by a Deputy Attorney General.

The Record Office is headed by a Chief Clerk, assisted by several clerks and secretaries.

The Court of Cassation is divided into two chambers: the Civil Chamber, presided over by the President of the Court of Cassation assisted by two Assessors, ruling on appealed civil and criminal cases, and the Criminal Chamber, presided over by the Deputy President, assisted by two Assessors, ruling on appealed criminal cases.

Operation.

Each Chamber of the Court of Cassation sits at least once a month. All hearings are open.

Jurisdiction.

The Court of Cassation rules on all petitions for quashing final sentences by the lower courts in criminal, commercial and civil cases.

With the exception of the Martial Courts at the Front, and the Special Courts, all courts in the judicial system are under the control of the Court of Cassation in criminal as well as civil matters.

The Court of Cassation examines appealed sentences only from the legal aspect, to assure correct application of the law. It does not examine the substance of cases.

Appeals for annulment are based only on allegations of incompetency or abuse of power, violation of the law, noncompliance with legal procedures which stipulate that noncompliance shall make the sentence void, or contradiction between two sentences ruled by two different courts on one and the same matter.

COURTS OF SPECIAL JURISDICTION.

House Lease Courts.

This court was established, by two ordinances, to hear disputes between owners and lessees. Ordinance No. 4, April 2, 1953, pertains to houses rented for dwelling or for use in the practice of any handicrafts or professions, and Ordinance No. 17, June 13, 1953, relates to houses rented for commercial or industrial purposes.

In practice, the House Lease Court is presided over by the Presiding Judge of the Court of First Instance (or a judge assigned for this purpose), or the Presiding Judge of the Justice of Peace with Extended Jurisdiction but with much more simplified procedures.

Judgments of the House Lease Court may be appealed to the Court of Appeal and then to the Court of Cassation in the same manner as civil cases tried by the Court of First Instance.

Labor Court.

This was established according to the Labor Code, Ordinance No. 15, July 8, 1952. It is comprised of a Presiding Judge, two Assessors representing the employers, two Assessors representing the employees, and one secretary.

The Assessors are appointed by drawing lot from among those registered on the lists established by the Regional Labor Inspector after consultation with the labor unions concerned.

The Labor Court judges individual disputes between employers and workers in the application of labor contracts. Collective disputes are settled by the Arbitration Council.

There are eight Labor Courts, established in provinces and cities important from commercial and industrial standpoints. There are five in South Viet-Nam, at Saigon, Bien Hoa, My Tho, Can Tho and Dalat, and three in Central Viet-Nam, at Hue, Da Nang and Nha Trang.

Where Labor Courts are not available, disputes are brought to the civil courts, either Court of First Instance or Justice of Peace with Extended Jurisdiction, which apply the Labor Code.

There are two courts for appeal. If decision was by a Labor Court, the appeal is to the Court of First Instance or to the Justice of Peace with Extended Jurisdiction for final judgment.

LABOR COURT, SAIGON

If the decision was by the Court of First Instance or the Justice of Peace with Extended Jurisdiction in application of the Labor Code, the appeal is to the Court of Appeal for final judgment.

Decisions of the Labor Court may be appealed to the Court of Cassation for misuse of power or for violation of law.

Juvenile Court.

This court tries juveniles (under 18 years of age) charged with criminal or minor offenses. There are four sections.

Minor Offenses Section at First Instance Level. There is one magistrate, who is the Presiding Judge.

Minor Offenses Section at Higher Court Level. An Assessor of the Court of Appeal is the Presiding Judge, assisted by two judges as Assessors.

Criminal Section of the Court of First Instance. The Presiding Judge of the Juvenile Court (Minor Offenses Section at First Instance Level) presides, assisted by two Peoples' Assessors.

Criminal Section of the Court of Appeal. One Assessor of the Court of Appeal presides, assisted by two People's Assessors.

Judges of the Juvenile Courts are appointed by the Minister of Justice through an arrete. The Public Prosecutor is the Public Prosecutor of the Minor Offenses Court.

There are four Juvenile Courts of First Instance for the trial of minor and criminal offenses. They are located in Saigon, Dinh Tuong, Hue, and Nha Trang. There are two higher Juvenile

Courts to try minor and criminal offenses, one at Saigon and the other at Hue. Where no Juvenile Courts are available, the local ordinary court tries the cases but applies the special procedures of the Juvenile Court.

Land Reform Court.

This was established to try violations and disputes which occur during the carrying out of the Land Reform Policy. There are now four Land Reform Courts, at Saigon, Long An, Dinh Tuong, and An Giang.

The offices and jurisdictions of these four courts are those of the four judicial Courts of First Instance of the provinces concerned. The Land Reform Court includes a Presiding Judge and two Assessors. The Presiding Judge is the Presiding Judge of the Court of First Instance, but the two Assessors are officials of the local Administration. The court has one government commissioner, who is assigned as Public Prosecutor, and one Secretary present at open hearings to keep the record.

Where no Land Reform Court is available, the Court of First Instance or the Justice of Peace with Extended Juris diction with its original composition acts as the Land Reform Court.

Decisions of the Land Reform Court are final. However, to be effective they must be approved by the Land Reform Council. If a decision is not accepted, the Council orders a review of the case by another nearby Land Reform Court.

The Martial Court.

The Martial Court is organized according to provisions of the Military Code. There are now four Martial Courts, at Saigon, Hue, Nha Trang and Can Tho.

The Martial Court is presided over by a Presiding Judge selected from among the civil judges of the Court of Appeal whose jurisdiction covers the Martial Court concerned. The Presiding Judge is assisted by four Military Assessors. The position of Public Prosecutor is held by the Judge Advocate (Commissioner of the Government) who is also military.

The Martial Court tries all crimes committed by military personnel, and all political, minor or serious offenses prejudicial to national security committed by military personnel or civilians. The Military Code has clearly defined the circumstances in which civilian offenders are brought to the Martial Court. Sentences of the Martial Court are final and can only be appealed to the Court of Cassation.

The Front Court.

At each of the four Military Tactical Regions there is a Front Court composed of a Presiding Judge and one Alternate, both selected from among officers of the grade of Colonel or higher and serving in the region concerned; four Assessors selected from among officers and NCO's serving in the same region; one Commissioner of the Government (Judge Advocate) selected from among

officers of the Military Justice Department, and one Chief Clerk who is military, assisted by other clerks and secretaries.

The Front Court tries cases of flagrant delict committed during the state of emergency within the territorial limits of the Tactical Region.

In these conditions, the Front Court is empowered to try all minor and criminal offenses committed by personnel of the Regular Army and the Regional Forces. Vis-a-vis civilians, the Front Court is qualified only to try violations of national security and such crimes determined by the Military Code as to be under the jurisdiction of the Martial Court.

Prosecution procedures provide for the offender to be brought directly to the court without any preliminary investigation. Sentence of the Front Court is final and conclusive and no appeal to any higher court is allowed.

The Special Court.

This was established by Decree Law No. 3/66, February 15, 1966, and is operative for the duration of the state of emergency. It has jurisdiction over all of Viet-Nam. It is located in Saigon, but may be mobile if necessary.

The Special Court comprises a Presiding Judge appointed by the Chairman of the National Leadership Committee (Chief of State), two Assessors appointed by the Chief of the Central Executive Committee (Prime Minister), one Judge Advocate with one or several

INSTALLATION OF PRESIDING JUDGE OF HIGHLANDS SECTION OF COURT OF PEACE WITH EXTENDED JURISDICTION, DALAT

Deputies appointed by the Prime Minister, and one Chief Clerk, assisted by clerks and secretaries.

The Special Court is empowered to try the following offenses, whether committed by military or civilians:

- Hoarding of goods, illegal transfer of currencies abroad, smuggling and violations of customs laws if the properties smuggled are of a value of VN $50,000 or more; and
- Corruption, abuse of power, embezzlements if the properties or amounts or both are valued at VN $50,000 or more.

Judgment of the Special Court is conclusive and no appeal to the Court of Cassation is authorized.

Montagnards Customs Courts.

These courts were established by Decree Law No. 6/65 of 22 July 1965, and are located in seven provinces of the Highlands: at Dar Lac, Quang Duc, Tuyen Duc, Lam Dong, Pleiku, Kontum and Phu Bon. They are based on two basic principles: respect for the traditions and customs of the Montagnards, and, at the same time, respect for the Vietnamese national judicial sovereignty. The purpose is to carry out the policy of unity between the Montagnards and the Delta people (Vietnamese.)

These courts are not in actuality special courts. They are incorporated in the national administrative and judicial structures at various levels.

At the village level, the Court includes the Chairman of the Village Administrative Committee as Presiding Judge, and two Montagnard Assessors.

At the district level, the Court is presided over by the District Chief acting as Justice of Peace, assisted by two Montagnard Assessors.

At the provincial level, the Justice of Peace with Extended Jurisdiction has a Montagnard Affairs Section which includes one Presiding Judge and two Assessors, all Montagnards.

At the Court of Appeal level, when both parties at law are Montagnards the Court has its ordinary composition but with two additional Assessors from among the Montagnards. In the Criminal Section of the Court the composition remains the same but the two Vietnamese Assessors are replaced by Montagnard Assessors.

In principle, the Customs Courts have judicial jurisdiction over the Montagnards except when provided otherwise by law. In cases of betrayal, violation of national security, disputes between Montagnards and Vietnamese, or in criminal cases where Vietnamese are involved, the National Courts of Justice, at each level, hold trials with their usual composition but with additional Montagnard Assessors.

The laws enforced against the Montagnards by the Court of Customs are the local traditional customs provided they are not inconsistent with public order.

THE ADMINISTRATIVE COURTS.

Before the time of the French there were no administrative courts in Viet-Nam. Power was in the hands of the king. The mandarins, who represented the king to rule the country, were responsible only to the king. No courts were empowered to control the legal character of their administrative activities or to determine the responsibilities of the king or the nation toward the people.

Nor during the French rule were there any courts having jurisdiction over the administration of the Vietnamese emperors or their officials.

However, during the administration of the French in Viet-Nam, and particularly in South Viet-Nam which was then their colony, and in the concessions of Hanoi, Hai Phong and Da Nang, an administrative court system was established by the French which included the French Council of State and an Indochinese administrative jurisdiction system having control over all the peninsula of Indochina.

During the period from 1950 to September 16, 1954 two administrative court systems in Viet-Nam were empowered to try all administrative litigation according to the nationality of the parties involved.

The French-Vietnamese Joint System included a Joint Administrative Court in Dalat, and a Joint Council of Appeal at the French Council of State.

The Vietnamese system included the Administrative Court, and the French-Vietnamese Supreme Administrative Jurisdiction Section in Viet-Nam.

After the signing of the judicial treaty with France of 16 September 1954, Viet-Nam recovered her total judicial sovereignty. The Joint Court System, administrative and judicial, was abolished. Only one national judicial administrative system remained, which included an Administrative Court and the Council of State.

Additionally, there existed a particular court of an administrative nature called the Pension Court, under the control of the Council of State.

ADMINISTRATIVE COURT.

There is now in Viet-Nam only one Administrative Court. It is located in Saigon and has juris diction over the whole country.

Composition.

The Administrative Court comprises a Presiding Judge, an Alternate Presiding Judge, a Government Commissioner, a number of Associate Judges according to the requirements of service, a Secretary General and several secretaries.

In reality, the Vietnamese Administrative Court has only one Presiding Judge, two Associate Judges, and one Government Commissioner.

Jurisdiction.

The Administrative Court judges:

In the first instance, all petitions for reimbursement of damages relating to administrative entities, petitions for cancellation of administrative decisions relating to the administrative status of officials appointed by the Ministers, Secretary of State, Government Delegate and Provincial Chief, and disputes relating to provincial, district and village elections.

In first instance and conclusively (no appeal is permitted), all cases having to do with direct tax problems and other taxes relating thereto.

THE COUNCIL OF STATE.

The Council of State is the highest court of the Administrative Court System, established by Ordinance No. 38 of 30 N vember 1954 to replace the Administrative Section of the former Supreme Court.

The Council of State is located in Saigon, and has jurisdiction over the whole country.

Composition.

It is comprised of a Judicial Board, an Administrative Board, a General Assembly of the Council, and an Office of the Secretary General.

Its personnel includes a President, one or two Vice Presidents, a number of Advisors and Consultants, a General Secretary, and several secretaries.

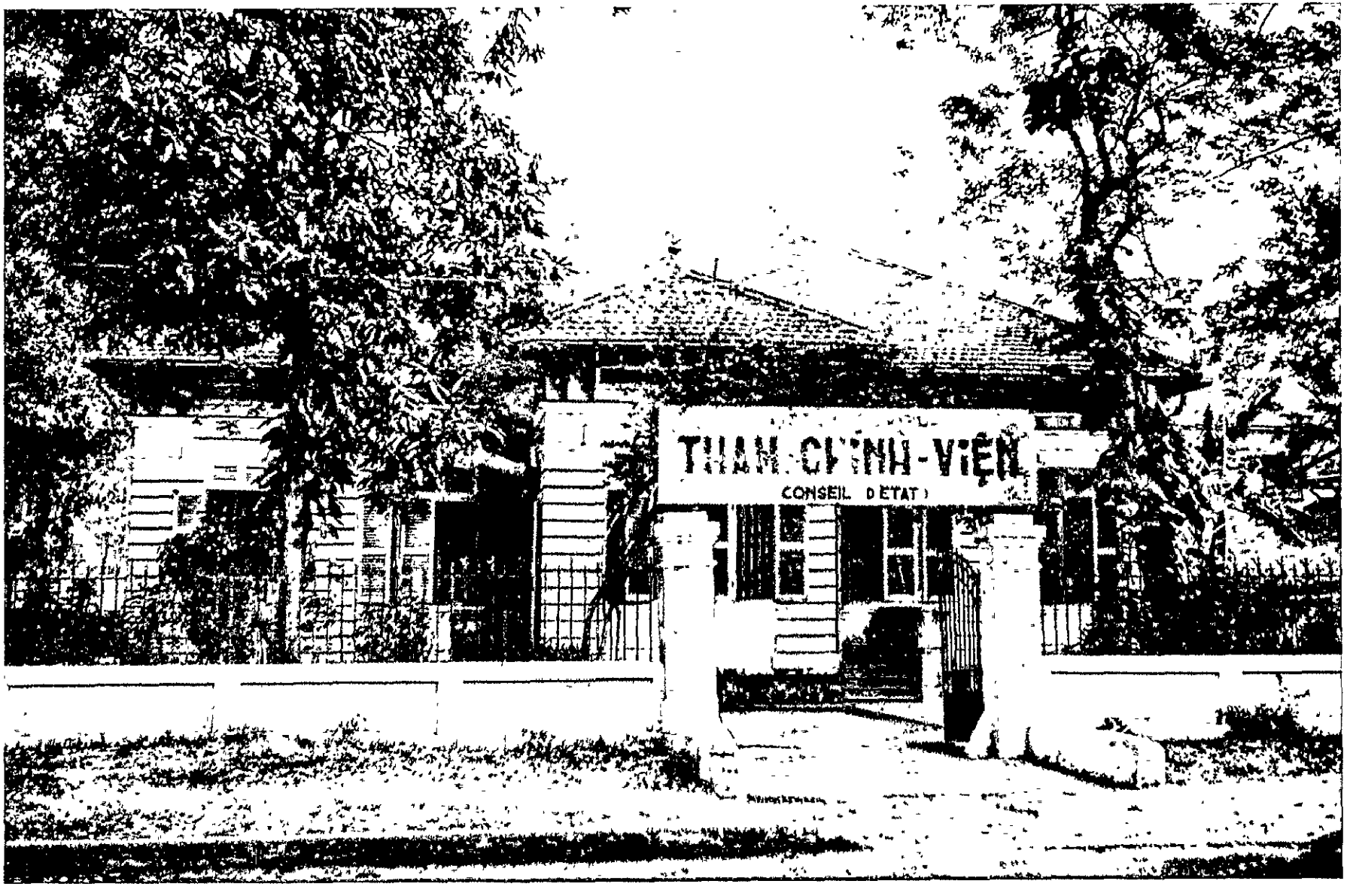
The President of the Council of State is responsible for:

- Presiding over the Judicial and Administrative Boards. He may delegate to the Vice President the power to preside over the Administrative Board.
- Supervising and controlling the general activities of the Council.
- Making assignments to the Boards.
- Representing the Council in its relations with the government and with private citizens.

The Judicial Board includes a Presiding Judge, two Associate Judges, and a Commissioner of the Government representing the law. The Presiding Judge is selected from amdng the President, Vice Presidents and Advisors of the Council of State. The Associate Judges and the Commissioner of the Government are selected from among the Advisors.

The Administrative Board includes a Chairman (selected from among the Vice Presidents and Advisors), two Advisors, and a number of Consultants according to the requirements of service. If it is necessary, the President of the Council of State may also preside over this Board. In each case, the Chairman of the Administrative Board assigns an Advisor to be a reporter.

The General Assembly of the Council of State includes all judges in service at the Council, and is chaired by the President of the Council.



COUNCIL OF STATE

Jurisdiction.

The Council of State is qualified to:

- Review all sentences ruled in first instance by the Administrative Courts.
- Consider petitions to void sentences ruled conclusively by the Administrative Courts or by courts of an administrative nature.
- Rule in first instance and conclusively on all petitions for cancellation of administrative decisions, individual or collective, for misuse of power, incompetency of the court, violation of law, and nonmotivation or inaccurate motivation.
- Rule in first instance and conclusively on all litigation concerned with the administrative status of public servants appointed by decree or arrete of the Chief of State.

Moreover, the Judicial Board of the Council of State has jurisdiction to try certain cases provided by special decrees, such as ruling in first instance and conclusively on disputes relating to elections for National Councils of doctors, dentists, midwives and pharmacists; to hear appeals made by them against decisions of their respective National Councils refusing their enrollment in the lists of the Councils; to consider appeals against decisions of their respective disciplinary councils; and to consider and settle disputes relative to payment of pensions to the military and their heirs.

The Administrative Board has two powers: advisory and legislative.

Under its advisory power, the Board can express its opinion on the following documents:

- Transfer of power for exploitation of a natural resource, or a public business or a commercial monopoly.
- Administrative contracts between administrative organs and private citizens valued at VN $500,000 or more.
- Authorization granted to administrative entities to receive donations in kind or in cash with conditions imposed by the donors.
- Installation or abolition of national or regional administrative organs.

Under its legislative consulting power, the Board can express its opinion on:

- Bills, decrees, arretes, etc. if so requested by the legislative organ or the Government.
- Bills, decrees, arretes, etc. on which the Government is required to consult the Council of State, as stipulated by law, or because the problem involves a citizen's right to freedom, public servants' status or the status of free professions, or national or regional administrative reorganization, public loans, or the organization of the administrative courts and the Council of State.

Opinions given by the Council of State are not binding on the requesting agency.

The General Assembly of the Council of State gives its opinion on the application of disciplinary action against administrative judges who have violated the discipline.

In addition, the President of the Council of State may delegate power to the General Assembly to consider and decide on important administrative disputes, and to express its opinion on bills, decrees and arretes of an important character. If necessary, the General Assembly of the Council may make recommendations to the legislative organ or to the government to change or clarify absurd terms, or provisions contradictory or inconsistent with laws currently in force.

The General Assembly of the Council of State may also express its opinion on constitutional problems, international laws, or on legislative problems conveyed to the Assembly by the Government for consultation.

THE PENSION COURT.

The Pension Court is responsible for trying disputes arising from the pension regime applied to disabled and invalid Vietnamese war veterans and their heirs, as provided for in Ordnance No. 22 of 15 November 1952.

These disputes are settled at two levels of jurisdiction: in first instance by the Pension Court of First Instance at the Regional level, and in appeal by the Pension Court of Appeal at the Regional level. Both courts have the character of an administrative court of special jurisdiction although they are both presided over

by a judicial judge.

THE PENSION COURT OF FIRST INSTANCE AT REGIONAL LEVEL.

Composition.

Within the jurisdiction of each Court of Appeal, a Pension Court of First Instance at the Regional level is established, and includes a Judge of the civil court assigned as Presiding Judge by the President of the Court of Appeal, a doctor, an Assessor who is a veteran and receiving a pension, a Judge Advocate who is an official of the Quartermasters, and a Clerk who is the Chief Clerk or a clerk of the C ivil Court of First Instance located at the capital of each Region.

Jurisdiction.

The Regional Pension Court of First Instance takes cognizance of appeals against decisions of the Minister of War Veterans and Invalids fixing the payment of, or refusing, pensions. The Court holds open hearings. The Sentence must clearly specify the reasons therefor, and it may be appealed to the Regional Pension Court of Appeal.

THE REGIONAL PENSION COURT OF APPEAL.

Within the jurisdiction of each Court of Appeal, a Regional Pension Court of Appeal is established.

Composition.

Each year the Minister of Justice appoints a Senior Judge of the Court of Appeal or a Senior Associate Judge as Presiding Judge, and two Associate Judges of the Court of Appeal. The Court of Appeal

assigns three alternates. The Judge Advocate is appointed by the Minister of Defense from among officers of the Quartermaster. The Clerk is the Chief Clerk or a clerk of the local Court of Appeal.

Jurisdiction.

The Regional Pension Court of Appeal has jurisdiction over appeals from sentences of the Regional Pension Court of First Instance. Appeals may be made by the party concerned or by the Judge Advocate, who is a Government Commissioner. Appeal from decisions of the Regional Pension Court of Appeal may be made to the Council of State on grounds of abuse of power, misuse of power, defects in form, or violation of law.

THE CONSTITUTIONAL COURT.

The Constitutional Court was established by Law No. 7/60 of 23 December 1960, in virtue of Articles 85, 87, 87 and 88 of the Constitution of 26 October 1956 and is responsible for:

- Ruling on the constitutionality of laws, decrees and administrative regulations.
- Expressing opinions on recommendations for modification or amendment of the Constitution forwarded to it by the National Assembly Committee.

The Constitutional Court has a President and eight Associate Judges. The President is appointed by the President of the Republic upon agreement of the National Assembly. Four Associate Judges are appointed by the President of the Republic from among the Senior Judges or Lawyers, and four by the National Assembly from among the Deputies.

The term of office of the President of the Court and of the Associate Judges is the same as for the National Assembly, three years.

The first President of the Constitutional Court was Lawyer Vuong Quang Nhuong, former President of the Bar Association and former Minister of Justice. The succeeding President was Dinh Van Huan, former President of the Court of Appeal and Attorney General of the Court of Appeal of Saigon.

The Constitutional Court operated from the beginning of 1961 until 1 November 1963 when the Revolution overthrew the dictatorial regime of Ngo Dinh Diem and terminated the offices created by the Constitution of 26 October 1956.

With the new Constitution of 1 April 1967, the responsibility for interpreting the Constitution, pronouncing on the constitutionality of laws, decrees, arretes and administrative orders is vested in the Supreme Court.

CONCLUSION.

Since Viet-Nam regained in entirety its judicial sovereignty, the Ministry of Justice has made great efforts to improve the judicial machinery for enforcement of the laws of the nation, to make them more responsive to the needs of the people, and to broadly disseminate a knowledge of them.

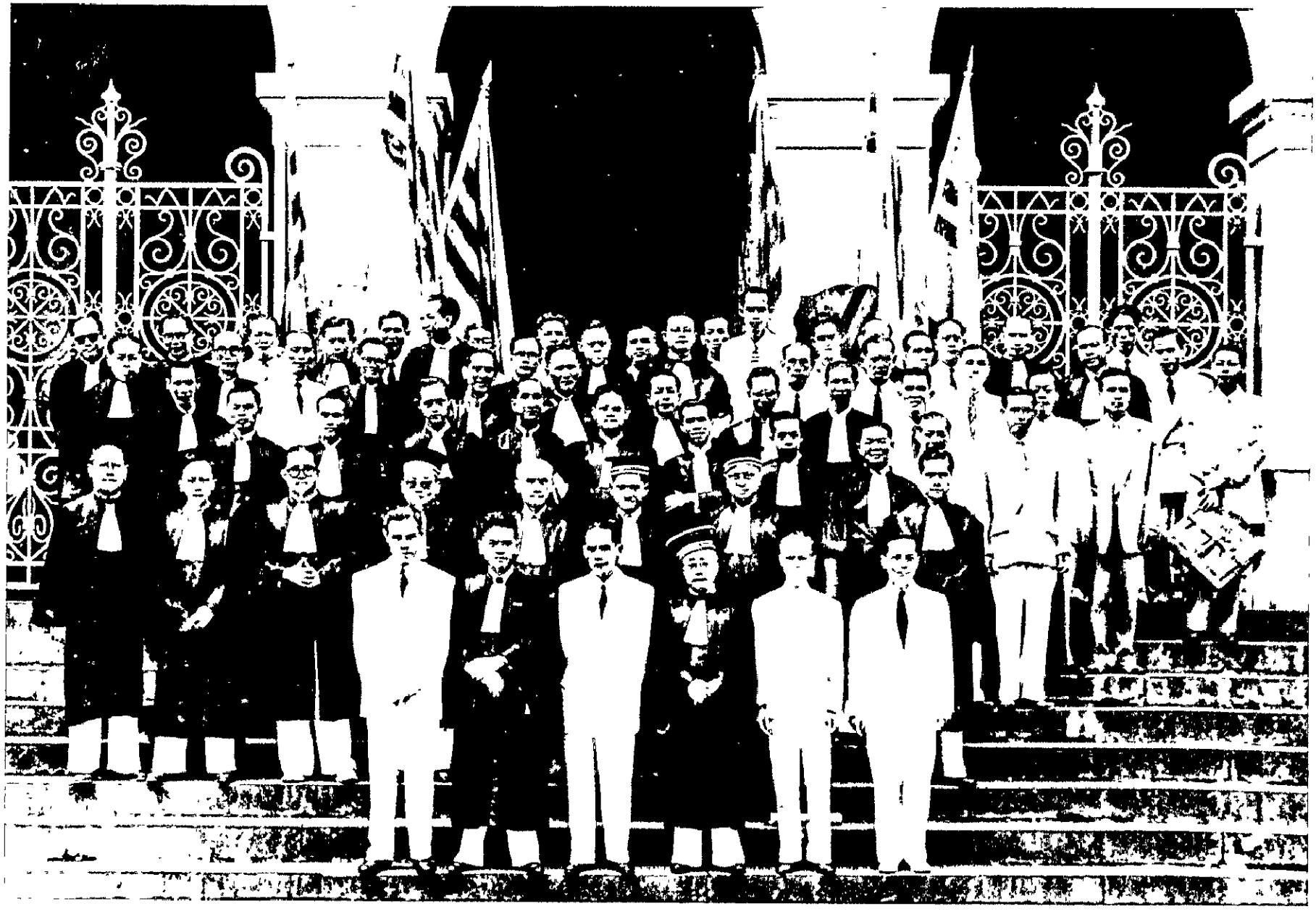
There have been many difficulties in equitably applying the law. Distances between courts is often great and sometimes imposes an unsurmountable burden on people seeking relief through the law.

For example, to seek cancellation of an administrative decision by a Province Chief in Quang Tri or An Xuyen, a petitioner has to make the long trip to Saigon to file his petition. There, so far removed from the people and circumstances involved, the Administrative Judge, no matter how experienced or how rich in jurisprudence, may find it difficult to truly render justice. This adds to the problems of developing in the residents of more remote areas a strong belief and confidence in justice.

The intention and effort of the Ministry of Justice is to bring justice through law, both in application and in meaning, to the people throughout all of the Republic of Viet-Nam. To this end, Circular Note No. 9745-BTP/HOV of 12 September 1966, in application of Decree Law No. 17 of 29 July 1964, created mobile Courts of First Instance. Similarly, by Arrete No. 1060-BTP/ND, of 27 October 1966, in application of Ordinance No. 33 of 14 June 1956, mobile Courts of Appeal were established. These mobile courts are part of the effort to make the attainment of justice through law more readily available to the people of Viet-Nam, enabling them to better understand the laws and to inspire respect and confidence in them. Every effort is being made to place the nation's laws and interests beyond all pressure.

The creation of courts having administrative jurisdiction without also having established a higher court to settle questions

of competency or conflict of jurisdiction has resulted in a serious gap in the administration of justice. This problem of the administrative courts must be reconsidered at a later date when the Supreme Court, with jurisdiction over appeals of conclusive judgments both judicial and administrative, is established in accordance with the provisions of the new Constitution.



GROUP OF VIETNAMESE JUDGES, 1950

CHAPTER IV

JUDGES IN VIET-NAM

Judges in Viet-Nam are assigned to one of the two branches of the court system, as judges of the judicial courts or of the administrative courts. Judges of the judicial courts comprise three classes, Justices of Peace, Judges of the Courts of First Instance and the Courts of Appeal, and Judges of the Court of Cassation.

Recruitment.

Judges are, in principle, appointed only after successfully passing a competitive recruiting examination. Candidates must be of Vietnamese nationality, between twenty-two and thirty-five years of age, and graduated with either a Doctor of Law or a Bachelor of Law degree.

However, for the office of Justice of Peace, the requirement of a diploma is not strictly enforced. A "Licence en Droit" degree is not compulsory. Any holder of an Indochina Law Certificate, a graduate of the Administrative Law School in Hanoi, or of the former Higher Studies School of Indochina, or a court clerk of the second grade or higher, is allowed to take the examination. (Refer to the chapter on Law Schools.)

Especially with regard to the office of Judge of the Court of Cassation, in addition to the diploma requirement (Doctorat or License en Droit, the equivalent not being accepted,) candidates

must have assumed, or be assuming, one of the following functions:

- Judge at the Joint Court of Appeals in Paris.
- First President or Prosecutor General at the Court of Appeal.
- President of Chamber or Deputy Prosecutor General at the Court of Appeals of First Class (Saigon).
- Presiding Judge or Prosecutor at the Court of First Instance of Extra Class (Saigon).
- Director of service at the Ministry of Justice, with at least three years of seniority, and formerly judge at the Court of Appeal.
- Professor Agrege at the Law Faculty.
- Barrister at the Court of Appeal in Viet-Nam with at least ten years of practice from the day he was registered on the Bar Association List, and have been either the president of or a member of the Bar's Council.

Judges are nominated to the courts through the Minister of Justice and appointed by decree of the Chief of State.

"Standing" and "Sitting" Magistrates.

There are very few judges in Viet-Nam. On May 1, 1967 there were only 167 judges, of whom 3 were at the Court of Cassation, 149 at the Courts of First Instance and Courts of Appeal, 3 as Justices of the Peace, and 12 Administrative Judges.

There is no distinction between prosecuting judges and trial judges. Due to the needs of public service, magistrates may be appointed either to the "Ministere Public" or to the Judiciary

proper. They may be transferred from one to the other through an arrete of the Minister of Justice.

The Right of Trial Judges to be Protected and Independent.

Article 5 of Ordinance No. 3 dated March 29, 1954 fixing the status of the Justices of Peace and Judges of the Courts of First Instance and Courts of Appeal stated: "Conforming to criminal law and special law, all judges shall be protected in case of threat, humiliation or slander" and "The government shall defend any judge threatened or attacked while fulfilling or after having fulfilled his functions." Moreover, while carrying out their judicial function, trial judges resort only to their own consciences for decisions. They can neither be transferred nor dismissed beyond circumstances specified in their statute. Administratively, prosecuting judges are under the direction and control of their superiors and the Minister of Justice.

Judicial Privilege.

Judges in Viet-Nam enjoy judicial privilege if they commit a crime of minor offense while or after carrying out their functions.

Upon receipt of a claim accusing a magistrate of a minor or a serious offense, the Prosecutor General immediately reports the case to the Minister of Justice and then commences a secret investigation either personally or by entrusting it to a judge of a higher rank.

The Minister of Justice personally decides whether or not to prosecute the offender. In case of prosecution, the First President of the Court of Appeal personally conducts the trial. He may entrust

the trial to a judge of the Court of Appeal of higher rank only when pressure of his work so necessitates.

The trial lies within the jurisdiction of the Court of Appeal, with all the chambers meeting together. The First President acts as President, and the Prosecutor General as Prosecutor.

Ranks and Salaries.

The class of Justices of Peace is composed of thirteen ranks, from justices on probation, with a salary index of 430, to justices of extra rank, after three years of seniority, with salary index of 1,000.

Judges of Courts of First Instance and of Appeals are composed of fifteen ranks, from Prosecuting Officer, with salary index of 430, to First President and Prosecutor General of the Court of Appeal, with salary index of 1,120.

Judges of the Court of Cassation are composed of three ranks: Judge of Appeal, with salary index of 1,120, President of Chamber and Deputy Prosecutor General, with salary index of 1,160, and First President and Prosecutor General, with salary index of 1,200.

The branch of Administrative Judges includes seventeen ranks, from judges on probation, with salary index of 430, to chairman of the Council of State, with salary index of 1,200. There is a difference of forty to fifty points between one grade and the next.

In addition to their basic salary, judges are entitled to remuneration as provided in the Vietnamese civil servants status

for the high cost of living, and family, housing and functions allowances. Moreover, the sitting judges are entitled to special allowances for trials.

All judges are entitled to one month of vacation with pay each year.

At present, an unmarried Prosecuting Magistrate with salary index of 430 is paid 8,802.57 piasters a month, while a single First President of the Court of Cassation with salary index of 1,200 earns 29,964.86 piasters a month.

Taking Oath.

Before assuming an office, the judge takes an oath worded as follows: "I swear and promise that I shall do my best to fulfill my duty, keep entirely secret all the questions discussed during the deliberation, and on all occasions behave like a worthy and loyal magistrate."

Justices of Peace take oath in open session before provincial Courts of First Instance or Justice of the Peace with Extended Jurisdiction who have competence over their courts.

Judges of the Courts of First Instance and Courts of Appeal take oath before the Court of Appeal in open session, with all chambers present.

If they live far from the Court of Appeal, the judges may send their written oaths to the court.

Judges of the Court of Cassation take oath in a solemn public session of the Court of Cassation, in the presence of all chambers.

Administrative judges take oath in a plenary session of the Council of State.

Family Relationships.

Articles 17, 18, 19 and 20 of Ordinance No. 3, dated March 29, 1954 prescribed:

"Wife and husband, and kinsmen as far as nephew and uncle from the paternal and maternal sides may not serve at the same court (of First Instance or of Appeal) as either Trial Judge or Prosecutor, or as Court Clerk, unless specially authorized by the Chief of State."

A judge who through marriage has relatives in his office may not retain his position unless he is granted exemption from the Ordinance by the Chief of State. Even with such exemption, neither hsuband and wife nor kinsmen may try the same case.

Under penalty of nullity of the proceedings, no judge may try a case if the advocate or attorney or barrister of a party concerned is kin as far as the third degree.

Promotion.

To be eligible for promotion to a higher rank, a judge must meet the following requirements: he must obtain from his direct supervisor a proposal for promotion, he must have at least two years of seniority in his present rank, but a magistrate of the Court of Cassation must have three years, and his name must be included in the promotion list prepared at the end of each year

by the Prime Minister according to the recommendations of the Supreme Committee of Judges, for a Justice of Peace, a Judge of the Courts of First Instance, and of the Court of Appeal. The composition of this committee, established by Article 22 of the referenced Ordinance No. 3, is:

Chairman: The First President of the Court of Cassation

Members: The Prosecutor General of the Court of Appeal

: The Prosecutor General of the Courts of Appeal in Saigon and Hue

: The Director of Personnel and Accounting Service at the Ministry of Justice

: Two representatives elected each year by the judges in South and Central Viet-Nam

Any judge who has four years of seniority in his present rank, a good record, and no disciplinary punishment, is registered at the top of the promotion list.

For the judges of the Court of Cassation, the promotion list is established by a committee composed of:

Chairman: The Minister of Justice

Members: The First President of the Court of Cassation

: The Prosecutor General of the Court of Cassation

The promotion of judges of administrative courts is accomplished by a decree of the Chief of State, conforming to the proposal of the Minister of Justice and in accordance with the formalities specified above.

Discipline.

Article 35 of referenced Ordinance No. 3 prescribes:

"Any judge, whether of the Justice of Peace, Court of First Instance, or Court of Appeal, who does not behave deservingly shall be warned by either the Prosecutor General or the Director of the Judiciary Service, or by the First President.

"If the warning remains ineffectual, or the offense damages the honor of the offender, the Minister shall inflict a punishment or a reprimand, which shall be registered in the police record of the offender.

"As for the judges of the Court of Cassation and Administrative Courts, the right to issue warnings rests with the Minister of Justice.

"If it is necessary to inflict more severe punishment, such as disciplinary transfer, delay in promotion for one or two years or striking from the promotion list, reduction to one or two ranks lower, temporary suspension from three to six months without pay, or dismissal with or without the right to enjoy retirement pension, the Minister of Justice shall convene the Supreme Committee of Judges for its opinion.

"The offending magistrate must be allowed knowledge of his record and be given the right to explain himself before the Committee, or to send his written explanation to the Committee. He may present witnesses, and he may ask a lawyer or one of his colleagues to defend him."

Upon receipt of the opinion of the Supreme Committee, the Minister of Justice may accept it or he may return the dossier to the Committee for further debate and a new proposal. If the Committee adheres to its opinion, the Minister of Justice must accept it and submit the decree stipulating the infliction to the Chief of State for approval and signatures.

For the Judges of the Court of Cassation and for administrative courts, a General Assembly of the Court of Cassation and a General Assembly of the Council of State shall give their opinions.

High Council of Judges.

The Constitution of October 26, 1956 recognizes, in Articles 70 and 71, the principle of the independence of trial judges. To ensure this independence a High Council of Judges was created, through Law 66 of March 15, 1961, responsible for the enforcement of the statute of sitting judges.

The High Council was composed of:

Chairman: The President of the Republic, or his representative.

Members: The First President of the Court of Cassation

: Three trial judges elected by the sitting judges of the Court of Cassation and Court of Appeal

: Two trial judges elected by the sitting judges of the Courts of First Instance and the Justice of Peace with Extended Jurisdiction

Secretary: A high official of the Ministry of Justice

The tenure of office of those members elected to the High Council was three years.

Competency

For trial judges, the High Council of Judges replaced the Supreme Committee of judges, the Committee for Promotion of the Judges of the Court of Cassation, and the General Assembly of the Court of Cassation for deciding on their promotion or punishment.

Moreover, the decision of the Minister of Justice on the transfer of office of the trial judges, as well as the transfer of the prosecuting magistrates to the judiciary proper, or vice versa, had to be concurred in by the High Council of Judges.

In practice, from the time of its establishment the High Council of Judges met only once under the chairmanship of the President of the Republic. The Revolution of November 1, 1963 overthrew Ngo-Dinh-Diem's dictatorial regime, and halted enforcement of the October 25, 1956 Constitution and organizations created thereunder as they were not effective.

Throughout the evolution of the judiciary and of the status of judges in Viet-Nam, one is aware of graat efforts by the government to ensure judicial independence. But in practice the Judiciary is still somewhat dependent upon the Executive Branch because the Constitution of October 26, 1956 did not clearly recognize the principle of separation of powers: it only settled the principle of division of responsibilities between the Executive, the Legislative, and the Judicial Branch.

As a consequence of the dictatorial regimes and the enforcement of rules still existing from earlier French domination, the Vietnamese judicial system has been criticized.

However, in the future, with Article 76 of the new Constitution of April 1, 1967 publicly recognizing the independence of the Judiciary, and a clear division of responsibilities between the trial judges and prosecuting magistrates, there are high prospects of effecting an independent and impartial Judiciary able to ensure the basic human rights of freedom and democracy and bring justice closer to the people.

CHAPTER V

ORGANIZATION OF LAWYERS IN FREE VIET-NAM

In Vietnam, both plaintiffs and defendants have the right to be defended at court by a lawyer.

Lawyers are organized into groups called Bars. Only those whose names are registered on the lists of the Bars have the right to practice as lawyers. The Bar includes both career and probationary lawyers.

Law No. 1/62 of January 8, 1962, amended by Decree Law No. 25/66 of July 7, 1966, provides for the establishment of a Bar at each Court of Appeal to operate within the same jurisdiction as the Court of Appeal. In Free Viet-Nam, there are two Bars: The Bar of Hue (Central Viet-Nam), and the Bar of Saigon.

Each Bar, under the management of a President, takes care of its own interests and enforces discipline among its members. However, the decisions of the Bar's Council in matters of discipline or enrollment on the Bar List may be appealed to the Court of Appeal, which will make its final decision in a General Assembly.

I. CONDITIONS FOR ENROLLMENT IN THE BAR:

To be registered on the Bar's list as a titular lawyer, the candidate must meet the following requirements:

1. Be of Vietnamese nationality.

   In the case of a foreign lawyer, an international treaty or agreement shall stipulate the conditions for enrollment and for the practice of his profession in Viet-Nam. If no such agreement has been signed, a foreign lawyer who wants to appear at the Bar for a particular case must have the authorization of the Vietnamese Ministry of Justice.

   According to the Vietnamese-French Treaty signed on September 16, 1954, French lawyers who had been at the French and Joint Courts shall have their names registered on the Vietnamese Bar List if they so request.

2. Be fully 24 years old.

3. Hold a "Licence en Droit" issued by a Vietnamese University, a High Studies Diploma of Indochina, or a law degree issued by a foreign university recognized by the Ministry of Education as being equivalent to the Vietnamese "Licence en Droit".

4. Have good conduct and never have been condemned for any crime or petty offense prejudicial to his honor and dignity.

5. Complete three years of probationary service in Viet-Nam, certified by the President of the Bar. Judges of the Judicial and Administrative organization who have been in service at the courts or at the Justice Department for three years, and law professors at the universities for an uninterrupted period of three years shall be exempt from these Provisions 5 and 6.

6. Pass the end-of-probation examinations.

To be registered on the list of probationary lawyers, candidates of either sec must meet the following requirements:

1. Be of Vietnamese nationality.
2. Be over 21 years old.
3. Hold a "Licence en Droit" issued by a Vietnamese university, a High Studies Diploma of Indochina, or a law degree issued by a foreign university recognized by the Ministry of Education as being equivalent to the Vietnamese "Licence en Droit".
4. Have good conduct and never have been condemned, for any crime or petty offense prejudicial to his honor and dignity.
5. Until it was changed in 1966, law No. 1/62 of January 18, 1962 imposed a fifth condition: that after

graduation the candidate must successfully pass a test of his capacity for practicing the profession of law. No limitation was placed on the time within which this test had to be taken. In compensation, the end-of-probation test was abolished, and the lawyer was automatically recognized as a career lawyer after a normal probationary period of three or four years. This was severely criticized by a majority of the lawyers on the basis that after the candidate had passed the capacity test, if he were not to be subject to any further tests he might become lax in the cultivation of his professional knowledge. Perhaps in recognizing the reasonableness of this criticism, the law makers in Decree-Law No. 25/66 of July 7, 1966, rewrote this fifth condition as follows: "The candidate must be accepted to work as a probationary lawyer at the office of a career lawyer or at the Probation Office of the Bar." But nothing was said about the abolition of the end-of-probation examination. As a result, the Council may, in most unusual circumstances, waive the requirement that the candidate take the end-of-probation examination and enroll him as a career lawyer.

During the three-year probation period, the lawyer must:

1. Assiduously participate in all professional activities under the supervision of the President of the Bar.
2. Carry out all regulations and traditional practices of the lawyer's profession.
3. Attend all court hearings.
4. Assiduously work in the office of the titular lawyer or the Bar's Probation Office.

At the end of his probation period, the lawyer must, unless exempted as noted previously, pass a test before a Council appointed by the Minister of Justice at the beginning of each year. This council comprises the Presiding Judge of the Court of Appeal as Chairman, a judge under the jurisdiction of the Court of Appeal, a lawyer appointed by the President of the Bar, and a representative of the Registration Department holding at least the rank of Inspector. Except as noted, only candidates who pass the test shall be registered on the list as career lawyers.

Even though the lawyer has passed the test, if he is judged by the President of the Bar not to have assiduously performed his duties as a probationary lawyer, the President

of the Bar may twice extend his probationary period, each time for one year, after hearing the lawyer personally explain his case.

II. THE LAWYER'S COUNCIL

In Viet-Nam, the Bar is placed under the supervision of the President of the Bar and a Lawyers' Council.

The President of the Bar and the members of the Council are elected by a General Assembly of the Lawyers convened during the first fifteen days of March each year.

The General Assembly of the Lawyers includes all career lawyers whose names are registered on the Bar's List.

The President of Bar is elected by secret ballot and must receive more than one half of the votes of the lawyers present at the General Assembly.

After the President of the Bar is elected, the General Assembly elects the members of the Council and the alternates.

The Council comprises eleven members and seven alternates if the total number of career lawyers is between 51 and 100. If there are over 100 career lawyers, two members and one alternate are elected for every 20 additional lawyers.

However, the Council of Lawyers is limited to not more than 21 titular members and 13 alternates.

To be elected President of the Bar, the candidate must be a career lawyer, of Vietnamese nationality, and have ten years of seniority of service.

To be elected principal or alternate members of the Council of Lawyers, candidates must be career lawyers registered for at least three years on the Bar's List.

The President of the Bar represents the Bar, presides over the Council of Lawyers when trying disciplinary cases, manages all internal affairs, reconciles internal conflicts, and defends the common interests of the Bar.

The main responsibilities of the Council are:

- To follow up on the execution of resolutions made by the General Assembly.
- To preserve all right and ethical principles, to be moderate and disinterested, to maintain good friendships among the lawyers, to defend the honor and interests of the Bar, to remind the members of the Bar to assiduously attend all court hearings, and to perform their duties as honest and loyal servants of Justice.
- To solve all problems pertaining to the practice of the profession of law.

- To manage all properties of the Bar.
- To organize and manage the Probation Office of the Bar.
- To manage the Probationary Service.

The Council examines for compliance with the legal requirements by, and the conduct of, candidates applying for membership in the Bar.

The Council of Lawyers is empowered to decide on the enrollment or re-enrollment of lawyers on the Bar List, or the dismissal therefrom of undesirable elements.

The candidate, however, has the right to appeal the resolution of the Council if his application is rejected, and the Public Prosecutor has the right to appeal the admission of any member.

The appeal is heard by the Court of Appeal convened in a General Assembly.

All decisions of the Court of Appeal may be appealed to the Court of Cassation.

III. DUTIES AND PRIVILEGES OF THE LAWYER

The organization of the Bar in Viet-Nam is based on the regulations and traditions of the Roman and French Bars.

The Vietnamese lawyers have therefore chosen the lasting traditions and regulations of the French Bar as a guide to the legal profession in Viet-Nam.

The traditional characteristics of a lawyer are:

- Independence
- Disinterestedness
- Justice and integrity

In Viet-Nam, since a lawyer practices a learned profession he must be free and independent. He cannot concurrently practice any other profession which may be prejudicial to his independence.

The career lawyer performs his duties at courts which have jurisdiction over the Bar of which he is a member, including the Court of Cassation, the State Council, and the Administrative Courts. Only a career lawyer has the right to have a law office and to handle litigation in the capacity of lawyer.

In addition to his right of giving advice and suggestions in legal matters when so requested, the lawyer also has the right to represent his clients, without having to present credentials, in all civil, commercial and administrative cases, to interview his clients in criminal cases, and defend them at court. He has the right to choose his own method of defense. He cannot be prosecuted for defamation, insult, etc. based on his plea or on any documents submitted to the court while defending his clients.

The lawyer is free to set his honoraria with his client, and must do so before agreeing to represent him, the agreed amount to cover all charges for the litigation until sentence

is pronounced by the court. His honorarium must not depend on the result of the case. When appointed to replace a judge to try a case in court, the lawyer is not to be compelled to take the oath of a judge.

A lawyer shall not say or do anything contrary to his conscience, the law, good morals and customs. He shall not have an unrespectful manner vis-a-vis the court and the government authorities.

A lawyer may not appear against a party who has previously solicited his advice on the case at hand.

The lawyer must reside in the area within the jurisdiction of the Court of Appeal. He must have a courteous manner toward and a good relationship with his colleagues.

A lawyer may not engage in anything of a commercial nature, or act as a broker, or perform any function for which he receives compensation, nor may he work as an accountant.

A lawyer cannot compete for clients by the use of a paid intermediary, or by advertisement in the newspapers.

A lawyer does not have the right to refuse to defend, nor may he request an honorarium for defending, anyone who is granted judicial assistance or who for any other reason is to be defended without charge. Once a lawyer has accepted the representation in any case, he must carry it through to completion. He may not

withdraw from a case except for legitimate reason.

A lawyer may not hold any position in the government as an employee, except that of a professor at a university.

When holding a publicly elected position, the lawyer shall not, during his term of office, act as a lawyer in cases against the nation or government agencies, or against the province or municipality where he has been elected; or in criminal cases for public damages, or in matters prejudicial to the national security.

A lawyer who was formerly an employee of the government shall not do anything in his capacity as a lawyer against the agency where he had previously been employed.

A lawyer must keep secret not only matters confided to him by his clients, but also all that he hears or sees during interrogations at an Examining Judge's office.

IV. DISCIPLINE

The career or probationary lawyer who commits an undisciplined action in the performance of his duty shall be tried and punished by the Council of Lawyers convened into a Council of Discipline.

The Council of Lawyers takes action on the case either on its own initiative, upon request of the Public Prosecutor or the President of the Bar, or upon complaint received by the Council.

The Council assigns one member to be in charge of the investigation, to hear witnesses if necessary, and to report to the Council.

The Council, after study of the report, decides whether the case will be closed or prosecuted.

If prosecution is decided, the Council shall let the accused lawyer know what he has been charged with, and fix the day on which he shall be brought before the Council of Discipline.

If the person involved is a probationary lawyer, the Council of Discipline is increased to include two additional probationary lawyers who are selected by order of seniority.

The lawyer taken to the Council of Discipline shall have one month to prepare his defense. He has the right to select one of his colleagues at the Bar to defend him.

The lawyer has the right to consult the files in the office of the Bar. He has the right to bring witnesses before the Council.

After hearing the defense, the Council of Discipline meets in closed door session and the decision is made according to the majority.

The following disciplinary actions may be taken:

- Warning
- Reprimand
- Suspension of the lawyer's right to practice for not

over one year.

- Dismissal from the Bar's List.

A lawyer who is reprimanded or suspended from practice may be deprived of his right to attend the Council of Lawyers for a period not exceeding ten years.

Both the accused attorney and the Attorney General have the right to appeal any disciplinary decision. The time limit for such appeal is one month, commencing with the day the attorney is notified of the decision.

The Court of Appeal meets in General Assembly to act on the appeals.

According to Article 43 of Law No. 1/62 of January 8, 1962, disciplinary action taken by the Council of Lawyers does not jeopardize the right of the Public Prosecutor or an aggrieved party to prosecute the lawyer before the Court of Summary Jurisdiction or the Criminal Court, as appropriate.

The ideal Vietnamese lawyer must be an independent and disinterested person, one who considers his devoted service of justice as a noble object of his profession.

Although the Vietnamese Bar is based on the traditional customs and regulations of the French Bar, no one can deny the junior character of the organization. However, it is due to this junior character that traditional virtues, such as independence

and disinterestedness, are heavy burdens which weigh upon the Viëtnamese lawyer's physical and spiritual life.

However, it has always been recognized that the Vietnamese lawyer is disinterested in his work. He is ready to defend the poor in cases where judicial assistance is granted.

In Viet-Nam, judicial assistance has been well organized, and is promulgated by Ordinance 1 dated January 8, 1955. The poor who want to engage in a law suit may ask for judicial assistance which provides them with a lawyer at no charge and exempts them from litigation fees. An agency called the Office of Judicial Assistance is located at each Court of Appeal to consider applications for this assistance. When granted, a lawyer is appointed by the President of the Bar. The Vietnamese lawyers considers it an honor to participate in this manner in the attainment of justice.

In addition to cases under judicial assistance, the Vietnamese lawyer also pleads free of charge in the juvenile criminal and summary jurisdiction courts, and before the military courts all over the country.

According to statistics of the Bar of Saigon, Saigon lawyers have pleaded free of charge for the poor in about 11,000 cases each year: 11,162 in 1959, 11,101 in 1960, 11525 in 1961, 11,070 in 1962, etc.

NUMBERS OF MEMBERS OF THE BARS WITHIN THE JURISDICTION OF THE COURTS OF APPEAL IN SAIGON AND HUE

Residences		Career	Probation
Bar of Saigon	(Saigon	150	24
	(MyTho	4	
	(Can Tho	3	1
	(Vinh Long	2	1
	(Bien Hoa	4	
	(Long Xuyen	4	
	(Long An	1	
	(Dalat	3	
	Total	171	26
Bar of Hue	(Hue	6	1
	(Nha Trang	5	2
	(Da Nang	6	2
	(Qui Nhon	4	
	(Tuy Hoa	1	
	Total	22	5

Nota Bene: From the table above, two questions are to be considered:

1. In Viet-Nam there are only two Regional Bars: one in Saigon, and the other in Hue. A National Bar is still lacking.

2. Most of the lawyers are concentrated in Saigon. The others, a small number, are scattered in important provinces. There are still thirty provinces without a lawyer. This problem should be brought up again

when the right to defense stipulated in Article 7 of the Constitution is dealt with, so that this right may be carried out equitably vis-a-vis the people living in remote provinces.

CHAPTER VI

LAW EDUCATION IN VIET-NAM

EXPANSION

The teaching of law as legal principles of occidental conception was organized relatively late in Viet-Nam. The School of Medicine was founded in Hanoi in 1905, and twelve years later the School of Law and Administration was created, also in Hanoi. The purpose of the latter school, according to the Order of 15 October 1917 establishing it, was to improve the general knowledge and occupational ability of the natives who wished to be employed in the French Administrative Service or in the local Mandarinate (civil service.)

The level of the school, therefore, could not be considered as attaining the higher education standards. It was necessary first that lower education be more readily available, enabling more young people to attain a Junior High School graduation certificate and the Baccalaureat II, the Senior High School graduation certificate. With more students eligible to go on to higher education, the School of Law and Administration was replaced by the School of Indochinese Higher Studies. The Baccalaureat II was a prerequisite for admission. The school offered a four-year course which, although at a higher level than its predecessor school, still was not an "essentially law study" as in a French Faculty of Law in those days.

FACULTY OF LAW, SAIGON

The curriculum of law of a French Faculty was fully adopted in Viet-Nam only with the creation of the Superior School of Law which, although provided for by Decree dated 11 September 1931, started functioning only in 1933, in Hanoi. Yet it could not be considered as a Faculty of Law since it only included the three-year curriculum of the Licence and had no Doctorate Division, although an arrete dated 21 July 1935 created a Fourth Year Course for the Certificate of Indochinese Juridicial Studies. By an arrete dated 30 May 1939, this Fourth Year Course was changed and it became the School of Administration, a preparatory center for the examinations for admission in Administrative and Judicial Services.

It was only in 1941 that the Superior School of Law was transformed into a Faculty of Law by the creation of the Division of Doctorate of Law, comprising a Course of Superior Studies of Private Law and a Course of Superior Studies of Economics.

In 1945, which was a year of great political events, the number of students approximated 500. About 20 or 30 were awarded the Licence en Droit each year. The total number of Licencies en Droit in Hanoi as of March 1945 was 260, of whom 220 were Vietnamese.

Early in 1947 the Faculty of Law was transferred to Saigon. In November 1948, the Hanoi Faculty was reopened and it existed simultaneously with the Saigon Faculty as an additional training center for the Licencies en Droit.

After the Geneva Agreement, the Law and other Faculties in Hanoi had to be closed or removed to South Viet-Nam.

In the following year, by the Agreement of 11 May 1955 the French Government returned control of higher education to the Vietnamese Government. It may be said that thenceforth law education in Viet-Nam has expanded rapidly. In its initial year, 1948-49, there were 764 students, including those in the Proficiency of Law Division created previously. In the 1966-67 academic year, the Proficiency of Law Division having been abolished, there were 8,666. During this twelve-year period there have been 1,261 Licencies en Droit. 115 students have been awarded Certificates of Superior Studies. 11 have received their Doctorat en Droit degrees. These figures include only the Faculty of Law at Saigon.

With a view to avoiding concentration in Saigon of all law students in the country, the Faculty of Law at Hue was created by Decree of 1 March 1957, and a third Faculty of Law has been founded in Can Tho (Phong Dinh) this year.

CURRICULUM.

I - LICENCE DIVISION.

Before the transfer of control of higher education to the Vietnamese Government, the three-year curriculum of the Licence en Droit was taught fully in accordance with the curriculum of a French Faculty of Law, even including a history of French and Roman law. In 1937 a new subject, Juridicial Institutions of the Far East, was added but it was merely an optional subject of minor importance. In those days, of course, the teaching and examinations were necessarily conducted in the French language.

Since the Government of Viet-Nam has taken charge of its higher education system, the curriculum of the Faculty of Law has been nationalized and Vietnamese has been the language used throughout the Licence Division after a transitional period with a Vietnamese Language Section and a French Language Section for those students following the French curriculum. This transitional period ended with the academic year 1956-57.

However, the new curriculum, with its necessary reforms made according to the special requirements of the country, does not differ much from the old one in arrangement and division of main subjects among the three years of the Licence Division.

Recently, in order to give the Vietnamese Licencies a more solid background of law, the period of study at the Faculty of Law has been extended from three to four years. It had been realized that "squeezing" the curriculum into three years did not allow either a deep study of the many important questions in the main subjects of law, or the teaching of additional necessary subjects, especially in Sociology and International Politics. Furthermore, it was realized that an equal allocation of teaching time to each series of subjects is also necessary.

There are sixteen half-year courses allocated to each of the three series of subjects, Private Law, Economics, and Politics, thus making a total of forty-eight half-year courses taught over a four-year period of twelve half-year courses each year. Each half-year

course comprises from thirty-five to forty hours of theory, plus five hours of practice and seminars, or a total of five hundred school hours in the thirty-two week school period each year. Holidays and summer vacations comprise the other twenty weeks. Thus, the students have fifteen hours of theory, practice and seminars each week, or three hours for each class day, plus non-classroom study time. The cirriculum of the Faculty, therefore, may be considered as fairly complete.

The four-year program has been in effect only since the 1965-66 academic year for the first and second years of the Licence Division. The old program is still followed in the third year of this Division. At present, while awaiting the fourth year of the Division to be opened in the next academic year, following is the schedule of subjects taught in the three years of the Licence Division.

First year of licence: full-year courses are taught, in the Vietnamese language, in Civil Law, History of Law, International Public Law, Economics, and Constitutional Law. From among these five, two subjects for compulsory written examinations are selected by drawing lots. Two half-year courses are taught, in Legal Terminology and Economic Terminology, and only oral tests are given in these subjects.

Second year of licence: full-year courses are taught in the Vietnamese language, in Civil Law, Administrative Law, Criminal Law, Economics, and Finance, and a half-year course in International Relations. From among these six subjects, two are selected for the

compulsory written examinations by drawing lots. Two half-year courses are taught, for oral testing only, in Legal Terminology and Economic Terminology.

Third year of licence: full-year courses are taught in Civil Law, Commercial Law, Economics, and the Economy of Viet-Nam, and half-year courses in History of Political Doctrine, International Private Law, Civil Procedure, and the newly added subject of Repartition of Incomes. Two subjects from among these eight are selected for written examination, again by drawing lots. Candidates undergoing oral examinations also take one optional subject from among the four half-year courses offered in Technology of the Budget, Insurance Law, Banking Operations, and Labor Law. There are two further half-year courses, on which oral examinations are given, in Economic Terminology, and Political Terminology.

Oral examinations at the end of the third year comprise two separate tests, and the candidate must pass both of them successfully to be awarded the Licence degree.

In addition to theory, the Licence Division also has a practice workshop enabling the student to familiarize himself with research work and the application of legal principles to various cases, all of which are under the direct guidance of a professor. Thus the teaching staff has an opportunity for close contact with the students. In this practical training, the Faculty has appealed to lawyers and judges for cooperation in order that the students may have actual occupational experience.

The practical training is so arranged that attendance is based on their personal convenience, whether they are full-time students, or part-time students who may be civil servants, employees of private firms, or servicemen. For this purpose, training sessions are divided into various groups working in regular office hour sessions, non-office hour sessions, or at the end of each academic year.

II - THE BAR PRE-ADMISSION TRAINING DIVISION.

Within the scope and purpose of the above practical training, mention should be made of the Bar Pre-Admission Training Division, the organization of which was entrusted to the Faculty of Law by the Legislature.

Act. No. 1/62 dated 8 January 1962, providing for Lawyer Status, instituted the Certificate of Qualification for the Bar required of all probation lawyers.

The training for this certificate included a one-year curriculum with courses on lawyer functions, practicing rules, and professional ethics, and lectures and practice on civil, criminal and administrative procedures. The teaching staff was composed of two Law Faculty professors, two judges of the Court of Appeal, and two lawyers, thus emphasizing its specialized nature and realizing the desire of the drafter of the program, who wanted this Division to be "a bridge leading the student from the university to the court."

This system was good in principle, and it helped many bar-qualified licentiates by making them less embarrassed at the beginning of their probationary period.

In fact, however, the system constituted a barrier to the progress of the young licentiate inclined to the Bar who wished to learn a profession and earn a living at the same time. It is perhaps in compensation for that drawback that the same Act, No. 1/62, provided for the abolition of the Graduation Examination, thus allowing the probation lawyer to automatically become a titular lawyer after the normal probationary period of three years, or after four years in case of extension of the probationary period due to insufficient assiduity or negligence.

Students and the Bar Association wished the return of the old probation regime, according to which the Licentiate immediately became a probation lawyer, counting on his practice to enhance his qualifications. This old probation regime was re-established by Decree-Law dated 7 July 1966 abolishing the Examination for the Certificate of Qualification for the Bar. The Bar Pre-Admission Training Division has also been abolished since the 1966-67 academic year.

III.- THE SUPERIOR STUDIES DIVISION

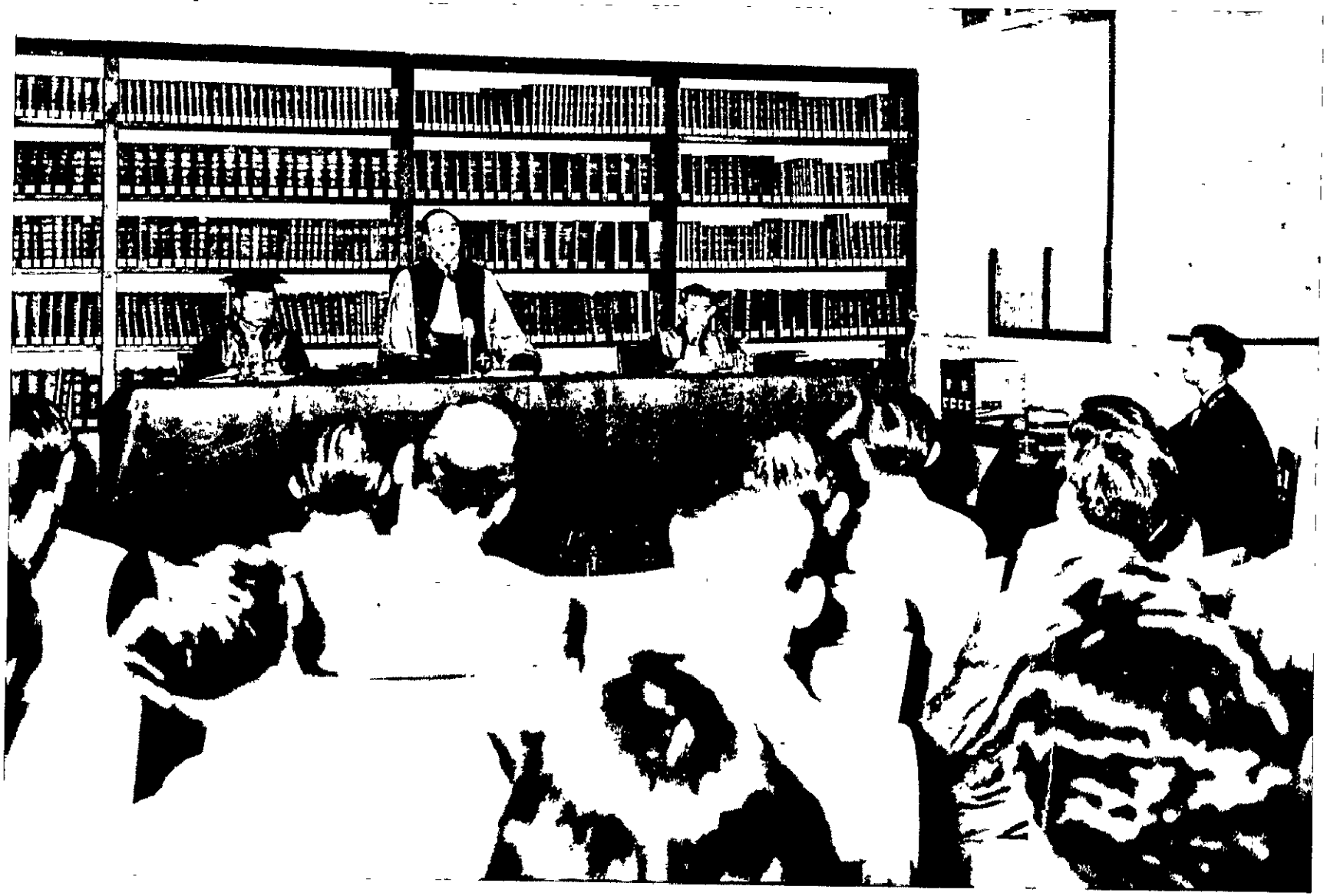
This Division has courses of study for three Certificates: on Private Law, Public Law, and Economics. To emphasize the specialization of this Division, the old regime has been abolished which

required the student to have two out of the three Certificates of Superior Studies, each certificate requiring one year of study, before presentation of his thesis for the Doctorate of Law. Starting with the 1957-58 academic year, students of this Division select at the time of their matriculation one of these three subjects, each with two grades, to study for two years.

In the Superior Studies of Private Law, the following subjects are taught in the first year: Civil Law, Commercial Law, Criminal Law, and International Private Law. Administrative Procedure and American Jurisprudence (taught in English) are optional subjects. In the Senior Grade, the following are taught: Civil Law, Commercial Law, Criminal Law, Civil Liability, and Civil Procedure.

In the Superior Studies of Public Law, the following are taught in the Junior Grade: Detailed Administrative Law, Detailed Constitutional Law, Doctrine of International Public Law, Questions of Liability in Civil Law, and Foreign Political and Administrative Doctrines. In the Senior Grade, Detailed International Public Law, History of Political Doctrines, International Political Matters, and Administrative and Civic Science, plus optional subjects on Politics, and International Organizations are taught.

In the Superior Studies of Economy, in the Junior Grade classes cover Detailed Economics, Mathematics for Economists, National Bookkeeping, and History of Economical Doctrines, with optional subjects of Rural Economy, and Demography. In the Senior Grade, classes are taught in the following: Economic Theory, Statistics, Economic and Financial Problems, Money and Banks, and Corporate



PRESENTATION OF THESIS FOR DOCTORATE OF LAW.

AUDITORIUM, FACULTY OF LAW, SAIGON

Finance, with Economic Industry, and Economic Geography, as optional subjects.

STANDARDS

While turning out Licencies en Droit under the French curriculum and through the French Language, the Faculty of Law of Indochina was considered a section of the University of Paris and all diplomas were conferred by that University. Therefore, the standard for these diplomas was the standard of the French.

After the school became the Vietnamese Faculty of Law, this standard remained unchanged for its teaching staff is composed of professors who received their "Agregation" in France, or their "Doctorat", most of them also having been obtained in France, and who have attended many international conventions on University Law Education. As far as the students are concerned, their curriculum is most complete and their selection for passing from one class to the next higher is very strict, as shown in the comparative list which follows.

Therefore, the French Government has officially recognized the Licence en Droit conferred by Vietnamese Faculties to be equivalent to the French Licence en Droit for attendance at a division of Doctorate of Law (National Education Official Bulletin, "B.O.E.N.", 12 October 1963, page 2481.)

The Faculty of Law at Saigon has a bright prospect for entering into relations with, and to progress along side, the law universities of other countries for it does not apply the "Closed Door Policy."

With open arms it will welcome professors from other countries who are willing to assist, in order that its students may gather new opinions from friendly universities on Law, Economy, and Politics.

Last year the Faculty enjoyed the assistance of three American and one French Professor at the Doctorat Division, one in Private Law and the other three in Public Law.

LIST OF SUCCESSFUL CANDIDATES AS COMPARED WITH MATRICULATED STUDENTS OF THE FACULTY OF LAW OF SAIGON EXCLUSIVELY, FROM 1954-55 TO 1965-66

Academic Yr.	1954-55	1955-56	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64	1964-65	1965-66
SUPERIOR STUDIES												
Private Law	5- 26	0- 6	2- 5	3- 18	4- 15	4- 25	6- 45	7- 40	12- 35	4- 33	6- 44	3- 41
Public Law	5- 28	0- 15	3- 28	12- 46	11- 51	6- 59	7- 29	5- 27	7- 37	10- 52	8- 76	10-123
Economics	4- 18	0- 35	2- 26	3- 22	6- 28	5- 28	8- 44	4- 44	7- 46	8- 59	13- 99	15-112
LICENCE												
First Year	85-298	146-482	103-699	116-632	183-907	170-1635	262-1600	276-1825	374-2035	359-3015	401-2831	455-4285
Second Year	35- 77	61-104	58-180	86-217	92-221	70-279	95-358	188-485	132-486	171-700	328-730	262-764
Third Year	36- 72	33- 57	63- 79	52- 75	69-108	68-128	89-134	87-135	108-229	186-253	207-328	273-440

Note: Under each academic year, the first figure indicates the number of successful candidates; the second figure indicates the number of matriculated students.

CHAPTER VII. CRIMINAL PROCEDURE

In the Fifteenth Century, Emperor Le-Thanh-Ton promulgated the "National Criminal Code of Procedure", which was the first Criminal Code ever promulgated in Viet-Nam. It could be said that the Code had given much credit to the lawmakers of the Le Dynasty, for they were, that early, able to distinguish the basic rules governing the substance of the matter and the organization of the judicial system, as well as the procedures for conducting litigation with justice.

Since the Code only set forth the basic rules, it depended in most cases on the wisdom of the judges to render justice. For this reason the legal procedures under the monarchy primarily bore the character of a personal government.

Later on, when Viet-Nam had established contacts with the West and the Occidental powers, knowledge of their legal procedures was obtained through the French Criminal Code of Procedure. This, however, was imbued deeply with the European individualism of the Nineteenth Century. Introduced in Viet-Nam, the Code was changed in its substance so as to be commensurate with the political organization of the three different parts of the country because each part had its own system of administrative and traditional customs. The North had the "North Viet-Nam Criminal Procedure", the Central part had the "Criminal Procedure of the Kingdom", and South Viet-Nam based its legal procedure on the French Criminal Code.

When Viet-Nam regained its sovereignty, Emperor Bao-Dai promulgated Ordinance No. 4 of October 18, 1949. It was but a fledgling step toward unification of the legal system, even though some reforms were directed at aligning the Code with the situation of the country and the people's standards of knowledge.

The legal procedure now in force is a consolidation of both petition and prosecution procedures. Either the public prosecutor or the individual whose interest is jeopardized, the victim, may bring a matter before the court. If the public prosecutor suspends his action on a matter that a party concerned feels is damaging to his interests, he may bring the case before the court within the shortest allowed period by calling on a process server to cite the accused party in the Criminal Court. This is called direct prosecution. In difficult cases which require evidence and witnesses, the victim may file an action for damage with the examining judge, who will order an investigation.

In any case, the public prosecutor is the main prosecuting party against both defendant and plaintiff. The victim is but a secondary prosecutor.

Not only physical persons, but also organizations representing the interests of the government, such as Customs, Finance, Registration, etc. have the right to prosecute individuals who jeopardize the government's interests. In this case, the public prosecutor has the secondary role. He controls the application

of the laws and requests the court to pronounce penalties. The legal procedure in force coordinates society's interests and individual freedom.

Each criminal case must consist of two phases:

- Evidence of the crime, compiled by the police or authorities of similar responsibilities. The Attorney General and the Examining Judge present evidence of the crime in cases of flagrant delicto.
- Deliberations in court.

In difficult cases involving several defendants, or where there is conflicting evidence, or where the offense was committed so far in the past that evidence is scanty, the Examining Judge must verify the facts before submitting the case to a hearing. This phase is called the questioning phase by the Examining Judge, which is quite different from the preliminary investigation at the police level.

The first phase aims at finding the author of the crime and protecting the public interests.

The second phase is carried out in open court, and the offender is entitled to confrontation with all parties concerned to protect him against any erroneous prosecution.

The legal procedure in force gives the judge the responsibility for conducting a proceding from its inception until final judgment.

The police only report the facts. The Public Prosecutor has full power to decide on the issue of the police report. He may order a complementary investigation or personally investigate the case. He may bring the criminal to court, or he may file and dispose of the case.

In complicated cases, the Examining Judge must verify the facts in the police record and conduct any necessary additional investigation. In this phase, the solicitor has the right to follow up the development of the case, attend the questioning sessions, and assist the defendant.

The solicitor pleads for the defendant in open court. In closed door hearings, in cases of moral turpitude, only the accused, the witnesses and the solicitors for both sides are permitted to attend.

Development of a Criminal Proceeding.

The Constitution of April 1, 1967 pledges, in the following statements, respect for the basic rights of the people:

- The Nation respects personal dignity.
- The Law protects the people's freedom, life, property and honor.
- The Nation respects and protects the right of individual security and the right of defense.
- No one shall be arrested and detailed if there is no legal

order from a competent authority, except in cases of flagrant delicto.

- The accused party and his relatives must be informed of the offense within the delay prescribed by law. All detentions must be placed under control of the judicial organizations. Art. 7, Paras. 1, 2 and 3.

Flagrant Delicto.

As provided in Articles 41 and 46 of the Criminal Procedure, the following are considered as flagrant delicto:

- Any delict which actually happens, is happening or has just happened.
- Any criminal who is being pursued by the public.
- Any person who is caught having with him at the time of the commission of the crime any object, weapon, material or document which could lead to belief that he is the author of the crime or an accomplice thereof.
- When the owner of a house requests the police to come and witness a crime or a delict which is being committed in his house.

Article 6 of the Code of Criminal Procedure authorizes any member of the Public Force, or any private citizen, although no court order has been issued, to detain any person caught in flagrant delict provided that he be immediately referred to the Public Prosecutor. Any abusive detention over the required delay

is considered illegal. The Public Prosecutor may issue a warrant of detention only in cases of flagrant delicto, or when the crime may be subject to corporal penalty, or it is duly recognized and there is positive evidence thereof.

The Right of the Examining Judge.

Except in cases of flagrant delicto, only the Examining Judge has the authority to order a detention, and this only after investigation has been made in accordance with the law. In the exercise of this right, he has the power to issue summonses for appearance or transportation of the prisoner, or a warrant of arrest or of detention.

Warrants can only be issued by a competent judge in accordance with the conditions and forms prescribed by law when there is clear evidence of the offense. The warrant must bear the title and seal of the issuing magistrate, the date, and the names of the parties summoned and, if possible, specification of the offense committed. Articles 96 and 96, HSTT.

Guarantees of Human Rights Before Justice.

With a view to protecting human freedom, the law has provided some limit to the above powers. In the first place, persons arrested in cases of flagrant delict are to be brought to the nearest hearing for judgment or for review of the order of detention. If the offender is detailed by order of the Examining Judge, he may thereafter be granted temporary freedom with or without bail.

In the second place, Article 341 and subsequent of the Amended Penal Code provide for a serious penalty in the event of illegal detention.

Thirdly, Articles 112 and 271 of the Criminal Procedure Code (HSTT) authorize an appeal against the magistrate if there have been any irregularities in the performance of his duty.

Preliminary Investigation.

Article 7, para. 4 of the Constitution provides that "No one shall be tortured, threatened or forced to confess.

The lawmakers paid great attention to the humane treatment of the offender by incorporating a very important rule of the Penal Code: Article 7, para. 8 of the Constitution provides that "the offender is considered to be not guilty until such time as a verdict shall have become definite." Additionally, the Code of Criminal Procedure clearly defines the authority of the judicial police, the Public Prosecutor and the Examining Judge in the various phases of the investigation and provides all necessary protection to the defendant.

Report of Investigation of the Police.

In accordance with Article II of the Criminal Code, the judicial police authorities have the responsibility for conducting preliminary investigations prior to the hearing of the Examining Judge. The police receive the reports and complaints or petitions, enter in the report all details of the offense, and promptly

transmit the petition and reports to the Public Prosecutor. The police have no duty to examine the case: they only record the facts in the reports and submit the files to the court for action.

The Public Prosecutor Directs the Investigation.

The main, and important, responsibility of the Public Prosecutor is to interrogate the parties involved. He directs the investigation, respecting the interests of the accused as defined in the law of December 8, 1897 which provided in particular that he advise the defendant in the first interrogation session that he has the right to refuse all statements, and that he be interrogated in the presence of his lawyer or after having duly notified the lawyer at least twenty-four hours in advance so that the latter can have sufficient time to examine the brief, and that he communicate all court decisions to the lawyer.

Freedom of Statement.

During the period of preliminary interrogation and investigation, the defendant is fully free to make any statements. No corporal torture or moral pressure may be applied against him. The Examining Judge must avoid lengthy questioning tiresome to the defendant. Nor shall he force the defendant to accept the guilt by threatening to cause prejudice either to the defendant himself or to his family or property. Nor may he promise any pecuniary reward or other interests of any nature. The Examining Judge must carefully study the brief so as to phrase his questions

in a clear, truthful and adequate manner: he must avoid asking cunning or troublesome questions which might cause the defendant to provide contradictory answers.

In a word, the Examining Judge should bear in mind that investigating does not mean to engage in a discussion with the defendant on the reasonableness of his answers, nor to trap him by asking troublesome questions. Nor does it mean the seeking of an offender. Its purpose, rather, is the disclosure of the truth. As a result, the Examining Judge must absolutely avoid all means which could eliminate the freedom of statement or which could lure the defendant into making a confession. He may not use any drug or hypnosis, polygraph or discreet tape recorder. On the contrary, scientific methods, including blood analysis in case of rape, drunkeness, urine analysis in cases involving the checking of mental status, etc. may be used in a large scale to determine the author of the crime or to clarify any doubtful points in the declaration of a witness.

Right to Communicate with the Accused.

All requests for communication with the accused party by his parents or close friends must be authorized by the Examining Judge. However, due to the necessities of interrogation, the Examining Judge may prohibit the accused from communicating with anyone for ten days. This prohibition may be extended only once for a further ten days, as provided in Article 603, HSTT. However,

the attorney is always authorized to communicate with his client, even in writing.

Judicial Assistance.

After confirmation of the identification of the accused, the Examining Judge must advise him that he has the right to select a lawyer for his defense. Should this procedure not be complied with, the action shall be void.

In the event that the offender does not select an attorney, the Examining Judge if so requested shall appoint one for his defense, as provided in the Law of May 20, 1963.

In all phases of the investigation and judgment, offenders who are minors and all parties accused before the Criminal Court, Martial or Special Court are required to have an attorney.

With regard to offenders whose repeated offense could lead to imposition of the deportation penalty, the assistance of a solicitor is required. Otherwise, as provided in Law of May 27, 1885, the legal procedure shall be void.

Before the Court of First Instance and the Court of Appeal, the assistance of a solicitor is always required even though the defendant does not appeal.

Translators.

In accordance with the terms of Articles 332 and 333 of the Code of Criminal Procedure, the court is required to have translators whenever needed. The above articles have no limitative

character: a translator must be appointed when the accused or a witness cannot speak Vietnamese, or if deaf and dumb and unable to write Vietnamese, or if unable to speak loudly and distinctly so as to be comprehensible to the court.

If a translator is not competent, the Public Prosecutor or the parties concerned can refuse his service. The translator must be at least twenty-one years of age and must swear to translate exactly what is said.

Temporary Freedom Before and During the Proceedings.

In principal, an offender can be detailed until judgment. However, he can be temporarily released.

Article 94, Para. 3 of the Code of Criminal Procedure provides for withdrawal of the detention warrant without bail if approved by the Public Prosecutor. The withdrawal cannot be appealed, but the Examining Judge can issue another warrant of detention.

An accused may automatically be granted freedom after five days following the first interrogation, provided that he resides in Viet-Nam, that the maximum penalty which could be pronounced against him if a two-year prison term, and that he has never been convicted for criminal delict or never been sentenced to more than one year without suspension. This is provided by Article 113 of the Code of Criminal Procedure, which does not apply in cases of flagrant delicto.

Article 116 of the Code of Criminal Procedure provides for submission of a petition for temporary release to the Examining Judge, or to the court of conviction: In this case, the accused must provide bail or have someone guarantee his presence when it is required. The approval or rejection of the petition for temporary release may be appealed.

Development of the Investigation and Proceedings.

The preliminary investigation is carried out by the assistants to the Public Prosecutors, the District Chiefs, Police and Security agents, or other administrative officials. Twenty-four hours after arrest, the offender must be brought to the Public Prosecutor for decision.

If there is no evidence on the facts to constitute a basis for prosecution against the party concerned, or if these facts do not constitute an offense or a crime, the matter shall be withdrawn and the party concerned immediately freed. If there is evidence that a certain person has committed an offense, but the opinion of the Public Prosecutor is that an arrest is not necessary or cannot be ordered, he may directly prosecute the offender before the court and the order of direct prosecution shall specify the delict. If it is a case of flagrant delicto, and an arrest is required, the Public Prosecutor shall carry out a preliminary investigation, hear the witnesses, question the offender, and conclude on the delict. The Public Prosecutor may issue a warrant of arrest and bring the case to court for hearing.

If a complementary investigation is required, or a crime is involved, the Public Prosecutor may, by an order of prosecution, assign the Examining Judge to carry out an investigation and determine proofs. The work of the Examining Judge may be concluded by an exemption from prosecution, or by a citation. If the latter, the plaintiff, the defendant and the witnesses shall be summoned to court. The Presiding Judge questions the parties, the Public Prosecutor accuses, the offender or his solicitor defends and is given the opportunity to make the final statement before the court deliberates.

Diligence. The Attorney General supervises the proceedings in criminal matters and makes certain that they are judged diligently.

Public hearing in open court. Hearings must be open, for otherwise the procedure shall be void, as provided in Articles 153 and 310. However, the Presiding Judge may order a closed door hearing if an open court would affect morale or public order. But in any case, the verdict must be announced in open court.

Responsibility for providing evidence. The Public Prosecutor has the duty to find evidence of the crime. If the defendant invokes attenuating circumstances or pleads for leniency, he must provide evidence to support such plea. Article 342 HSTT provides that the value of the evidence is to be determined by the court.

Responsibility of the court to ascertain the truth. The court has the duty to investigate so as to decide whether or not a suspect can be accused. The Presiding Judge must consider the results of the preliminary investigation, the conclusion of the Examining Judge, the house search, the opinion of the experts, the documents in writing, the statements of the witnesses, and the accused's declaration before the court, as well as traces and other doubtful points, all as provided by law. The statement of the suspect, whether made in the presence of the court or elsewhere, shall be considered by the Judge only to the extent that it is supported by other evidence.

Providing evidence. Evidence must be obtained in accordance with the law, observing the legally required guarantees. The scope of investigation by the Judge is very wide, but the morals and personal dignity of the suspect must be respected. If the offender confesses as a result of his being tortured morally or physically, or as a result of the administration of a drug, the confession shall be void. Home search can only be carried out in the daytime. Experts and witnesses must swear under oath. Evidence must be produced in writing and included in the brief, and both plaintiff and defendant have the right to object to its inclusion.

Witnesses. They must personally have seen or heard that to which they testify. They must appear before the court, take oath, and make their statement. Otherwise they are subject to penalties as provided in Article 80 of the Penal Code. Those giving false

testimony are subject to penalties as provided in Article 361 and subsequent of the Penal Code.

Certain persons, because of their personal or professional status, are not permitted to be witnesses:

- Those deemed to be mentally incapable, i.e., under fifteen years of age, insane or feeble minded, senile, drunk, etc.
- Those who have been deprived of their civil rights.
- Those whose position does not permit them to testify, i.e., judges, assessors, court clerks, public prosecutors, court translators, etc. involved in any phase of the trial.
- Those having a relationship with the family of the accused.
- Those receiving information as a result of their profession. Such persons have not only the right, but also the firm duty, to maintain professional secrecy.

Interrogating the accused party. The accused shall not be allowed to take oath and make statements for his own defense. He shall answer questions of the Presiding Judge. He is, however, free to answer or not. Answers must be made orally, but written documents may be introduced to support the answers. Solicitors are not allowed to answer for their clients.

Appeal. This is a normal way of recourse. The parties concerned have the right to appeal any decision of the Examining Judge, a decision of the Justice of Peace imposing a prison sentence or pecuniary penalty greater than VN $20, and from any

decision of the Court of Summary Jurisdiction or Criminal Court. However, there are some exceptions:

- All decisions of the Justice of the Peace with Extended Jurisdiction ruling in petty offenses, and decisions of the Martial Court are final.
- As to "avant dire droit" judgments, appeal may be taken only when a judgment on the substance has been made.
- A party claiming damages can only appeal from a judgment prejudicial to his civil interests.
- The Public Prosecutor cannot appeal against judgments on petty offenses.

The appellant must file his appeal with the Record Office within two days from service of notice of any decision of the Examining Judge, and within ten days thereof for decisions on petty offenses by the Court of Summary Jurisdiction and Criminal Court. Incidental appeals are granted five additional days. In case of appeal by the Public Prosecutor from a decision of the Examining Judge, he must advise the offenders and the parties liable for damage within fifteen days from the date the brief is received. With regard to decisions of the Court of Summary Jurisdiction and the Criminal Court, the delay for appeal is one or two months, depending on whether the Public Prosecutor is informed of the result of the hearing. In principle, the appeal has suspensive effect unless appealed by the Public Prosecutor.

The Court of Indictment (Chambre de mise) rules on any appeal from decisions of the Examining Judges. The Court of Summary Jurisdiction is competent to decide on appeals from decisions on small offenses. For appeals against decisions of the Court of Summary Jurisdiction, the Summary Jurisdiction Chamber of Appeal (Chambre d'appel correctionel) is competent. For any appeal from decisions of the Criminal Court, the Criminal Chamber of Appeal (Chambre d'appel criminel) is competent. The Court of Appeal must abide with the following rule: Tantum devolutum, quantum appellatum.

When the offender is the only appellant, the court may not increase the penalty which had been imposed.

If the parties are not satisfied with the decision of the Court of Appeal, they may refer to the Supreme Court (Cour de Cassation) within three days. However, before the Supreme Court the parties cannot contest the decision on the facts of the case. They can only argue on grounds of defect of form or lack of competence of the lower court, or that the decision was contrary to established jurisprudence.

Re-examination. This is an unusual practice. It is not applicable to cases of petty offense, but only to the four following cases:

- If there has been an indictment for murder, but it is found thereafter that the supposed victim is still alive.

- If separate courts sentence different defendants for the same murder.
- If a sentence in a criminal matter has been pronounced based on the testimony of a witness who thereafter is sentenced by the court for giving false testimony.
- If after the verdict new elements are discovered which may prove the innocense of the accused.

The Minister of Justice, the accused, or his legal representative or successor have the right to file a petition at the Department of Justice for re-examination within one year from the date the proof of possible non-guilt is revealed. Execution of judgment shall be suspended from the date such petition is filed with the Supreme Court. The Penal Affairs Chamber is competent to consider the petition. If accepted, the court routes the brief to the competent office for action.

Special Procedures.

In addition to the normal procedures, the law also provides for special cases of serious nature when a juvenile is involved or when the special circumstances of the case could constitute a threat to public security and therefore require prompt action.

The Criminal Court.

This court was instituted by Ordinance of June 20, 1950 to rule on crimes which could lead to imposition of penalties such as confinement, forced labor, or death. As a general rule, all

criminal cases are subject to verification by the Court of Indictment of the questioning of the Examining Judge, and the case will be judged in the first and last instance (lower and higher Criminal Courts) as is normally practiced in any cases of offense in summary jurisdiction.

The Accusation of the Attorney General. After examination of the report and of the conclusions of the Examining Judge, the Attorney General establishes the accusation outlining the facts, including the attenuating and aggravating circumstances, in accordance with the law. The articles of law referred to must be set forth in the accusation.

Decision of the Court of Indictment. This court examines the brief and the accusation of the Attorney General. Upon agreement, the Court of Indictment issues an order to cite the accused to the Criminal Court and at the same time issues an order of detention. This order is served on the party concerned, together with a copy of the accusation, so that he can formulate his defense. If the accused is being detained in jail, the judicial officer must call at his place of detention and establish a report in due form. No such notice may be served through administrative channels. Thereafter, the accused may be transferred to another jail nearest to the location of the Criminal Court. The law of February 7, 1935 provides that an accused who has been granted temporary freedom is subject to forced detention twenty-four hours before court hearing unless he voluntarily presents himself for detention.

SWEARING IN OF ATTORNEY GENERAL

SOLEMN SESSION OF COURT OF APPEALS, SAIGON

The Criminal Court of First Instance.

Before the Court of First Instance ruling in criminal matters, the procedure is a little different from that of the court ruling in Summary Jurisdiction. The court includes one presiding judge and two assessors. Wherever no magistrates are available to perform these functions, the Minister of Justice may by decree appoint two members of the local administration to act as assessors.

After interrogating the accused as to identity, the presiding judge orders the clerk to read the charge and, thereafter, the witnesses are heard.

As a general rule, the party claiming for damage is given the right to make the opening statement.

After hearing the claimant, the public prosecutor outlines the details of the case and presents his accusation.

The accused is then authorized to present his defense, either personally or through his counsel. He is always given the right to make the concluding statement.

The judges of the Criminal Court of First Instance decide by majority on all items relative to the crime, the aggravating or attenuating circumstances, the application for penalties, and the claims for damage.

After pronouncing the judgment, if the accused is convicted, the presiding judge must inform him that he has ten days in which to make an appeal.

The Criminal Court of Appeal.

Five days prior to the hearing, the presiding judge draws the names of two civilian assessors from among the twelve names duly submitted, this in the presence of the public prosecutor, the plaintiff and defendant and their solicitors.

The names of two alternate assessors are similarly drawn to provide against sudden vacancies. If an assessor is to be replaced, the presiding judge must respect the order by which the lot has been drawn, otherwise the sentence will be cancelled. The public prosecutor and the accused may have the right to protest against any civilian assessor. If the protest is for valid reasons, the first alternate shall replace the protested assessor. Thus the court includes one presiding judge, two assistant magistrates, and two civilian assessors.

Procedures at hearings. On the date and at the time specified in the summons, the accused is brought to the hearing, without handcuffs unless he refuses to appear voluntarily. If he causes a disturbance, the court continues to proceed but he is held in a room nearby and the process server keeps him informed of the developments in the proceedings, as provided by Law of September 9, 1935.

The Presiding Judge has some special powers that the assessors do not have, and the court has some powers that the presiding judge does not have. The presiding judge insures that the solemnity of

the Court will be respected, conducts the hearing, and has full authority to hear any of the witnesses even though the summons may not have been served in due form. He may order a search, and the Court must agree. The presiding judge is not authorized to unilaterally order a closed door hearing, or decide on the penalty to be imposed. These two decisions must be reached in common by the Court.

The civilian assessors have the duty to follow the proceedings but may not directly participate in the debate. If they want to ask questions, they must submit them to the presiding judge, who will ask the questions himself. During the proceedings, the civilian assessors have no right to communicate with anyone except the presiding judge and the two magistrate assessors, in accordance with Article 344. Moreover, the law of December 16, 1933 requires that the civilian assessors keep all confidential matters to themselves, not only during the proceedings but throughout their entire life.

The Court hears the solicitor for the plaintiff, the attorney general's accusation, and the defense of the solicitor for the defendant. Before the Criminal Court, the defendant always has a defense solicitor. If he has no counsel, the attorney general requests the Chairman of the Bar to appoint a solicitor for a gratuitous defense. The hearing ends with the last statement of the accused and the presiding judge's declaration for adjournment, per Article 355, and the Court retires to closed door deliberation.

Deliberations in terms of the law. During the deliberation no one, including the attorney general and the clerk, shall leave the room, nor shall any third party be admitted. Violation of this rule, as provided in Article 344, will cause the offender to be subject to a twenty-four hour detention.

Members of the Criminal Court must answer the questions of the presiding judge on each crime, on the aggravating circumstances and the extenuating circumstances of each crime.

In the debates in Court bring in proof of a new fact relative to the prosecuted action and capable of changing the denomination of the crime, the presiding judge may ask new questions so as to change the crime's denomination accordingly.

However, the presiding judge may not consider any other crime which has no relationship to that under consideration even though the debate may have revealed a new one. Nor shall he convict any person whose name is not in the order of the Court of Indictment and the accusation. The Court determines by resolution adopted by the majority. After determination of guilt, the Court also votes by majority on the penalty.

Pronouncing sentence. The Court meets again, with the public prosecutor and the clerk present. The presiding judge reads the questions and answers, and pronounces the sentence. Article 358 of the Code of Criminal Procedure (HSTT) provides that an accused who is adjudged not guilty must be released immediately, all

formalities to be fulfilled later. If the accused is convicted, the Presiding Judge must inform him that he has three days in which to file his appeal before the Supreme Court.

After many years of experience, the legislators must have become aware that one of the defects in the organization of the Criminal Court of Appeal is the fact that not much consideration has been given to the judgments by civilian assessors. At the Court of First Instance there are no civilian assessors, yet there are witnesses to be heard. At the Court of Appeal, on the other hand, there are civilian assessors but not witnesses, as the Court of Appeal judges only on the briefs forwarded from the lower court. Civilian assessors are not professional magistrates, and they should therefore be given the opportunity to see and to hear witnesses so as to have a better concept of the crime involved.

The Juvenile Court.

The procedure before the Juvenile Court is quite different from that normally adopted. The procedures for flagrant delicto or direct prosecution can only be applied if they are found to be advantageous to the offender. Further, a preliminary examination is required.

Each case of delinquency must be judged separately. Offenders in other cases, as well as persons foreign to the case, are not authorized to be present at the hearing. The only persons permitted to participate in the hearing are the witnesses, close relatives of the child, his solicitor, representatives of organizations in

charge of juvenile welfare, and those persons whose presence is deemed necessary. The sentences, however, are pronounced in open court.

No one shall release the debates before the Juvenile Court, nor may the picture or name of the accused, nor even his initials, be published.

Ordinary Martial Court.

Prosecution is initiated by the Minister of Defense in an order of prosecution, or a direct prosecution ordering the appearance of the accused in court. The prosecution and the brief are forwarded to the competent Commissioner of the Government at the Martial Court for action.

When such an order is received, the Commissioner immediately forwards the brief to the Military Examining Judge, along with his remarks. The Examining Judge summonses the accused to court for interrogation, obtains statements from the witnesses, and applies other lawful measures, such as distraint, survey, etc., to determine the truth. If there is no evidence for an accusation, the Examining Judge may issue an order of non-guilt; otherwise, he may issue an order to bring the accused before the court.

The sessions of the Martial Court are always conducted openly except where a public hearing may prejudice the public order.

The decision of the Martial Court is final and conclusive, with appeal only to the Supreme Court. The Supreme Court examines only as to the legality of the case, and not on the

substance. If the appeal is accepted, the sentence pronounced by the Martial Court is cancelled and the case sent back for retrial before another court.

The Military Courts of the Tactical Zones.
Also called The Front Courts.

This court system was established by Ordinance 11/62 of May 21, 1962. There are presently four such courts, in each of the four Military Tactical Regions, although more may be created if required.

This decree law does not institute any special judicial organization. It merely assigns to the Military Courts of the Tactical Zones, The Front Courts, the responsibility for judging those accused of certain offenses dangerous to the existence of the Nation in time of war.

The Front Court tries cases of flagrant delict committed during the state of emergency within the territorial limits of the Tactical Region. It is empowered to try all minor and criminal offenses committed by personnel of the Regular Army and the Regional Forces, and may try civilians charged with violations of national security and such crimes as have been determined by the Military Code to be under the jurisdiction of the Martial Court.

Prosecution procedures provide that the offender be brought directly to the court without any preliminary investigation, even in cases where conviction carries a death penalty. A summons

does not require any period of notice prior to time of appearance. The Commissioner of the Government may appoint any person, whether or not a member of the Bar, as defense attorney. Decisions are final, with no appeal even to the Supreme Court.

Decree Law No. 4/65 of July 19, 1965 of the Military Government placed under the jurisdiction of this court violations of economic laws and regulations, sales beyond official prices, illegal transfer of funds, illegal imports of goods, bribery, embezzlement of public funds, and disturbances of the public security especially those committed by hoodlums against the police, intending thereby to protect the public order. Reference should be made to the section on the Special Court, established February 15, 1966, for offenses it is empowered to try.

The Revolutionary Court.

Following the revolution of November 1, 1963, the Revolutionary Government promulgated Decree Law No. 4/64 of February 28, 1964. This established a Revolutionary Court for a fixed period of only three months. It comprised one civilian Presiding Judge, four People's Assessors, four Military Assessors, and one Public Prosecutor appointed by the Prime Minister. It was established to judge all crimes committed by prominent officials under the Ngo Dinh Diem regime, from October 26, 1955 to 1963. Trials were conducted under normal procedures. Its decisions were final and conclusive.

The Special Court.

The Military Government established this court by Ordinance No. 3/66 of February 15, 1966, to be operative for the duration of the state of emergency. It is empowered to try offenses, whether committed by military or civilians, of hoarding of goods, illegal transfer of currencies abroad, smuggling and violations of customs laws if the properties smuggled are of a value of VN $50,000 or more; and of corruption, abuse of power, embezzlements if the properties or amounts or both are valued at VN $50,000 or more.

The procedure is that of the Military Courts in the Tactical Zones. Its judgment is final and conclusive, with no appeal to the Supreme Court.

Clemency and Leniency.

The Chief of State is the only one with authority to grant clemency to a criminal. The Constitution of April 1, 1967 confirms this, in Article 61. Ordinance No. 5 of April 6, 1950 provides two procedures of application for leniency: either by the culprit himself, or by the Minister of Justice upon the recommendation of the jail supervisor, who must certify to the satisfactory character of the prisoner during his prison term. In cases of death penalty, application for leniency must be submitted within three clear days after sentence is pronounced. In other cases, application may be submitted at any time. The Council

for Leniency, provided over by the Minister of Justice, includes four members: the Attorney General and the First President of the Court of Appeal, one representative of the Ministry of Interior and one of the Director for Penal Affairs of the Justice Department. The Council studies the brief and makes recommendation to the Chief of State. Leniency, whether as to all or a part of the penalty, is granted by Ordinance of the Chief of State.

The culprit may be released under certain conditions by decision of the Minister of Justice if he has shown that he has repented or if he has served more than one half of his sentence. The decision is made upon recommendation of the Attorney General based on the approval of the Council for Conditional Release.

Conditional release differs from leniency in that if the released prisoner violates any of the conditions of his release he will be re-arrested and forced to serve the remainder of his prison term. Ordinance No. 5 of April 6, 1950.

Prospects for the Future.

The Constitution of April 1, 1967 provides for wider protection of the accused as it authorizes the solicitor to assist his client from the very beginning, the interrogation at the police level. Although the law in force requires that the Judge verify the investigation conducted by the police, the new Constitution provides more protection of the rights of the accused at this

stage. Thus an important step forward has been accomplished in the field of protection of human rights.

This is very meaningful in guaranteeing justice before any special judicial organization instituted to cope with the wartime situation and where the procedures are simplified to the extent that the court proceeds on the basis of the preliminary investigation, without the normal requirements at the Examining Judge level.

At the present time there are not many such special institutions although Viet-Nam is in a state of war and requires maximum guarantees for security and order.

It may be said that in the field of justice, the Constitution of April 1, 1967, in recognizing the right of the accused to have the assistance of a solicitor at any preliminary investigation, has added one more guarantee to human rights before the prosecuting power. However, in the field of criminal procedure the legislature must provide for the incorporation of the new procedure in the present legal system in such a way that there will be no double use or contradiction which might jeopardize the individual freedom safeguards and the interests of society. This is a major topic for a three-phase consideration in any policy of penalizing an offender.

Under the present legal system, proceedings must go through two questioning phases: by the Examining Judge, and by the Court of Indictment if there is an appeal from the action of the Examining

Judge; and two hearings: at the Court of First Instance, and at the Court of Appeal.

In the preliminary investigation, the police have only the duty of gathering the facts, and the Examining Judge is free to believe or not the police report.

On the other hand, in a system which during wartime bypasses the Examining Judge and the Court of Indictment, the police assume the duty of the Examining Judge and prepare the report for direct presentation to court. For this reason the assistance of a lawyer at the police level is necessary to guarantee justice.

If the new system discussed above is adopted, the question arises as to whether the functions of Examining Judges and the Chamber of Indictment are to be maintained or abolished. The maintenance of these two institutions would bring three phases of investigation to every criminal case. Moreover, police examination, in such a system, should be raised to the level of the office of the Examining Judge. Judicial action in criminal affairs might, therefore, be delayed, which is not the intention of the legislators, whose slogan is "Justice delayed is justice denied."

A further point deserves our attention. Provisions for judicial assistance must be revised so that assistance of the lawyer is not merely a platonic principle but a practical help so as to give meaning to that which has been emphasized in the Constitution: that the accused party has the right to be defended by a lawyer.

To attain this goal, the Bar must be so organized that there is always available at each court at least one lawyer wholeheartedly willing and able, with true professional diligence, to protect the interests of an accused party whenever such judicial assistance is required.

CHAPTER VIII. THE CIVIL PROCEDURAL LAW

SOURCE OF THE PROCEDURAL LAW.

Viet-Nam has a variety of civil codes of procedure inherited from colonial days. These are to be replaced by a uniform Code of Civil Procedures which has been drafted.

The basic document on procedural law is Ordinance No. 4 of October 18, 1945 prescribing the judicial organization of Viet-Nam.

Other laws concerning judicial procedures are:

- Ordinance No. 5 of October 18, 1949 establishing the Supreme Court.
- Ordinance No. 27 of September 2, 1954 replacing the judicial branch of the Supreme Court with the Court of Cassation.
- Ordinance No. 38 of November 9, 1954 replacing the administrative branch of the Supreme Court with the Council of State.
- Decree of March 7, 1924 establishing Courts of Peace in Indochina.
- Ordinance No. 2 of January 5, 1950, amended by Ordinance No. 36 of November 8, 1954 establishing Administrative Courts.
- Ordinance No. 22 of November 15, 1952 establishing Alimony Courts for veterans' claims.
- Ordinance No. 27 of October 22, 1956 and Decree of November 27, 1957 establishing Agrarian Courts.
- Ordinance No. 4 of April 2, 1953 establishing Rent Courts.
- Ordinance No. 15 of July 8, 1952 establishing Labor Courts.

Additionally, there have been various other laws and regulations concerning magistrates, notaries, clerks of court, lawyers, bailiffs, auctioneers, etc.

The Code of Civil and Commercial Procedure.

Central Viet-Nam, by Ordinance No. 46 of June 12, 1942, and Southern Viet-Nam, by Arrete of March 16, 1910, each have separate codes which, with some adaptation, were inherited from French colonial times.

ADMINISTRATIVE BRANCH.

Before the French domination, Viet-Nam had no administrative courts. All power belonged to the Emperor and to his mandarins, who were responsible only to him. During the French domination there was no court to limit the power of the King and his mandarins. The French Council of State and the Administrative Jurisdictional Council of Indochina had no competence to control the decisions of the King and his functionaries in Northern and Central Viet-Nam. The concept of administrative responsibility in Viet-Nam was not recognized. Decisions of French functionaries, who acted under authority delegated by the Emperor, were not subject to any control.

Since 1950, administrative jurisdiction has been recognized. Administrative courts were established by Ordinance No. 2 of January 5, 1950, and the administrative section of the Supreme Court was established by Ordinance No. 5 of October 15, 1954 and later reformed and changed by Ordinance No. 38 of November 9, 1954 to the Council of State. Moreover, an important special administrative court, the Alimony Court, was established by Ordinance No. 22 of November 15, 1952.

COMPETENCE OF JURISDICTIONAL AGENCIES.

JURISDICTIONAL COMPETENCE OF JUDICIAL COURT.

Jurisdictional competence of the Court of First Degree. Every case must first be tried by the Court of First Degree before being reviewed by a higher court, according to the principle of double levels of jurisdiction (judicial review.) Courts of First Instance, Courts of Peace with Extended Jurisdiction, Courts of Peace, and the Labor Courts are Courts of First Degree.

It is important to note that the Civil Courts of First Instance and the Courts of Peace with Extended Jurisdiction have original jurisdiction over every case except those which fall under the jurisdiction of other courts, called Special Courts, such as the Commercial Court, Court of Urgency Procedure, Rent Court, Agrarian Court, Labor Court, and Court of Peace.

Court of First Instance, and

Court of Peace with Extended Jurisdiction. The jurisdictional competence of these courts is based on two standards: the amount involved, and the nature of the case.

Jurisdictional amount. In Central Viet-Nam, the Court of First Instance and the Court of Peace with Extended Jurisdiction adjudicate finally cases relating to personal property, commercial affairs, claims for reimbursement or damages which are more than VN $500 but less than VN $1,500, and real estate the annual income from which does not exceed VN $150.

These courts have original jurisdiction over cases relating to the above matters when the amount in controversy is VN $1,500 or the income is over VN $150 or indefinite. These courts also have original jurisdiction over cases involving actions in personam, public property, personal estates, inheritances and bankruptcy.

In South Viet-Nam, these courts adjudicate finally cases involving actions in personam, and in personal estates where the amount in controversy is not over VN $750 or 15,000 kg of rice (750 gia), and actions on real estate the annual production of which is not over 30 or 40 "gia" of rice (800 kg.) These courts have original jurisdiction over all cases stated in the foregoing the amounts of which exceed the jurisdictional limits stated or are indefinite.

Nature of the cases. The Courts of First Instance and the Courts of Peace with Extended Jurisdiction have general jurisdiction over cases not clearly reserved to the courts of special jurisdiction.

Nevertheless, even where jurisdiction is reserved to courts of special jurisdiction, these courts have the power to hear cases upon consent of the parties. To remove a case to a court of special jurisdiction, the issue of competency of a court must be raised before there is a decision on the substance of the case.

In addition to the foregoing general jurisdictional competency, these courts have discretionary jurisdiction over the following:

- Cases involving real estate of any value. This power is restricted by Ordinance No. 57 of October 22, 1956 and by Decree of November 27, 1957 which reserve to the Agrarian Court jurisdiction over cases of land conflict in application of the agrarian reform plan.

- Cases relating to personal status, legal capacity such as marriage or filiation, and nationality.

- Cases involving procedures of written documents (Articles 93 and 101 of Arrete of 1910, and Articles 195 and 203 of the Civil and Commercial Procedure Code), and pleas of forgery of authentic or notarized acts. (Articles 102 and 110 of Arrete of 1910, and Articles 204 and 203 of the Code of Civil and Commercial Procedure.)

- Cases involving conflict of patent property (Article 24 of Law No. 12/57 of August 1, 1957.)

- Cases involving indirect tax (Article 202 of Arrete of May 1, 1940) and registration tax (Arrete of November 6, 1929.)

- Cases where there is difficulty in executing judgment, even the judgment of the court of special jurisdiction.

- Cases involving labor accidents. (Arrete of January 31, 1944, and Article 248 of the Labor Code.) The Court of First Instance considers claims for damages only when the victim is permanently incapacitated. Allowance of fees for the funeral ceremony and for medical treatment are within the competency of the Justice of Peace of the area where the accident occurred.

- Finally, the Courts of First Instance are empowered to issue enforcement orders to allow foreign judgments to be executed in Viet-Nam.

The Courts of First Instance and the Courts of Peace with Extended Jurisdiction also have power to render non-contentious judgments, i.e., those not involving disputed claims. This power is usually exercised in camera.

Viet-Nam does not have a commercial court, although there is a Commercial Code applicable to Central Viet-Nam promulgated by Ordinance No. 46 dated June 12, 1942.

During the period of French domination, except in Hanoi, DaNang and Saigon, the Courts of First Instance and the Courts of Peace with Extended Jurisdiction took cognizance of cases involving commercial law.

Ordinance No. 4 of October 18, 1949, which prescribes the judicial organization of Viet-Nam, does not mention commercial courts or the laws and regulations applicable to such courts. Therefore, Central Viet-Nam has no separate commercial courts. The Courts of First Instance and the Courts of Peace with Extended Jurisdiction take cognizance of cases involving commercial law and apply the Commercial Code of 1942. The same situation exists in South Viet-Nam, but the applicable laws and regulations are the documents mentioned in Article 122 of Decree dated 1921, and Arrete of October 16, 1910, with the exception of those provisions which are contrary to the judicial organization based on Ordinance No. 4.

In principle, commercial divisions of civil courts have jurisdiction over conflicts relating to traders or to acts which are defined by their nature as being commercial or quasi-commercial. If one of the two parties is a trader, whether the civil or the commercial division of the court will take cognizance depends on whether the defendant is a trader.

The commercial division of the civil court also has jurisdiction over conflicts among members of a commercial company and over bankruptcy.

The above rules of competence have a relative value because the commercial division, such as in Saigon, is a Chamber of the Court of First Instance. In a small town, civil and commercial cases are judged by one magistrate and in one court session. Therefore, when a complainant mistakes the civil court for the commercial division when petitioning, or vice versa, the procedure is not void.

The President of the Court of First Instance and The Court of Peace with Extended Jurisdiction.

The President of the Court of Peace with Extended Jurisdiction occupies a special position, with extensive and complex powers. Unlike the President of the Court of First Instance, who is solely a member of the Court, the President of the Court of Peace with Extended Jurisdiction functions as the Investigator, Prosecutor, and Judge. He is empowered, also, to issue provisional orders,

similar to a temporary restraining order, when the urgency of a situation so requires. He may also issue a similar order based on a petition containing a proviso that the petitioner has the responsibility for executing the order.

Article 249 of Decree of 16 March 1910 provides that judges may issue orders based on a petition when an immediate action has to be taken but the rules of urgency procedure are not applicable.

The Code of Civil Procedure of Central Viet-Nam does not contain a general provision, as Article 249 mentioned above, but, rather, enumerates many special cases where the magistrate can issue provisional orders, and orders based on petition. The following are examples:

Orders allowing the rectification of a material mistake on documents of civil status.

Orders allowing creditors to attach a debtor's personal estate.

Orders allowing priority to a principal action.

Orders permitting a bailiff to draw up an information against adultery.

Court of Urgency Procedure.

This court is presided over by a magistrate of the Court of First Instance or the Court of Peace with Extended Jurisdiction, the activity of which is simply prescribed by Articles 175, 245 and 248 of Arrete of 15 March 1910.

Neither the Code of Civil and Commercial Procedure of Central Viet-Nam, nor Ordinance No. 4 of 18 October 1949 mention this court.

The urgency procedure has the purpose of temporarily and quickly resolving cases which are pressing and those where there is difficulty arising from the execution of a judgment.

Urgency cases. The question of urgency is one of fact, and only the judge has the power to decide. Decisions of the court are provisional and do not affect the main merits of the case, as this is within the jurisdiction of the civil Court of First Instance. The Court of Urgency Procedure does not have jurisdiction over important conflicts.

Difficulty of Execution. If difficulty is encountered regarding an enforceable title or a judgment, the matter is not considered as urgent. Generally, when issuing an order based on a petition, the magistrate will forsee the difficulty of execution and will stipulate in the order that "If difficulty is encountered in the execution hereof, it will be resolved by the Court of Urgency Procedure."

If a bailiff has difficulty in executing a judgment he must bring the matter before the Court of Urgency Procedure. The Court must refer to the bailiff's statement when reaching a decision, and it is therefore called "Urgent Decision Upon Statement."

Rent, or House Lease, Court.

The Rent, or House Lease, Court is presided over by the President of the Court of First Instance, or by the Court of Peace with Extended Jurisdiction, or by an appointed magistrate. The Rent Court convenes without the Prosecutor or his assistant.

The competent court is that which is in the area of the real estate, whether the house is rented for residential, handicraft or commercial purposes.

According to a senior lawyer, it was formerly held that the Rent Court had jurisdiction over all houses built prior to 1947 since these buildings were governed by Ordinance No. 4, while houses built after that date, and therefore not covered by that Ordinance, must be under the jurisdiction of the Civil Court. This rule has since been changed by later cases which recognize the competency of the Rent Court over all residential property.

Ordinance No. 4 of April 2, 1903 provides for recovery by the owner of a leased house if he intends to occupy it as his residence, or to rebuild it or enlarge it. This right, however, is limited by conditions difficult to comply with.

As to houses rented for commercial use, the law allows the owner to increase the amount of rent to be paid, and to recover his house in accordance with conditions and procedures not injurious to the tenant.

It is important to note in the laws regarding leased houses that it is necessary to distinguish between houses rented for commercial use, where the owner can recover the property, and those rented for residential or handicraft purposes, wherein the owner can rarely recover the property. The applicable law is determined by the primary purpose of the tenant's use of the leased house.

Judgments of the House Lease Court may be appealed to the Court of Appeal and then to the Court of Cassation in the same manner as civil cases tried by the Court of First Instance.

Land Reform Court.

This court, also called the Agrarian Court, is empowered to adjudicate conflicts resulting from land reform or which occur during the execution of the land reform policy.

The court has wide powers. However, it should be noted that the civil courts still have discretionary power over cases concerning real estate and therefore disputes not relating to land reform are still under the jurisdiction of the ordinary courts.

There are four Land Reform Courts, at Saigon, Dinh-Tuong, Long-An, and An-Giang. Where there are none, the Court of First Instance or the Court of Peace with Extended Jurisdiction hears such cases.

Labor Courts.

These were established by the Labor Code, Ordinance No. 15 of July 8, 1952, to judge individual disputes between employers and workers arising from the application of labor contracts.

"Individual disputes" means any conflict between an employer and less than ten workers. When a dispute is joined by ten or more workers, and embraces at least one-quarter of the workers of a factory, it is called a collective conflict. This term also includes any conflict concerning ten or more workers whose strike

would hinder the activity of the factory. Collective disputes are within the competence of the Arbitration Council.

Workers, non-annual workers, and apprentices in industrial, mining and commercial undertakings, and in the liberal professions, are within the jurisdiction of the Labor Court. Domestic employees, i.e., those who look after the person or property of an employer but who do not normally assist him in his trade or business, and those employed in agriculture and members of the Military are governed by their particular regulations.

The Labor Court in the area where the employment contract is executed has jurisdiction. At the present time there are seven such courts, at Saigon, Can-Tho, Dalat, Bien-Hoa, Hue, Da-Nang, and Nha-Trang. Their judgments may be appealed to the Court of First Instance or to the Court of Peace with Extended Jurisdiction. Where there is no Labor Court, the local civil court has jurisdiction and its judgment may be appealed to the Court of Appeal.

Court of Peace.

Article 86 of Ordinance No. 4, dated October 18, 1949, provides that in South Viet-Nam the jurisdictional competency of the Court of Peace is prescribed by Arrete dated March 7, 1934 and subsequent documents, and in Central Viet-Nam by Arrete No. 9 dated April 23, 1947 and Arrete No. 877 dated November 20, 1947 issued by the provisional government council of Central Viet-Nam.

The 1934 Arrete, applicable to South Viet-Nam, and the 1947 Arrete, applicable to Central Viet-Nam, differ in some respects but the provisions relating to the jurisdiction of the Court of Peace are generally similar.

Non-contentious judgment. The Court of Peace is empowered to conciliate all civil and commercial conflicts regardless of the amount in controversy. In Central Viet-Nam, the Justice of Peace is empowered to convene and preside over the Family Council, and it controls the guardianship of incompetent persons. In South Viet-Nam, the Justice of Peace has power to issue documents which take the place of birth or death certificates. He can also order or rescind a lien against property, and order an inventory of property.

Jurisdictional competency. In Central Viet-Nam, the Justice of Peace is empowered to render original and final judgment in commercial and civil cases involving actions in personam, or relating to personal estates, or to claims for reimbursement or payment for injuries caused by an offense not yet tried by a criminal court, if the amount in controversy is not over VN $150. He also has original jurisdiction over cases in these categories when the amount involved is over VN $150 but not more than VN $500. These original judgments may be appealed to general trial courts (Courts of First Instance, or Courts of Peace with Extended Jurisdiction.)

In South Viet-Nam, the Justice of Peace is empowered to render original and final judgments in cases involving actions in personam or relating to personal estates if the amount in controversy is not over VN $150. He can adjudicate such cases originally if the amount in controversy is not over VN $450, and he can adjudicate possessory actions.

Possessory actions are divided into three categories:

(1) Complaint by the possessor of real estate against the disturbance of his right.

(2) An action "denouncing new construction" to prevent future infringement by such construction.

(3) Reinstatement action used by the possessor to restore his right of possession whenever that right has been violated.

The Arrete of 1947, applicable to Central Viet-Nam, does not mention the possessory actions.

In cases relating to labor accidents, the Court of Peace may have jurisdiction over claims for funeral fees, medical treatment, and daily allowances.

There are two courts of this type in South Viet-Nam, one in Saigon and the other in the chief town of Sadec. There is only one in Central Viet-Nam, at Hoi-An in Quang-Nam Province. However, by Decree Law of July 29, 1964, the Administrative District Chiefs may concurrently assume the function of Justices of Peace. Further, pending establishment of additional Justices of Peace, all Courts of First Instance and Courts of Peace with Extended Jurisdiction exercise the function of Justice of Peace.

Jurisdiction Assigned to the Court of Second Resort. The law permits a party to request that a case be tried again, but the principle of double levels of jurisdiction is not absolute. It sometimes is not necessary that a case be tried twice: if there is a need for quick relief, such as a request for provisional compen-

sation or funeral expenses resulting from occupational accidents, as provided by Arrete of January 31, 1944, or by the nature of the ligitation, as in a land case, or by settlement out of court.

In principle, the Court of Appeal is the Court of Second Resort for the retrial of cases. In addition to hearing cases previously tried by the Courts of First Instance, it also hears cases arising in many different circumstances, such as appeals from the Commercial or Civil Divisions of the Civil Courts, appeals from ex parte orders, decisions of Urgency Procedure and the House Lease Courts, appeals from judgments of the Courts of First Instance on labor cases in areas not having Labor Courts, etc. All objections based on jurisdiction of the Court of First Instance, whether of great or little monetary value, may also be appealed.

However, the Court of First Instance and the Court of Peace with Extended Jurisdiction may also function as the Court of Second Resort in the following circumstances:

- Appeals from decisions of the Labor Court, which was organized according to Article 241 of the Labor Code.
- Appeals from decisions of the Court of Peace, organized according to Ordinance No. 4, according to the value of the amount in litigation.

TERRITORIAL JURISDICTION.

In South Viet-Nam, according to Article 9 of the Arrete dated March 16, 1910, application for suits involving personal actions

and chattels must be made at the office of the Clerk of Court at the defendant's residence, or at the residence of one of them if there are several defendants.

In Central Viet-Nam, Ordinance No. 55 dated August 2, 1933 contains the same provision. The principle "Actor sequitur forum rei" is applied for the court of special jurisdiction, as well as for the court of general jurisdiction.

Even though this is designed for the benefit of the defendant, he can agree to trial at a court in whose jurisdiction he does not reside.

Further, the law has provided many exceptions. With regard to actions on real estate, the court where the real estate is located has competent jurisdiction, as provided by Article 9, Para. 3, of Arrete of 16 March 1910.

With regard to societies, in suits between members, the case law applied by Article No. 59, Para. 5 of the French Code of Civil Procedures as ratio scripta provides that the court of competent jurisdiction is determined by the location where the society is established.

Case law recognizes the jurisdiction of the court where a branch or agency of the defendant society is located. This can be anywhere that a legal representative of the society has dealings with its customers.

Article 9 of Arrete of 1910 does not provide for disputes between heirs, or between a creditor and an heir, or between the

legatee and official heir. In South Viet-Nam, case law developed under the French Code of Civil Procedure determines that the court of competent jurisdiction is the court probating the estate.

Article 20 of the Civil and Commercial Procedure Code for Central Viet-Nam provides similarly.

Article 311 of the Civil Law of North Viet-Nam, and Article 309 of the Civil Law of Central Viet-Nam, determine clearly that the estate is probated at the last residence of the deceased.

With regard to actions involving insurance, Article 3 of the Law of July 13, 1930 requires adjudication at the court of the residence of the insured person, with two exceptions:

(1) If it concerns fire insurance, it must be adjudicated where the real or personal property is located.

(2) If it concerns accidents, the insured may bring suit where the accident occurred.

Limit on Competency of Jurisdiction.

The principle is that the court judging the main case has the right to consider peremptory pleas. However, the respondent, on the basis that the law allows the court to consider all the causes for a peremptory plea, can take advantage of this provision and bring forward points over which the magistrate would not otherwise have jurisdiction. Accordingly, competency of jurisdiction is variable.

The traditional practice is that all causes for a peremptory plea must be considered by the judge of the court of general jurisdiction even though they may be in, or depend on, the jurisdiction of another court.

A court of general jurisdiction that has taken cognizance of a main case also has jurisdiction over causes for a peremptory plea raised thereafter although these causes are under the jurisdiction of another court of general jurisdiction.

In some instances, the principle that "the court that judges the case also considers the peremptory plea" is not applicable to the court of general jurisdiction when this principle violates the system of the courts.

If the defendant presents a point which is under the jurisdiction of an administrative court, the court of general jurisdiction must temporarily halt its proceeding and transfer it to the administrative agency involved for adjudication of the particular point, after which it may continue to judgment on the case.

If the defendant presents a point which is under the jurisdiction of a criminal court, the court of general jurisdiction must temporarily halt its proceeding and await the decision of the criminal court, in accordance with the principle that "a criminal case postpones a civil case."

If the defendant establishes an exception concerning a political article of an international agreement, the civil court must interrupt the trial in order that the Secretary of State may explain or clarify the matter.

Courts of special jurisdiction are more cautious in the application of the foregoing principles. It is recognized that courts of special jurisdiction have the right to decide on points on which a peremptory plea is based even though such matter may be under the jurisdiction of an equivalent court at another location. When a right is explicitly and exclusively assigned to a civil court of general jurisdiction, the civil court of special jurisdiction and all other judicial agencies must respect that assignment and postpone the trial until that court has acted on the matter. Thus, the principle that "the court in which judgment is to be rendered has the right to consider the peremptory plea" has a narrower application in the courts of special jurisdiction than in those of general jurisdiction.

HIGHLANDER HABITS AND CUSTOMS COURTS.

To meet the aspirations of the Highlanders and to further the solidarity between them and the Vietnamese, Decree Law No. 6/65 of July 22, 1965 reorganized the Highlanders Habits and Customs Courts in the Central Viet-Nam Highland regions. These courts have jurisdiction over civil, commercial and criminal cases in which the parties involved are Highlanders. However, Article 2, Sec. 2 of the Decree Law indicates that suit may be brought in a National court if they so request.

At the lowest level there is a Village Habits and Customs Court, the composition of which includes the Chairman of the Village Administrative Committee as Presiding Judge, and two Highland jurors elected by the people. At the District level there is a Highlanders Affairs Court at which the District Chief, who is concurrently Judge of the Court of Peace, is Presiding Judge, and two Highland jurors who are elected by the people.

The Village Habits and Customs Court has jurisdiction in the first instance in suits involving amounts not in excess of VN $500.

The District Highlanders Affairs Court has jurisdiction to render final adjudication on appeals from decisions in civil and commercial cases by the Village Habits and Customs Court within the district, to adjudicate in the first instance and in the last resort civil and commercial suits within its jurisdiction involving amounts over VN $500 but not more than VN $1,500, and to adjudicate in the first instance, with the right of appeal from the judgment, civil and commercial suits involving amounts over VN $1,500 or undetermined.

In each National Court of First Instance in Central Viet-Nam Highlands, a Highlanders Affairs Commission, including one Highland Presiding Judge and two Highland jurors, is established. The judge, as well as the jurors, must be natives of the Highland. The jurors are elected by the people, and the presiding judge is elected by the alternate and actual jurors of the District Highlanders Affairs Courts in the territory of the province court concerned.

The Province Highlanders Affairs Commission has jurisdiction to adjudicate in the last resort appeals from judgments in the first

instance rendered by the District Highlanders Affairs Courts, and to adjudicate in the first instance all suits which are not within the jurisdiction of the Village Habits and Customs Court and District Highlanders Affairs Courts.

In courts of higher jurisdiction, in suits between Highlanders the usual composition of the Court of Appeals will include two additional elected jurors, who must be Highlanders. With this composition, the Court of Appeals by a writ of certiorari has the right on its own initiative to retry cases it determines were wrongly adjudicated by the District Highlanders Affairs Courts and Province Highlanders Affairs Commission. The delay for execution of this power is thirty days as of the date the appeal from the judgment in first instance expires. As to final judgment, the delay of thirty days commences on the date of announcement of the judgment. The Court of Appeals will pass on the formality and content of the case within thirty days of receipt of the file.

Civil disputes between Highlanders and Vietnamese, as well as criminal cases in which both Highlanders and Vietnamese are involved, are judged by the National courts in accordance with their jurisdictions. They have their usual composition plus two assessors: one Highlander and one Vietnamese.

ADMINISTRATIVE COURTS.

The Pension Court.

This court was established by Ordinance No. 22 of 15 November 1952 to try disputes arising from the application of the pension

regime determined by this Ordinance for disabled and invalided Vietnamese war veterans and their heirs.

Such disputes are settled at two levels of jurisdiction: in the first instance by the Pension Court of First Instance at the Regional level, and in appeal by the Pension Court of Appeal at the Regional level. Both courts have the character of an administrative court of special jurisdiction although they are both presided over by a judicial judge.

The Court of First Instance hears cases wherein the petitioner objects to decisions of the Minister of War Veterans and Invalids fixing the payment of, or refusing, pensions, and to decisions made by both the Minister of War Veterans and the Minister of Finance amending such decisions previously signed by the Minister of War Veterans.

The Regional Pension Court of Appeal has jurisdiction over appeals from sentences of the Regional Pension Court of First Instance. Appeal may be made by the war veteran or by a representative of the government.

Appeals from decisions of the Regional Pension Court may be made to the Council of State on grounds ofabuse or misuse of power, defects as to form, or violation of law.

The Administrative Court.

At present there is only one Administrative Court in Viet-Nam. It is located in Saigon, and has jurisdiction over the entire country. It tries in the first instance claims for reimbursement of damages relating to administrative entities, petitions for cancellation of administrative decisions relating to the administrative status of public servants appointed by the Ministers, the Secretary of State, Government delegates

and Province Chiefs, and disputes relating to provincial, district and village elections. Further, it tries in first and final judgment cases involving problems of direct taxes and those assimilated thereto.

The Council of State.

This is the highest court of the Administrative Court System. It was established by Ordinance No. 38 of November 9, 1954 to replace the Administrative Section of the former Supreme Court. Located in Saigon, it has jurisdiction over the entire country. It is comprised of a judicial and an administrative board, although only the judicial board is reviewed herein.

The Judicial Board includes a presiding judge, two assessors, and a government counsel. The presiding judge is selected from among the president, vice presidents and advisors of the Council of State. The assessors and the government counsel are selected from among the advisors. Its functions include:

- Review of all sentences ruled in the first instance by the Administrative Court.
- Consideration of petitions to void sentences ruled conclusively by the Administrative Court or by courts of an administrative nature.
- Ruling in first and final instance on all petitions for cancellation of administrative decisions for individuals or for regulations based on misuse of power, lack of jurisdiction, violation of law, nonmotivation or inaccurate motivation.

- Trying in first and final instance any litigation relating to the administrative status of public servants appointed by decrees or arretes of the Chief of State.

It also has jurisdiction, by special decrees and ordinances, to adjudicate other litigation:

- Ordinance No. 57/3 of October 22, 1956, Articles 31, 48 and 53, prescribes professional regulations for doctors, dentists and midwives. Law No. 1/58 of January 10, 1958, Article 90, prescribes those for pharmacists. The Judicial Board hears in first and final instance disputes relating to elections of the national associations of the foregoing.

- Ordinance No. 57/3 of October 22, 1956, Articles 25, 48 and 53, and Law No. 1/58, Article 83, delegate it jurisdiction to hear appeals made by doctors, dentists, midwives and pharmacists against decisions of their respective National Councils refusing their enrollment on the Council membership lists.

- Ordinance No. 57/3, Articles 40, 48 and 53, and Law No. 1/58, Article 100, grant it the authority to adjudicate appeals of the foregoing involving disciplinary actions taken by their respective National Councils.

- Ordinance No. 22 of November 15, 1952, Article 73, assigns it authority to adjudicate disputes relative to payment of permanent or temporary pensions to the military and their heirs under Article 92 of that Ordinance.

LITIGATION PROCEDURE BEFORE THE JUDICIAL ORGANIZATIONS.

Civil procedures, like the administrative, are as follow.

Litigation of controversies. A definition of the controversy between the parties at court is necessary both for the clarification of the issues between the parties and for the information of the officers of the court.

Public, or Open, Hearings. The principle of open sessions for the preservation of justice is of benefit to the individual parties at court and also for the benefit of the public. There are exceptions to the application of this general principle in matters which may tend to aggravate or offend public morals, and in cases of divorce or judicial separation, as provided in Decree Law No. 15/64 of 23 July 1964, Articles 72 and 95, which also prohibits publication in the press of details of such cases.

Control of Litigation by the Judges. The Central Viet-Nam legislation provides, in Para. 1 of Article 72 of HSTSTT (Civil and Commercial Procedure Code) that "The Presiding Judge must closely follow the procedure of a case." This is not specifically provided in the Arrete of 16 March 1910, the Procedure Code of South Viet-Nam, but the rule is nonetheless generally applied. Chapter I of Article 10, in referring to petition for trial, provides that at the time of filing the petition the complainant must certify to his right to file the petition, and the legislature has granted the judge control of the record and the right, if he deems necessary, to order the case to trial.

In administrative procedures, the judge orders delivery to the parties of copies of the procedural documents, sets the time for presenting their pleas, and conducts the examination necessary to the trial without the parties to the suit having to request his doing so, unless otherwise provided by law. The judge determines when to end the examination and when to order the case be brought to trial. He makes the report and drafts the judgment.

Neutral Position of Judge. The judge in civil cases must maintain a neutral position. He is restricted, as contrasted with judges in criminal courts, in the extent of his investigation. It is the intention of the law that the court solve a case rapidly, but the judge has no authority to introduce evidence on behalf of any party. The judge does have the right to control introduction of the evidence and he can reject the testimony of any of the parties, or, before rendering judgment, he can force one or all of the parties to take an oath as to their testimony. In order that the investigation may be just, the court ensures that the procedures followed and the proving of evidence are all in accordance with the applicable laws. Testimony obtained by individual examinations outside of the court and not in the presence of the parties to the suit may not be considered.

Administrative procedures differ from civil in many ways, including the following:

1. Administrative procedures are simpler and less expensive.

2. Proceedings before the Administrative Court are written. All petitions, pleas, exceptions and discussions between the parties must be in writing for the record. The procedure in the civil court for answering on the merit of the complaint is simpler. The attorney may plead orally, as, for example, during interlocutory contestations to answer the opposing party.

3. Service of documents. Under administrative procedures, all petitions, documents, defenses and written pleas are served on the parties by the administrative servant, such as the officer-messenger, or by the administrative authorities, such as the Province or District Chief, or the Chief of the Commune Board. In civil procedures, only notification of the summons and notice of judgment must be served, and there are various methods of service:

- Article 261 of the Labor Code provides for service in labor litigation by registered mail with return receipt. Article 30 of Ordinance No. 4 of 2 April 1953 provides similarly for litigation in the House Lease Court.

- Article 26 of the Civil and Commercial Procedure Code authorizes service by the communal servant. The Village Chief is designated by Articles 252 and 256 of the Arrete of 16 March 1910, and at present the police and security commissioners are so authorized.

- Article 18 of Arrete No. 111 of 4 February 1950 provides for service by a process server. He is restricted as to time: he cannot legally notify or execute documents before 5:00 a.m. or after 7:00 p.m., nor on legal holidays, except in criminal cases. However, a

judge can waive this restriction so that service may be made at any time.

THE CIVIL PROCEDURE.

Commencement of Litigation.

Litigation is always begun by a petition for trial. The complainant must include in the petition his full name, age, profession, birthplace, residence, subject of the suit and causes therefor, his request, and the full name of the defendant. (Article 14 of the Code of Civil and Commercial Procedure, and Article 6 of Arrete 1910.) He must also attach to his petition all documents relative to the case in order to support his request.

Documents are filed in the office of the clerk of the competent court, who records the date of receipt of the petition. This is the beginning date of the case. The complainant mustpost a bond of an amount according to the importance of the case, although he may be exempt from such a deposit if he is entitled to judicial assistance.

Measures of Conservation.

Upon commencement of suit the complainant may request measures of conservation over the defendant's property to guarantee satisfaction of judgment if he is successful in his suit.

In areas applying the system of land registration under the Decree of 21 July 1925, the complainant may request an urgency order to file notice of suit against the title of the defendant's real property in the Land Book.

Article 398 of the referenced Land Code provides for a procedure called Entry on Restraint of Alienation. The making of this entry in the Land Register is grounds for annulment of any subsequent transfer of title upon petition of the complainant. However, if he loses his case at the court, he may be ordered to pay damages to the defendant.

In Central Viet-Nam, Articles 52 and 71 of the Civil and Commercial Procedure Code provide that the court can seize for the purpose of conservation real properties and chattels as a guarantee of satisfaction during investigation of the petition of complainant and any counterclaim of the defendant.

In South Viet-Nam, Article 167 of the Arrete of 16 March 1910 provides that a creditor may request an order to execute measures of conservation, or temporary seizure, although precedents recognize only distraint on moveables. This may be by sequestration, but most of the judges prefer that the matter be brought before the Court of Urgency Procedure in order that the defendant may also be heard.

Conciliation.

The law of South Viet-Nam, under Articles 3 and 4 of Arrete of 16 March 1910, provides for conciliation between the parties; although it is not compulsory. The complainant may request the District Chief or the Communal Administrative Chief to conciliate a conflict or to bring it before the court for trial. In an area where there is a Court of Peace, that judge has the right to attempt conciliation.

The law of Central Viet-Nam, in Title V of Chapter 3, prescribes the conciliation procedure. The Judge of the Court of Peace may attempt conciliation between the parties, unless such is exempted by law. A conciliation accepted by the parties has validity as a contract between them.

Summons:

If conciliation efforts are not successful, documents and registered papers are completed and the court issues a summons to the parties to appear.

Trial Court.

Lawyers are permitted by law to represent their clients before the court, but the law does not require a party to have an attorney. He can defend himself, or, according to Article 35 of the Arrete of 16 March 1910, assign his spouse, relatives or friends to represent him. This latter is done by a formal act of procuration.

There is an exception to this, in suits by children against their parents. Article 13 of the Arrete of 16 March 1910 provides that the eldest of a family must be in charge of any such action, and if he refuses, the prosecutor's office will represent the child upon request.

If the party appears personally, the court must first check his identification card. If he has a legal representative, the court must check the letter of procuration of the representative. If he is represented by his lawyer, no check is made of his

identification card or letter of procuration, and the deliberation before the court is only the exchange of conclusions between lawyers.

The law requires that the party be interrogated immediately before trial, but he can present his statement in writing. Any such written statements will be registered by the Clerk of Court in the Record of Trial.

It is the intent of the legislature, as expressed in Article 43 of the Arrete of 16 March 1910, and in Article 78 of the Code of Civil and Commercial Procedure, that judgment be made immediately. The judge cannot adjourn the case if he has sufficient factors on which to base a decision. The appearance of both parties has been determined by law to be sufficient to judge a case. Thus, as provided in Articles 24 and 25 of the Arrete of 16 March 1910, and Articles 72 and 75 of the Civil and Commercial Procedure Code, if one of the parties to a suit dies, it is not necessary to call a relative to appear in his stead.

Absence of Either or Both Parties.

In South Viet-Nam, if the plaintiff does not appear at court, the judgment is rendered in his absence and he must pay all court fees.

Judgment is announced to the parties within forty-eight hours by the Clerk of Court. The plaintiff has the right to oppose within

thirty days, including the day he receives notification of judgment. Beyond that period, his only recourse is to the Court of Appeals.

The law of Central Viet-Nam is most strict. According to Articles 96 and 98, the court not only can dismiss the case, but it also can punish the plaintiff as a petty offender and can also order him to pay damages to the defendant to compensate for his unnecessary appearance.

The law of Central Viet-Nam also provides for the case where there are two or more plaintiffs but not all appear in court. The court can separate the case and judge as to those who appeared and as to those absence in accordance with the previous paragraph herein, as provided by Articles 96 and 98 of the Code of Civil and Commercial Procedure.

If both the plaintiff and defendant fail to appear, according to the laws of Central Viet-Nam (last paragraph of Article 95), and of South Viet-Nam (Article 54), the court will dismiss the case.

As to default by the defendant, Article 59 of the Arrete of 16 March 1910 provides that his absence will be immediately announced in court and the plaintiff's request will be accepted if there is sufficient evidence to sustain it.

Article 99 of the Code of Civil and Commercial Procedure provides similarly, and also authorizes dismissal by the court of the plaintiff's request if it is contrary to law.

If there are two or more defendants but not all appear in court, the court will order a judgment by default, certifying the absence of the specific defendants, and postpone the case to another time. At that later time if some defendants are absent the case will be heard and judgment rendered which will be binding on all parties whether present or not.

Termination of Litigation.

Litigation is ended by judgment, and also in other ways. The plaintiff may withdraw his action, the defendant may accede to the plaintiff's request, the parties may settle their differences between themselves, or by reconciliation with an arbitrator. The case may also be terminated without judgment if the complainant, whether purposely or inadvertently, allows the case to go beyond the prescription period.

The court must dismiss a case, in accordance with Article 77 of the Code of Civil and Commercial Procedure, when the parties agree among themselves and let over eighteen months elapse without appearance at court.

The Arrete of 16 March 1910 specifies clearly that prescription will be accepted if the plaintiff takes no action for six months after the final or last procedure (Article 29) but the defendant must request such prescription. The court has the right to determine whether the plaintiff's delay is reasonable and whether it can grant the defendant's request, and the plaintiff cannot bring a new petition in protest (Article 31.)

INTERLOCUTORY CIVIL PROCEDURE.

This includes all objections and actions to interrupt the litigation. Interlocutory procedure may be related to the externals of the litigation, changing the situation of the parties after the petition (counterclaim, petition for attendance, etc.) and to the composition of the court (transfer of a case to another court for legal cause, recusation, challenge, etc.), to the capacity of the litigants (except to non-payment of a bond in case of a foreigner) and to the irregularity of procedure (dilatory exception). Further, interlocutories may also be granted during investigation, such as on exceptions to testimony.

Testimony of the Parties.

One of the most simple and effective methods is to call the parties themselves to testify before the court during investigation of the case. They are called by summons of the clerk of court and interrogated by the judges in open session. A report is drafted immediately, signed by the parties, the presiding judge and the clerk, and filed.

Inspection.

It is sometimes necessary for the judge to visit the locale involved in the suit. Particularly in cases relating to real property, he may need to personally view the common wall, the right of way, the interference with enjoyment of the view, etc. All the

parties to the suit are summoned to be present at the site on the day determined by the judge for the visit. The prosecutor need not be present. After the visit a report is prepared and signed by the presiding judge and the parties concerned.

The Survey.

This is a very precise and current method of investigation, and it is used when the court needs the opinion of specialists in order to render an interlocutory judgment. A court order for a survey must mention precisely the object and the points to be considered, and the time period for presenting the report. The court usually is required to designate only one surveyor, but in a complex case it may, with the agreement of the parties, designate a board of surveyors. In principle, the expert's report is not binding on the judge. (Article 31 of Arrete of 16 March 1910, and Article 194 of the Civil and Commercial Procedures Code.) Before reaching a decision on the substance of a case, the court may interrogate the surveyor as a witness. The court may also order a counter survey for further clarification after hearing the parties who conducted the previous survey.

Examination and Requirement of Dossier.

This is a procedure allowing the court to demand that all original documents concerning authentic acts stored in the government office of the legal officer (notary public, or clerk of court) be submitted to

the Court. It allows a party to request the Court for a copy of such documents in cases he did not attend. The examination of criminal files is usual (Article 211 of the Civil and Commercial Procedures Code, and Article 113 of the Arrete of 1910.)

There must be a provisional judgment based on the application of the plaintiff or defendant, or by order of the Court.

If it is a criminal case the investigation of which has been delayed at the Prosecutor's office, or if the charge is dismissed, examination of the document is allowed only upon approval of the Prosecutor General of the Court of Appeal.

Swearing.

The law distinguishes two different forms. The res judicata swearing has validity for deciding the result of a case where no evidence is produced as to which one party challenges the adverse party to swear. The assistance swearing is a form to help the judge to decide if he feels it necessary to reinforce the conviction by having the parties to the suit swear.

Article 89 of the Code of Civil and Commercial Procedure outlines the circumstances under which the parties must be sworn, according to the Central Viet-Nam Civil Law Code. Articles 1669 and 1677 of this Code recognize two forms of swearing, as above. The law generally determines the manner of swearing according to the religion of those involved. The Vietnamese often swear before the communal house, a pagoda, temple, or sacrificial ancestral temple. They drink chicken blood mixed with water after swearing to what is written in the provisional judgment.

Investigation.

Under the Litigation Law of Viet-Nam, the Court may order civil investigations in all cases. When application is made for an investigation, the Court will examine all points introduced to see whether they are justified and can help to decide the case. All the reasons for accepting or rejecting the application must be stated in the judgment (Article 64, Arrete of 1910, and Article 159 of the Code of Civil and Commercial Procedure.) The Court has full authority to determine whether or not to investigate, and will reject any request if it considers the only reason for it is to delay the lawsuit.

There are two forms of investigation: one at the Deliberations Office, and one at a session of the Court. At the Deliberations Office, investigation is often made by a magistrate delegate, and at a session of the Court, the Presiding Judge will personally interrogate the witnesses.

The law of Central Viet-Nam outlines the circumstances wherein a court may request another court, or a judge in another judicial district, to conduct the investigation without the presence of the parties in the case.

The plaintiff may request an investigation and, after its completion, the defendant may request a counter-investigation to obtain contrary evidence in order to establish that the facts stated by the plaintiff were false.

Investigation is an important procedural form, and violation of the form may render the procedure null and void, in accordance with

the Arrete of 16 March 1910, Article 77, as to South Viet-Nam, which stipulates that "Nullity of investigation can be examined at the same time as the substance of the case." The law of Central Viet-Nam does not mention this point.

Examination of Handwriting.

Any private document may be questioned. The holder of a suspected document may, during the process of a suit, request an examination of the document. Both of the two Codes of Procedure in Viet-Nam have decided alike on this matter (Article 93 and 99 of the Arrete of 1910, and Articles 195 and 203 of the Code of Civil and Commercial Procedure.)

The court will usually designate a handwriting expert, and in Central Viet-Nam it is usual to have three such experts, to check handwriting.

A provisional judgment may be granted for permission to verify handwriting on records in dispute in the office of the clerk where prosecution took place. The verification is signed, in order to preclude any change, by the presiding judge, the clerk of court, and the parties to a suit.

Forged Documents in a Civil Suit.

If a claim of forgery is made as to allegedly authentic papers introduced in a civil suit, the party intending to submit the papers is questioned as to whether he will in fact introduce them. If he wishes to withdraw them, the court will allow him to and overlook the matter. The court shall also overlook the challenge if this is

considered groundless. If he insists on using them, the court must outline to the party challenging their authenticity the difficulties, responsibilities and results of the challenge.

If the party continues in his determination to raise the question of forgery, the court will grant permission for him to submit his claim in the criminal courts and will transfer to the Public Prosecutor's Office, under the law of South Viet-Nam, or, in Central Viet-Nam will fix a period of time within which the claimant must proceed in the criminal court. The civil proceedings are halted until judgment is pronounced in the criminal proceedings. If the claimant changes his mind during the halt and withdraws his claim of forgery, the Civil Court will try the substance of the case. After judgment in the criminal court, the civil court will resume consideration of the case. The decision of the criminal court shall be binding on the civil court: the civil court shall either reject the challenge or take the forged document off the file, according to the judgment of the criminal court. In both North and Central Viet-Nam, the person who unsuccessfully challenged the authenticity of the documents may be ordered to make compensatory payment to the other party.

SPECIAL PROCEEDINGS.

Petition for Divorce and Judicial Separation.

Petition. Upon receipt of a petition for divorce or judicial separation, the court will hear the plaintiff's reasons and will advise against the action. If the plaintiff persists, the court will order

the other spouse to appear with the plaintiff on a fixed date for a reconciliation effort. In this order, authorization to live apart may be granted under exceptional circumstances. The summons shall be served, together with a copy of the petition, to the defendant by the Process Server three full days prior to the day set for the reconciliation effort. However, additional time may be granted, depending upon the distance of the defendant's residence from the court. The summons shall be null and void if the applicable procedure is not followed.

Reconciliation. If the plaintiff if absent from court on the appearance date, another summons will be issued fixing another date. Two consecutive absences of the plaintiff will result in cancellation of the petition, and a new one may not be filed within a year.

If the defendant resides within the jurisdiction of another court, the court at which the petition was filed may authorize that other court to take the statement of the defendant.

If the defendant is absent, or if reconciliation is not accomplished, the court will order a second reconciliation effort three months later.

If the two efforts at reconciliation fail, the court will issue a decision permitting the plaintiff to continue the proceeding before the trial court. In this decision the President of the Court may decide upon the temporary residences of the spouses, the handing over of the personal effects of each, custody of the children, visitation rights, and the amount of alimony. Appeal may be made by Urgency Procedure within eight full days, but this will not delay immediate

execution of the decision. These provisional orders may be amended, changed or completed during the course of the proceedings.

Upon the first order, the spouses have the right to request conservation measures to safeguard their interests, particularly with respect to affixing of seals to common property. The Justice of the Peace is in charge of this. The judge shall order the sealing except when the defendant, through emergency procedure, objects. Even if the wife is not within the community property statute, she has the right to request sealing of the property enjoyed or administered by her husband. Each spouse has the right to request cancellation of the seals to inventory and appraise the property. Following this, the property is entrusted to the care of the party actually in possession unless otherwise ordered by the Court.

Proceedings Before the Trial Court. Action for divorce shall be cancelled if the spouses reconcile after having been authorized to live apart. However, petition for divorce may again be made, based on other reasons occurring after the reunion, or on the same grounds as the initial petition. The action for divorce shall also be cancelled if one of the spouses dies before the judgment of divorce becomes final.

It should be noted that, contrary to the general rule, at any time in the course of the proceedings the plaintiff may change his initial petition for divorce into a petition for judicial separation. The defendant has the right to counterclaim for divorce, based on the wrongs of the other party, by submitting pleadings before the Court.

The press is forbidden to publish details of divorce cases, and may report information only about the court's decree adjudging the end of the case.

If the summons for the defendant to appear cannot be served on him in person, the Court shall order insertion of the notice of summons in three newspapers located within the territorial area of the court concerned or at the last residence of the defendant.

Prior to any determination by the Court, the dossier must be transmitted to the Prosecutor's office for study and advice.

If the reasons forming the basis for the divorce petition are denied, an investigation may be ordered by the Court. Servants and relatives of both parties, but not the children, may be questioned as witnesses.

Judgment. When the divorce judgment is final, it will be noted in the records of the Registrar's Office at the place of marriage, at the request of the Prosecutor. It will also be noted on the margins of the marriage and birth certificates of both parties.

The judgment has retroactive effect between the spouses with regard to their properties from the date of the initial petition. However, as to third parties it is effective only from the date of notation.

Notice of judgment must be published in a newspaper located within the territorial area of the court, or in the nearest area.

The spouse absent on the judgment day may enter a motion for a new trial within a month after the notice of judgment by default is

served on him or her in person. Otherwise, only an appeal to a higher court may be made within six months after the judgment becomes decisive. (Article 83 of Decree Law No. 15/64 of 23 July 1964.) A counterclaim by the defendant may be submitted for the first time before the Court of Appeal. An appeal will have suspensive effect.

Emergency Procedure.

The simple and expeditious emergency procedure may be employed when there is a pressing need. A judge may hear a case of top urgency at any time, even at home. (Articles 245 and 247 of Arrete of 1910.) The judgment rendered will have immediate effect, even before it is registered, contrary to ordinary procedure. The bailiff shall use the original judgment for execution of the court order, and then return the judgment to the office of the Clerk of Court for registration.

Whether the defendant appeared or not, he only may appeal to the Court of Appeals within ten full days from the date of notification.

The emergency procedure, summarily prescribed by Arrete of 16 March 1910, applies only in South Viet-Nam. In such cases in Central Viet-Nam, it appears necessary to bring them before the regular sessions of the court.

Procedure Before House Lease Courts.

Summons is served by registered letter, with acknowledgment receipt requested, to the defendant fifteen days before the date of trial.

The judge must try to have the parties reach an amicable settlement. If a reconciliation is effected, a report with execution formula shall be made, but that effort failing, the case will be promptly heard. Judgment is rendered in the Deliberations Room, and is called a decision. If it is a default judgment, notification must be made within five days instead of ten according to common law, again by registered letter, and the defendant has fifteen days from the date of notification to enter a motion for a new trial. When judgment is rendered in the presence of both parties, they have twenty days to appeal and the case shall be transferred to the Court of Appeals to be retried.

Procedure Before the Land Reform Courts.

Land Reform Procedure was prescribed by several legal documents issued over a long period of time.

Ordinance No. 2 of 4 June 1953 established the Tenant-Farmers Statute, but was amended by Ordinance No. 20 of 8 January 1955 in Article 24, which stipulated that any litigation must go first to the Provincial Agricultural Committee for a reconciliation.

Decree No. 558 DT/CCDD of 5 December 1958 added: "Any farmer may directly bring a lawsuit to the Land Court in case a dispute over land matters occurred in a place where no Agricultural Committee had been established. The plaintiff also may bring his case to the Land Court if an available Agricultural Committee does not either examine his petition or try to effect a reconciliation." In such litigation, all tenant farmers concerned are officially entitled to Judicial Assistance.

The Land Reform Court system was established by Decree No. 498 DT/CCDD of 27 November 1957. Articles 11 and 12 provide that the procedure before these courts shall be similar to that of the Courts of First Instance. Cases brought to the Land Court are free of court costs.

Cases are to be brought to trial within forty days from the date the petition is filed. Judgments are final. However, they are enforceable only after approval by the Land Reform Council, as provided by Decree No. 74 DT/CCDD of 4 April 1957. According to Decree No. 588 DT/CCDD, if a judgment is rejected by the Council the case will be referred to a Land Reform Court in a neighboring area for retrial. This court does not review the case in the capacity of a Court of Appeal. It adjudicates as a special court of the same nature and level as the previous court, and is delegated the power to try a case beyond its jurisdiction.

The question arises, "What is the next process if the second Land Court does not follow the opinion of the Council?" It is worth noting that the Land Reform Council does not constitute an upper court of any kind. It only may prevent a judgment from being executed for political reasons, but interpretation and application of the law are still under the court's competence. The second Land Court must not have been expected to oppose the Council, since so far no provisions have been stipulated with respect to the problem. A case should, however, not be judged more than twice, and thus the decree above should be amended.

Procedure Before the Labor Courts.

Petitions filed at the Office of the Clerk of the Labor Court are exempt from stamp duties, registration fees and other costs.

The aggrieved party may also submit his petition to the office of the Labor Inspector. That officer has the power to attempt to have the parties reach an agreement. If he fails to effect a conciliation, the initial petition will be referred to the Labor Court.

The parties will be called for appearance at court by registered letter sent ten days before the date of trial. It must bear the name, profession and residence of the plaintiff, the object of the lawsuit, and the date of appearance. If these formalities are not observed, the summons will be null and void.

If the plaintiff does not appear on the day of trial, the case will be cancelled. He may submit another petition relating to the same case after eight days, but no further petitions will be allowed.

If the defendant does not appear, the case will be tried by default.

If both parties are present, reconciliation will be attempted by the Court. If successful, a report of that is prepared and may be enforced as a real judgment. If agreement is not reached, the case will be promptly tried by the Court. Any necessary investigation, search or visit to the place where the offense occurred may be ordered.

Judgment rendered by a Labor Court may be executed eight days after it is pronounced. Appeal from the judgment may be taken within those eight days.

Employees and workers enjoy legal assistance at every stage of the proceedings before the Court of First Instance, whether plaintiff or defendant, but only the defendant in the higher courts.

Recourse Proceedings.

Objection to a Default Judgment. This has been discussed in the various default procedures.

Appeal. Because it is an ordinary recourse, this channel may be taken from every decision in contentious matters unless expressly prescribed by a particular statute,as, for example, judgments by the Land Reform Courts. A third party has no right of appeal, but may have recourse to a challenge of the judgment.

The right of appeal belongs to the party who, either in whole or in part, loses the lawsuit.

Form, Condition and Time Limitation. With regard to procedure, the law distinguishes between first appeals and counter appeals. The first appeal is taken by the party who lost the suit in the Court of First Instance. When the case has been so appealed and a further appeal is taken by the other party, that second or further appeal is called the counter appeal.

In case of first appeal, the declaration of appeal, which must be made by the party himself or by a representative with a special power of attorney, must be inscribed on a particular register maintained for that purpose at the Office of the Clerk at the initial court. (Article 115 of Arrete of 1910.)

In Central Viet-Nam, no firm condition or form is required. The appeal may be made orally, or in writing by letter or telegram addressed to the Clerk, the Judge, or even another authority. (Articles 117 and 118 of the Code of Civil and Commercial Procedure.)

In South Viet-Nam, the appeal must be taken within sixty days of judgment. In Central Viet-Nam it must be within thirty days.

If appeal is from a judgment by default, it may be made only after expiration of the time limit for an objection to a default judgment.

In case of death of a party to the suit, the prescribed time is suspended and runs only from service to his heirs of notice of judgment. (Article 120 of the Civil and Commercial Code of Procedure.) By Article 115 of Decree of 16 March 1910, a supplementary period of sixty days from service will be added.

For counter appeal, there are no provisions for form, condition or time limitation. In the counter appeal, reconsideration may be requested of points not mentioned in the first appeal.

Withdrawal of the first appeal does not modify the effects of counter appeal, but if the first appeal is ruled null and void, e.g., inconsistent in form or condition, the counter appeal cannot stand.

Effects of Appeal. Filing of an appeal suspends execution of the judgment except in cases where an immediate provisional execution has been authorized by the lower court.

The higher court has the power to reconsider the entire case, but in fact it limits its review to those points constituting the

basis for the appeal. The petitioner may not amend his appeal to present any additional demands.

Vietnamese law recognizes two cases in which the Court of Appeal has the right to hold a dossier of a case pending in a lower court and to try the case itself on its merits: where the judgment of the lower court is cancelled because of inadequacy of form, or where the judgment is null and void because of incompetency of the court. (Article 130, Arrete of 1910, Article129, Code of Civil and Commercial Procedure.)

Challenge of Judgment by a Third Party.

A third party who is neither a party to the lawsuit nor a representative of a party thereto may be granted the right to challenge a judgment which is prejudicial to his own interests. In principle, any judgment which causes damage to a third party may be subject to challenge. However, decisions not involving a dispute at law, and decrees by the Court of Cassation may not be subject to challenge.

No time limit is required for a challenge.

Article 233 of the Civil Code in Central Viet-Nam states that the challenge must be made in the form of a bill of complaint.

A challenge has no suspensive effect, although the court may order suspension of execution of judgment in cases where the party challenging is expected to win the case. (Article 135 of Arrete of 1910, Article 234 of Code of Civil and Commercial Procedure.)

The party who loses the challenge shall be sentenced to a fine plus compensation to the other party.

In case the challenged party loses, the judgment shall be either withdrawn or amended. Reversal or amendment of a judgment is effective only for the benefit of the petitioner. The initial judgment remains in effect as to all others.

Petition for Retraction of Judgment.

The Arrete of 1910 provides that retraction of judgment may be requested in the following cases:

- If there were false pretenses which caused the court to err.
- If the procedures are null and void because of defect in form before or during the trial.
- If judgment was based on points not demanded by the parties.
- If judgment was adjudicated beyond the demands of the parties.
- If there are contradictory decisions issued by the same court for the same case with the same parties.
- If there are contradictory articles in the same decision.
- If the judgment was based on false documents, or on documents declared false after pronouncement of judgment.
- If after the judgment is rendered, new basic documents retained by the opposing party are discovered.

The Code of Civil and Commercial Procedures in Central Viet-Nam, in Article 212, permits petitions in similar cases but not including false pretense.

Conditions. Except as to decisions of the Court of Cassation, request for retraction of any judgment by an ordinary or extraordinary court may be made.

The persons who may be granted this recourse are those who also have the right to appeal, i.e., the parties to the suit or their lawful representatives.

The time limit in South Viet-Nam is two months, and in Central Viet-Nam is one month. In case of false documents, the time runs from the date the forgery is denounced or acknowledged, and, where a new document is discovered, the time runs from the date its discovery is confirmed by written evidence. In other cases it runs from the date of pronouncement of judgment to the parties, or from expiration of the time for a motion for new trial.

In South Viet-Nam, the time as to false documents is the same as in Central Viet-Nam. In case of contradictory decisions, time runs from the date notice of the latest decision is served. In other cases, it runs from the date of service of judgment either in person or at his domicile. The period may be prolonged, in the case of a minor, until he reaches his majority.

Procedure. The case shall be referred to the initial court for examination of the unintentional error. The interested party must file a petition and deposit a substantial bond, otherwise the petition shall not be received. Additionally, three lawyers having a lengthy practice must express a favorable opinion, or the petition may not be received. (Article 153, Arrete of 1910.)

In Central Viet-Nam, the dossier shall be forwarded to the Ministry of Justice for advice and be returned to the court within twenty days with the necessary memorandum.

The trial comprises two phases: first, the court has to determine whether there is serious reason to receive the petition. Then the court in a second meeting renders a new decision to supersede the initial judgment if the petition is considered as well grounded. The decision ending these two phases is final and may be appealed only to the Court of Cassation.

In case of contradictory decision, the judgment from the first phase abolishing the challenged decision puts an end to the procedure and therefore the second phase is not necessary.

In principle, the petition for retraction has no suspensive effect. However, the Code of Civil and Commercial Procedure prescribed, in Article 217, that judges in Central Viet-Nam have the right to order suspension of execution of a challenged judgment.

Appeal for Annulment.

Legislation outlining procedure for annulment applicable to the National courts is provided in Ordinance No. 5 of 18 October 1949.

Grounds for Appeal. Request for annulment of a final civil judgment can be based only on:

- Lack of jurisdiction or abuse of power.
- Violation of law.
- Non-compliance with stipulated litigation procedure, which renders the proceedings null and void.
- Contradictory judgments of the same case in different courts.

Effect of Appeal. Appeal for annulment has no suspensive effect unless otherwise provided by law. Nor has it an effect of additional judgment.

The Court of Cassation has only the right to determine the applicability of laws claimed by the appellant. It judges only as to the legality, not the content of the suit, i.e., it does not review facts already adjudicated by the lower court.

A new cause for appeal is not normally allowed to be presented to the Court of Cassation. However, case law permits the following two exceptions:

- If the cause was not previously mentioned because it arises from the decision, i.e., an appeal on a question of legality.
- If it is in connection with public orders, provided, however, that it was available in the documents presented to the lower court.

Conditions of Appeal.

- It must be from a contentious judgment.
- It must be from a final judgment, whether by contradiction or by default. If by default, it is necessary that the time limit for a motion to a new trial have expired.
- Appellant must have the right to appeal or to petition for retraction of judgment.

The law provides for cases in which the Prosecutor General of the Court of Cassation may file an appeal. If there is a violation of law or irregularity of litigation, he can request an annulment of the decision. However, if abuse of power is involved, an order of the Commissioner General for Justice is required.

Delay and Procedures of Appeal. The petition must be made, either orally or in writing, at the office of the Clerk of Court within fifteen days from the date the notification of judgment is served either personally or at the appellant's residence. He must post a bond of VN $200, although this is not applicable to appeals filed by the Public Prosecutor. The Clerk of Court within one month must notify the other party by registered letter, with acknowledgment of receipt, of the request for annulment. Within three months the file must be forwarded to the Court of Cassation. The justification of the party, and the peremptory plea of the other party, are exchanged through the Clerk of the Court of Cassation.

According to Decree Law No. 14/65 of 17 September 1965, if the appellant does not file a plea within three months, the case will be brought before the court for trial. The court will also try the case for the defendant if, having been informed of the plea of the appellant, the defendant does not file a plea within two months.

The President of the Court will appoint an associate judge to make a report within two months. After receiving that report, the Office of the Prosecutor will prepare his conclusion and return it to theOffice of the Clerk of Court not later than three days prior to the trial.

Judgment. The judgment of the Court of Cassation must always be based on stated grounds. If the petition is rejected, the claimant is bound to pay all court fees, forfeit his bond, and pay compensation to the defendant equal to one and one-half times the amount of the bond.

If the judgment is reversed, the deposit for bond is returned to the claimant and the case is forwarded to another court of the same category for decision on the main issue of the case.

However, in some circumstances such a transfer does not take place:

- If the Prosecutor General of the Court of Cassation has filed the petition based on the interest of law in obtaining a unified jurisprudence.
- If the Court of Appeal had ruled on an appeal made beyond the prescribed legal term, or inconsistent with correct procedure, and the Court of Cassation reverses the decision of the Court of Appeal for these reasons, such transfer is not required.
- If there is a contradiction between two judgments, only one of them need be reversed.

The second court to which the case is referred need not adopt the opinion indicated by the Court of Cassation. In this case, when the dossier comes again before the Court of Cassation, this court will settle the matter in joint chamber without any further recourse.

Special Procedure at the Court of Customs.

As to civil and commercial cases in the villages, all litigation without distinction as to amounts must be first submitted for conciliation. The President of the Village Administrative Council is responsible in the conciliation and, if necessary, he can solicit the opinions of associate Highlander judges. If the council secures a conciliation, all consents included in the report have the validity of

execution and are not appealable. Failing conciliation, the cases are judged by the Court. All Highland Courts apply local customs consistent with public order. If there are claimants of different customs, the custom applied will be that of the place of the real estate which is the subject matter of the litigation, or that of the location of the residence of the defendant in a personal action.

Time for appeal is fifteen days from first judgment by a Village Court of Customs, and thirty days from first judgment by a District Highland Court or Highland Commission of Town Court. Final judgments by those bodies shall become decisive and have the validity of execution after thirty days from the date sentence is pronounced if they are not appealed within the prescribed term.

Motion for a new trial and appeal for annulment shall not apply to judgments by the Court of Customs.

Claimants are exempt from paying initial expenses, but upon pronouncing its decision the Court will decide to whom the expenses will be charged.

Procedure at Judicial Administrative Offices.

A petition must be handed to the Secretary General of the Administrative Court. It must be clearly written and contain the full name, occupation and residence of the plaintiff and the defendant, describe all details, giving the grounds for the petition for judgment, and set forth all the papers annexed to the petition, and mention the elected domicile at the place where the court is located.

The application of protest must be filed within three months from the date of receipt of the decision, except that if the plaintiff

is not a resident of the country, double that time will be granted.

Procedure at the Court. The President Judge assigns one of the Associate Judges to be a Reporting Commissioner. This Commissioner is responsible for all aspects of the examination, including a proposal of measures to be taken for investigation, the summary report, and informing the defendant of the results of the investigation. The President Judge issues an order for the defendant to be notified that he has two months in which to introduce his objections. When received, the objection will be forwarded to the plaintiff, who has fifteen days to make his plea in response. Following receipt of that plea, the defendant has fifteen days in which to file his second objection.

When the case is ready for trial, the Commissioner makes a report and drafts a judgment. These documents, reports and draft judgment are delivered to the Commissioner of the Government for incorporation in a conclusive form. The President Judge shall set a list of cases to go up to the tribune according to the proposal by the Commissioner of Government.

Open Hearing. The claimant must be informed of the date of hearing at least eight days in advance thereof. At this hearing, after conclusion by the Associate Judge all the claimants may orally explain their written conclusions, and the Commissioner of Government makes a last conclusion. The court, following discussion or deliberation, either renders its decision then or delays its decision until the next hearing.

Application to Delay Execution of Judgment. An objection to an administrative decision filed at an Administrative Court does not have suspensive effect, but the Administrative Court can, if circumstances are such that execution of the decision would inflict an uncompensable damage, order delay of the execution upon request by one party and after informing the other party of the request. The Court can also order provisional execution and demand a guarantor for this. The request for delay of execution must be made simultaneously with the petition. The defendant has the right to object to the delay.

Appeal to Council of State. If the claimant desires to appeal a judgment of the Administrative Court to the Council of State, he can do so within one month from the date the judgment by contradiction is served to the parties, or the last day of the time for objection to a default judgment, by making an appeal declaration at the Office of the Secretary General of the Administrative Court, or by sending his appeal application to the Council of State.

Under Article 53 of Ordinance No. 2 of 5 January 1950, the time within which the State may appeal begins to run from the date of pronouncement of sentence. Under the common procedure for litigation, the time for appeal begins with the date of notification of judgment, and Article 53 must be considered as an exception and applicable only to the State as represented by the Central Government and is not applied to administrative artificial persons. As to artificial persons such as those representing local administrative entities, or private

entities, the time of appeal commences with the date of notification of judgment under the common principle delineated in Article 51, Ordinance No. 2 of 5 January 1950 (Case TCV. Dec. 21, 1957. Saigon Insurance Society "Le Secours" PLTS Second Semester 1959, Page 63.)

Administrative Urgency Procedure. In urgency cases upon application of the claimant the Chief Justice of the Administrative Court can order immediate execution of all measures capable of resolving the disputes, on the condition that the order will not influence the merits of the case. The claimant may object to this order at the Council of State within fifteen days after notification of judgment.

Procedure at the Council of State. The application for filing an objection must be signed by the claimant or by his attorney in fact. An application on behalf of a public office must be signed by the Secretary of State or by a public officer designated by him. The application and any necessary documents must be sent to the Office of the Secretary General of the Council of State, or to the President of the Council of State, and no postage is required on such documents. In any circumstance, the Council of State can adjudicate only after a decision by an administrative authority or a judgment by the Administrative Court.

An administrative authority who does nothing within two months of receiving an application is deemed to have denied it.

Regarding time for making an objection, unless otherwise determined by law, the application will be accepted only within two months

from the date of proclamation of a default administrative decision, or from the date of receipt of notification of decision if it concerns a personal administrative decision. That time period ceases if the claimant requests dissolution of the administrative decision either in the presence of the person who issued the order or in the presence of his superior.

If the authorities refuse to answer within two months, the petition is deemed to be denied and the two months within which the objection must be filed is based on that first two months' expiration.

A request for dissolution of a decision does not delay the execution of that decision. However, if the President of the Council recognizes that execution of the administrative decision may cause an uncompensatable damage he can, upon request of the claimant, and after informing the adverse party, issue an order to delay the execution. The request for delay must be made with the application in the main case.

Procedure of Examination. The President Judge assigns an Examining Commissioner from among consultants to conduct the examination. The President issues an order notifying the claimant, and determines the time when both parties must present their written pleas and written defenses. When the examination is in order and ready for trial, the Examining Commissioner makes a report and a draft of judgment. The complete document is delivered to the Commissioner of Government for a written conclusion.

Open Trial. At the hearing, the Examining Commissioner reads his statement, the claimants orally present their notices, and the Commissioner of Government states his conclusion. After discussion, the judgment by the Council of State is pronounced in open court.

Only career lawyers have the right to plead officially before the Council of State.

MODERNIZATION OF THE VIETNAMESE JUDICIAL SYSTEM

CONCEPT

In the social revolution being carried out in our country, the Vietnamese Judicial System may and must play a decisive role in winning the people's hearts. To contribute efficiently to the building of a new society, to eliminate local officials' corrupt practices and Communist infiltration, to bring justice closer to the people, our system of laws must faithfully reflect our social situation, meet the well-grounded aspirations of our people, cope with the progress of the national community, and keep it in harmony with the world community. The laws to be passed must be based on social justice and represent the will of the community through a free and democratic regime. The judicial system must be properly organized and must operate efficiently so that laws may be strictly complied with. The Judicial officials must be imbued with the ideal of serving the interests of the Nation and of the people.

The present Vietnamese judicial system has been deeply influenced by Roman law in regard to doctrine, as well as techniques of law making and interpretation, organization of judicial machinery, and judicial officials' concepts of their duties.

After the recovery of Viet-Nam's national sovereignty, the withdrawal of the French Expeditionary Corps, and the dissolution of Mixed Courts in accordance with the French-Vietnamese Treaty of 16 September 1954, most of the old laws continued to be applied in

Vietnamese courts. Whether promulgated under Vietnamese Emperors or during French colonization, these laws were not based on the needs of the people and they did not have the support of the people. On the contrary, they felt that the laws were promulgated not to protect their well-grounded aspirations but to punish them or to strengthen the Administration of the period.

Already divided after one thousand years of Chinese domination and a long period of independence under successive royal dynasties, the Vietnamese society was much more deeply divided by the French, who, pursuant to the policy of "reigning by division", applied a separate Code of Law to each region although the Vietnamese are a unified people having the same language and the same customs and traditions. This has created many difficulties in the application of laws in the courts. When judges are assigned to a new area of jurisdiction they have to learn and apply the different laws and it is, as a result, difficult for them to avoid errors and omissions.

At present, although Viet-Nam has long since recovered its national sovereignty, its Codes of Civil and Criminal Laws have not yet been unified. Although the laws promulgated under French colonization are obsolete, they have not yet been amended.

Based on administrative organization, the judicial system has proved not to be in accordance with the actual needs of the areas and population of the country.

There are three Courts of Peace in Viet-Nam. In all other Districts the function of the Justice of Peace is assumed by the Administrative District Chief. In each Province there is a Court of Peace with Extended Jurisdiction, or a Court of First Instance. For all three regions of Viet-Nam, with its fifteen million inhabitants, there are only two intermediate Courts of Appeal.

A few typical examples prove the deficient organization of the judicial system. In Quang-Nam and Quang-Tin provinces and Da-Nang City, there is a population of 1,100,000, and yet there is only one Court of First Instance. In Quang-Ngai Province, with its population of 510,000, there is only one Court of Peace with Extended Jurisdiction and its president also functions as public prosecutor and examining magistrate, assisted by a judge.

The concurrent functioning of Administrative District Chiefs as Justices of Peace is contrary to the principle of separation of powers and is not conducive to the administering of justice. The limited jurisdiction of these courts, as well as the limited time of the District Chiefs, who are both unqualified in legal matters and too busy with their administrative duties, have discouraged the people. When they have a lawsuit it is necessary for them to travel sometimes hundreds of kilometers to appear before a provincial court. Even with relatively secure roads, such a trip is long, difficult and expensive for the parties to the suit. It is much more difficult with the VC sabotage of roads, bridges and villages. Appeals to the Courts of Appeal intensify the problem. For instance, parties living

in Southern Central Viet-Nam must travel more than 600 kilometers to attend an appeal session.

As said previously, such an improper organization has discouraged the people. They lack confidence in national justice and feel that it is a privilege reserved for city dwellers. This attitude has contributed to local officials continuing corrupt practices and to Communist infiltration into rural areas.

Judicial officials, who have been trained in accordance with the Roman legal doctrine, too often believe that their duties are to punish offenders by application of law. They withdraw into their "ivory tower" instead of being in contact with the people in order to know their aspirations, to consider the matters to be settled, and to apply the laws properly.

Such a unilateral concept is prejudicial to judicial officials in particular, and to justice in general, especially at present when we have to cope with distorted Communist propaganda which aims at winning the people to their side. Every hasty decision, every judgment based exclusively on textual interpretation of a law without considering external facts and circumstances, will be an opportunity for the enemy to spread its distorted propaganda. This unilateral concept has also eliminated another noble duty: the education of the people. Is there anyone endowed with more knowledge, ability and reliability than judges? Who could better educate the people in this important area?

REORGANIZATION TO BE CARRIED OUT

As explained in the foregoing, if the Vietnamese judicial system is not improved and modernized in proper time, it will be an obstacle to the achievement of social revolution. Only a broad reorganization of the laws and the judicial system and concept of duties will enable the efficient operation necessary to keep pace with a new society and contribute to victory over aggression.

When planning the two-year program for 1967 and 1968, the Minister of Justice developed a plan for remedying the foregoing deficiencies so that the Vietnamese judicial system may cope with the needs of the social revolution which is being carried out in the country and to keep pace with the world's progress.

The modernization program was outlined in a memorandum dated 9 August 1966 from the Ministry of Justice to all Judges and Judicial Officials:

"We understand that the sacred duty of the Courts is to preserve man's freedom, develop his abilities, raise his dignity, and enable him to enjoy all his civic rights within the scope of public order and national security and as permitted by law. In order to fulfill this noble and extremely difficult mission, the Courts must be impartial and come near the people instead of remaining isolated far from the people who are waiting and hoping for a 'warm winter sunbeam'.

"The Courts will come to the people during inspections, circuit sessions and various other contacts intended to make them realize the necessity of complying with the laws. This is intended to strengthen the system of administration by law and to free the law and the Nation from all pressures: pressure from Communists or from corrupt local officials.

"To make the people realize the necessity of complying with the law, to give rise to a law-abiding spirit in order to eliminate corrupt practices and misuse of authority, mean actual implementation of democracy among the people and contribution to the building of a strong basis for a future society."

The Vietnamese Judicial System Modernization Program may be summarized in the following motto: "Judicial Justice at the Service of the Masses." It may be achieved by bringing justice closer to the people, and aims at the following three main objectives:

1. Unifying and modernizing the laws in order to solidify national sovereignty, unite the people, and replace obsolete laws with others suitable to the nature and progress of the Vietnamese people.
2. Improving the judicial system in regard to organizational structure and personnel to efficiently administer justice to the people and for the people.
3. Bringing justice closer to the people in order to actually serve the people throughout the country, create a law-abiding spirit among them, and give them confidence in the national cause.

MODERNIZATION PLAN AND DURATION OF EXECUTION

A. Unification and Modernization of Laws.

The drafting of new Codes to unify and modernize laws is a complicated task which requires a long period of time and continuous participation of qualified and distinguished jurists. Although law drafting committees have long been established, their activities have been delayed, partly due to lack of operating facilities and partly due to the political events of the past years. Thanks to the effort and devotion of their members, these Committees have overcome

the difficulties and have completed drafts of the Codes of Civil Law, Criminal Law, Civil Procedure, Commercial Procedure, and Criminal Procedure, which are the basic Codes of the national legal system. In addition, a number of old laws have been amended or replaced in order to be suitable to the present situation and social progress of the country. However, these Codes were drafted at a time when our country was not provided with well-determined institutions. Therefore, although they have been completed, they must be improved upon to be in accord with the leading principles of a free and democratic regime established by the newly promulgated Constitution.

For this purpose, and in a spirit of improvement, the Ministry of Justice has activated a committee called the "Legal Research Committee." This committee is responsible for reviewing and amending the draft Codes so that they may be in accordance with the contents of the new Constitution. It is also charged with amending those obsolete laws which had not been completed by previous committees.

In addition to codifying and amending old laws, and drafting new laws, the Legal Research Committee will assume the modernization of the Vietnamese judicial system, prepare training programs for judges, encourage their participation, and follow up on the training and results.

The Legal Research Committee will work in accordance with an established schedule. Between 1 April 1967 and 31 December 1967, it will complete the codification and amending of old laws, and become a "Legal Research Center" in the beginning of 1968, with a wider scope of activities.

So far, the Committee has proposed ninety-six questions for consideration. Of these, twenty-four are on the Criminal Law Section, thirty on the Civil Law Section, and forty-two on Public and Administrative Law.

The Center will be responsible for studying legal conflicts, and comparative laws at interntional level, in order to amend the nation's laws in accordance with general progress. The Constitution of April 1967 solemnly recognized these basic principles in the following articles:

Art. 2. The nation recognizes and guarantees the basic rights of its citizens. The nation professes equality of all citizens without distinction as to sex, religion, race or political affiliation. Ethnic universities are particularly supported and enabled to maintain progress in common with all the people.

Art. 4. The Republic of Viet-Nam is opposed to Communism in any form. Any activity aiming at propaganda for Communism or the realization of this doctrine is forbidden.

Art. 6. The Nation respects the human personality. Freedom, life, property and honor of every citizen are protected by laws.

Art. 7. The Nation respects and protects the right to individual safety and defense in courts of law.

Art. 8. The private life, home and correspondence of the citizens shall be protected.

Art. 9. The Nation respects and guarantees freedom of creed, religion, propaganda and practice, provided they are not detrimental to the Nation's interests, public order and safety, and good manners and customs.

Art. 10. The Nation recognizes freedom of education.

Art. 12. The Nation respects freedom of thought, of speech, of press and of publications, provided the exercise of those rights is not detrimental to individual honor, national defense, or good manners and customs.

Art. 13. Every citizen has freedom of assembly and association as determined by law.

Every citizen has the right to vote, to be a candidate for an elected office, and to participate in public functions on a basis of equality and under conditions and formalities determined by law.

The Nation respects the political rights of all citizens, including the freedom of proposal, and of public, peaceful and lawful opposition.

Art. 19. The Nation recognizes and guarantees the right to private property.

Art. 20. Freedom of trade and competition is recognized, provided it does not become a monopoly and control the market.

B. Improvement of the Judicial System.

Regardless of how perfect laws may be, they may be ineffective if the courts which apply them are not properly organized and provided with sufficient operating facilities and qualified personnel imbued with a sense of duty.

At present the courts are lacking both personnel and material facilities. Courthouses generally are small buildings, lacking sufficient space, equipment and personnel to meet service requirements. Judicial officials assigned to remote courts are rarely visited, encouraged, urged or directed by higher officials. In addition, their logical requests are rarely satisfied because attention is rarely paid to the requests. These facts have affected the working method of the courts and entailed accumulation of records and delay in service. Mistakes have not been corrected and misuse of authority has not been discovered and coped with in proper time. As a result the people have an unfavorable opinion of the judicial system.

To improve this situation, in addition to providing the courts with sufficient material facilities for their operation (enlarging courthouses, assigning additional personnel, and making more equipment available) the Ministry of Justice has paid special attention to the improvement of the courts' working methods and has broadly disseminated the new concept of duties which the courts and judicial officials should have.

To attain this, the Ministry of Justice activated a "Judicial Reorganization Committee" in September 1966. This Committee is

responsible for studying and recommending proper measures to improve the organization and management of the judicial agencies in the country. To date the activities of this Committee have brought about noteworthy results. A number of recommendations have been submitted to resolve the accumulation of records at the courts, to enlarge the courthouses, assign additional personnel, prescribe a date limit for submitting lawyers' pleadings, promulgating legal documents, etc.

In addition, to strengthen the judicial system from the central to the regional levels, inspection teams were activated and have been operating since September 1966 on an established schedule. Twenty-seven inspection teams, composed of high ranking judges from the Ministry of Justice, Court of Cassation, Council of State, Court of Appeals, and the Administrative Court have successively inspected the activities of thirty provincial courts.

The inspection teams performed their duties with a constructive spirit, aiming at advising, urging and correcting, rather than punishing for, mistakes.

The scope of inspection extended to all the court activities, from administration to judgment of cases.

In addition to inspection of court installations and operations, the teams examined a number of records of civil and criminal cases, of cases provisionally discharged or definitely filed. They also attended a few sessions and investigations in order to properly evaluate the judgments pronounced by the courts.

Discussions by the inspecting judges with the magistrates of the courts were in a spirit of mutual guidance so that judgments might be pronounced more carefully, based on facts as well as on laws.

To disseminate the new concept of duties of officials of the courts, the team reserved time to explain it and to instruct them, and to listen to their recommendations and personnel petitions.

The teams also contacted representatives of regional administrative authorities, Council members elected by the people, and important provincial persons in order to ascertain public opinion of the courts and on the behavior of the judicial officials, to understand the aspirations of the people and their worries about problems relating to the courts, and to give them confidence in justice and in the Government.

At Rehabilitation Centers, the teams paid special attention to the presumed offenders not yet convicted, to determine whether they were legally detailed, and whether female and minor offenders were detained separately.

The results obtained by the teams are very encouraging. The most important achievement is the tightening of the bonds among all levels of the judicial system. It has demonstrated the solicitude of the central level courts for the remote courts, promotes feelings of mutual assistance, and upholds and stimulates the sense of serving justice in accordance with the new policy and guide lines, already sketched by the Constitution of the Republic of Viet-Nam in the following articles:

Art. 76. Independent judicial power is delegated to the Supreme Court and exercised by trial judges. A law will further settle the organization and functioning of the judiciary.

Art. 78. Trial judges and prosecuting magistrates will have their responsibilities and their particular status clearly defined.

Trial judges pass sentence according to conscience and law, under the jurisdiction of the Supreme Court.

Prosecuting magistrates follow up the carrying out of law to safeguard the public order, under the jurisdiction of the Ministry of Justice.

Art. 81. The Supreme Court is empowered to interpret the Constitution and decide whether or not a law, decree-law, decree, arrete or administrative decision is constitutional and lawful.

The Supreme Court is also competent to rule on the dissolution of any political party opposed to the Republic or its objectives and activities.

Art. 83. The Supreme Court has an autonomous budget and is empowered to make regulations for the management of the judiciary.

Art. 84. The Council of Judges is authorized to make all proposals relative to the appointment, promotion, transfer and discipline of trial judges, and to advise the Supreme Court on all questions concerning the judiciary.

Art. 85. The Special Court is competent to relieve the President, Vice-President, Prime Minister, all ministers, all judges of the Supreme Court, and all censors of their duties in case of treason or other crimes.

Within the framework of the program of modernizing the judicial system, there is a project to make the profession of notary more liberal, and a draft bill for this purpose is under consideration by the Ministry of Justice.

C. Bringing Justice Closer to the People.

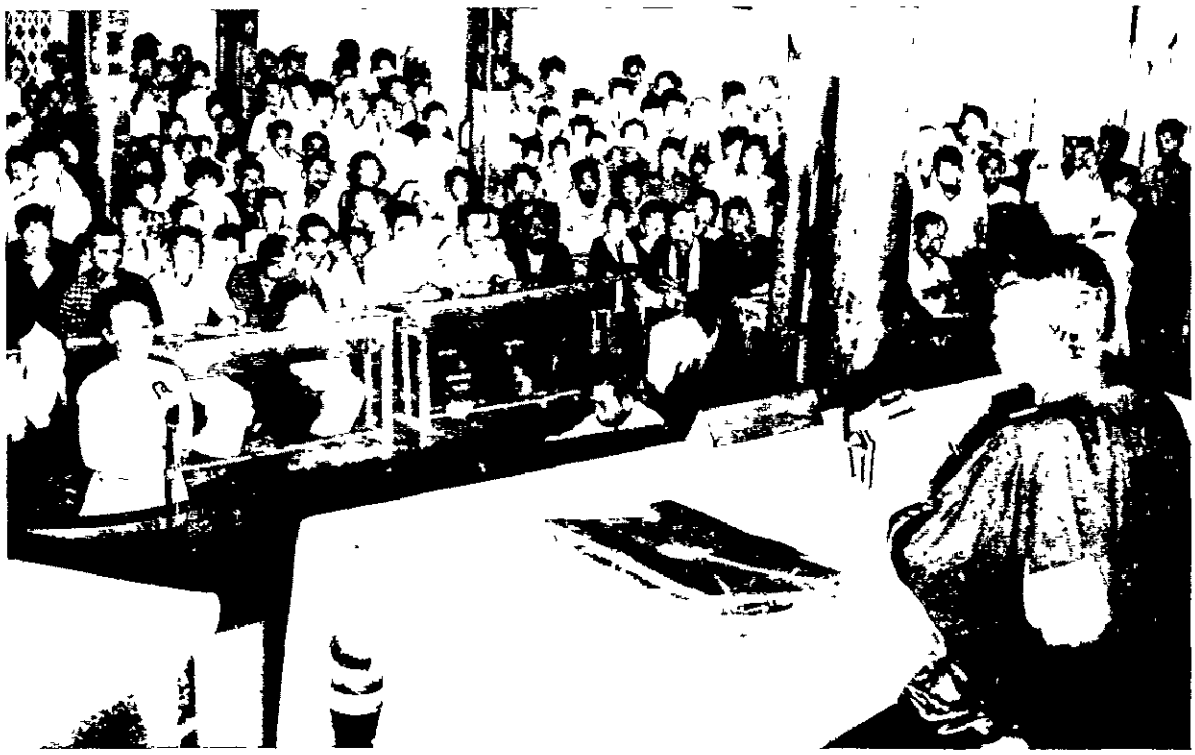
With the inspection of provincial courts, and important preparatory step has been taken to bring justice closer to the people.

Since the end purpose is the people, all judicial activities must be directed to building a new life for the people, giving to each individual and community a way of life, a spirit, an ideal, based on the principles of democracy, freedom and justice, within the scope of national discipline, under the protection of law.

In the decisive phase of this total war to preserve our independence and freedom, during which we must strive to keep every inch of ground and every inhabitant, the foregoing task will be an efficient form of fighting, if properly performed, to win people's hearts.

Due to the war situation, people in the rural areas are remote from the Government. They are influenced by Communist propaganda and oppressed by Communists' demagogic and deceitful schemes, as well as by local officials' misuse of authority. Therefore the most efficient plan to bring justice closer to the people is to organize

CIRCUIT TRIAL, COURT OF FIRST INSTANCE, BINH-DINH



CIRCUIT TRIAL, COURT OF PEACE WITH EXTENDED JURIS-DICTION, AN-GIANG

circuit sessions of Provincial Courts and Courts of Appeal, first in the districts, and then, gradually, as permitted by local security situations, in the villages and hamlets.

The purpose of circuit sessions is to actually serve the majority, prevent corrupt practices, eradicate dishonesty and cruelty, create a concept of democracy and a law-abiding spirit among the people, and give them confidence in the national judicial system. They are organized simply, to familiarize the people with the courts which are responsible for preserving their interests, lives and properties, and to ensure continuous service to them.

The locations of circuit sessions have been chosen based on careful consideration of geographic and communications conditions and on human needs so that the Courts of Appeal may fulfill their duties without encountering major obstacles. The Court of Appeals of Hue holds circuit sessions at Nha-Trang, and the Saigon Court of Appeals holds them at Can-Tho and at Dalat.

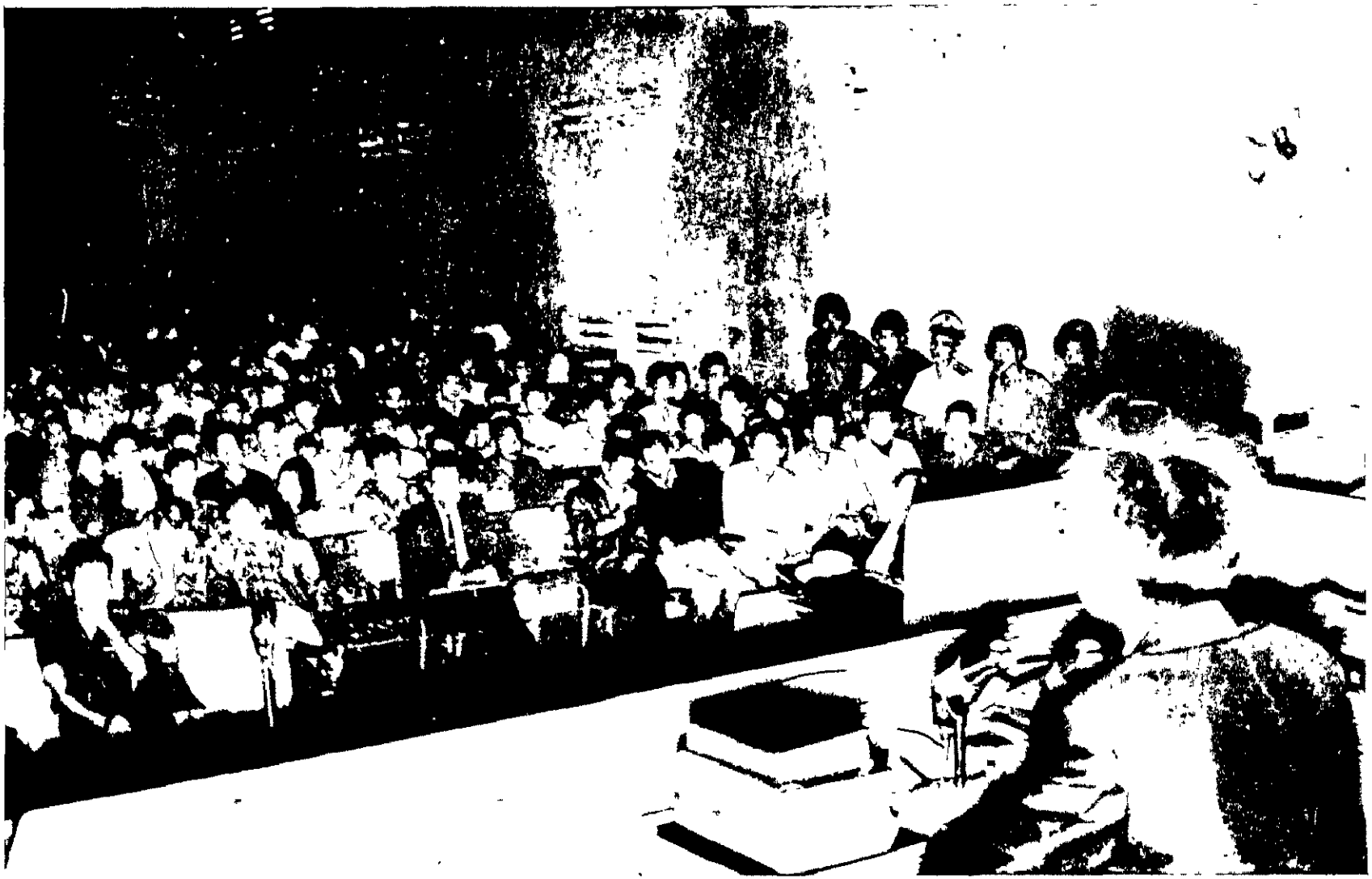
Between 16 September 1966, the date the first circuit session was held in Long-Dien District of Phuoc-Tuy Province, to 31 May 1967, 209 circuit sessions were held for Provincial Courts, 9 for the Saigon Court of Appeals, 7 for misdemeanors, and 2 for serious offenses. Two circuit sessions of the Court of Appeals of Hue were held: 1 for a serious offense, and 1 for a misdemeanor.

Cases brought before circuit sessions are simple, involving civil, criminal or land matters relating to local people's lives. Special attention is given to petitions for issuance of substitute birth

certificates so that the country people may obtain the necessary papers for their children to go to school, for instance, without the parents having to incur the expense and loss of time travelling from their remote areas to distant courts.

The good resulting from circuit sessions may be seen in that held on 15 October 1966 at Kien-Giang Court, Phu-Quoc Island. Only 2 misdemeanors and 3 petitions for substitute birth certificates were on the docket, but upon realizing the keen interest of the residents in that session the President Judge responded to their request and welcomed all their petitions for substitute certificates and 265 orders for issuance of certificates were granted on that same day. Other people, hearing of the circuit session, came to the courthouse in the evening and requested that another session be held the following day. To satisfy his fellow-countrymen's wishes, the President Judge stayed the additional day and 135 petitions were submitted and granted.

Another circuit session, held on 27 April 1966 at Kien Hoa Court at Ham Long District, nearly 15 kilometers from the Chief Town, was also successful beyond hope. There, 15 cases were anticipated but upon arrival of the President Judge 85 additional petitions were presented for substitute birth certificates and all of these were granted. On that occasion the Deputy of the Province Council acquainted the Court officials with the difficulties of transportation, stating that it would have cost at least VN $800 for board and travel for each person to go to the Chief Town to obtain the needed documents. Thus, because the circuit session was held in their town the residents were spared the aggregate expense of $VN 80,000.



PRESIDING JUDGE OF COURT OF FIRST INSTANCE OF BINH-DINH
EXPLAINING THE LAWS TO THE PEOPLE OF AN-NHON DISTRICT

In administering justice, the judges may contribute to social progress by interpreting and executing laws in accordance with the provisions prescribed and the requirements of the community. Additionally, judges are qualified leaders, able to actively contribute to the instilling of a democratic spirit and a respect for the law. Through their meetings with the people, their talks and directives, they may aid the people to understand the basic principles of a free regime, and their rights and duties within the framework of the national government.

Education is a very important task, and if it is properly and continuously carried out it will be of great benefit to the people of the Republic. Therefore the Ministry of Justice has directed that judges give talks on current legal matters and civic education prior to or after their circuit sessions, and to distribute the series of nine booklets, "The Courts Come to the People" which it has prepared and published. These are entitled:

1. How to request certificates and judgments to be used as birth certificate substitutes.
2. Some information about vital statistics.
3. Legal assistance.
4. Registrars and establishment of death certificates.
5. Natural children.
6. Police record.
7. Handbook for plaintiffs.
8. Filiation and adoption.
9. Divorce and judicial separation.

The Ministry of Justice will continue to prepare and publish additional booklets on other current legal matters.

After distributing and explaining the booklets, the judges discuss a series of simple and concise questions and answers on the material to assist the people to better understand the laws and their application.

In addition to circuit sessions, Examining Magistrates are directed to institute on the spot investigation and examination of serious offenses when possible. They endeavor to interrogate the victims, the witnesses and the accused. This avoids the necessity of the victims and witnesses making expensive and time-consuming trips to the Provincial Courts, gives people confidence in the protection of the law, and serves as a warning to those who would attempt to violate the law.

CONCLUSION.

The modernization of the Vietnamese judicial system, begun in September 1966, has attained many successful results and has been most beneficial to the people of the nation.

Inspections, contacts and circuit sessions give the country people more confidence in the national cause and their protection under the law, and more determination to eradicate Communist aggressors in order to preserve their lives and properties.

ANALYSIS OF THE CONSTITUTION

Introduction.

Constitutional Analysis.

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ANALYSIS OF THE CONSTITUTION OF 1 APRIL 1967

INTRODUCTION

In 1940 during the early stages of World War II, Viet-Nam was occupied by Japanese Military Forces. Coalition of Nationalist and Communist underground activities spawned the Viet-Minh League in 1941, which was predominantly Communist. In March 1945 the Japanese interned the French officials and declared Viet-Nam free and independent under Emperor Bao-Dai. In August 1945 the Viet-Minh seized power and established a Republic of Viet-Nam which encompassed the French administrative areas of Cochin-China (South), Annam (Central), and Tonkin (North), with Hanoi as the capital.

In September 1945 the French entered Cochin-China and shortly thereafter hostilities commenced with the Viet-Minh. In March 1946 a cease-fire was negotiated on the basis of France's recognition of a free Viet-Nam. Prior to holding peace talks, the French pulled Cochin-China out of the bargain and established it as an independent Republic. The ensuring peace treaty was a sham, and the battle soon resumed.

An agreement in 1949 between Bao-Dai and the French recognized the independence of Viet-Nam within the French Union. France retained partial control over the country until its defeat at Dien-Bien-Phu and the Treaty of Geneva in 1954, at which time complete sovereignty was transferred to Viet-Nam. Neither South Viet-Nam nor the United States signed the treaty, which established the 17th Parallel as a provisional military demarcation line until a general election could be held in July 1956. That election has not been held.

Following a referendum in 1955, Ngo-Dinh-Diem, who had replaced Emperor Bao-Dai, declared Viet-Nam a Republic and became its first President. A constitution was promulgated in 1956 vesting Executive power in the President and Legislative power in a single chamber, the National Assembly. The Judiciary was under the Executive Branch.

By 1961 the National Assembly had surrendered its power to the Executive, and Ngo-Dinh-Diem became a dictator. The Diem government was ousted by the Military in 1963, and a Revolutionary Military Council assumed control. Civilian rule was restored briefly in 1964, to be again taken over by the Military, which established a National Leadership Council with Major-General Nguyen-Van-Thieu as Chairman and Air Vice-Marshall Nguyen-Cao-Ky as Prime Minister.

A National Constituent Assembly comprised of 117 members was elected by a nation-wide ballot on 1 September 1966 to draft and enact a constitution providing for the return to civilian government. The resulting constitution was proclaimed on 1 April 1967.

CONSTITUTIONAL ANALYSIS

The Constitution of the Republic of Viet-Nam was promulgated on 1 April 1967, superseding the Provisional Charter under which the country had been governed since 19 June 1965.

The Constitution was framed and enacted by an elected Constituent Assembly which met in Saigon. A unified republic featuring a constitutional guarantee of local autonomy was established with a mixed presidential parliamentary form of government, reflecting its own national circumstances. The President, elected for four years, appoints the Prime Minister and, upon the latter's proposal, the members of the government. No legislative confirmation is needed, but they are subject to recall by the National Assembly.

PART ONE. ANALYSIS BY CHAPTERS

I. Basic Provisions. Articles 1-5

The doctrine of separation of powers is recognized by the establishment of separate legislative, executive and judicial branches. An elaborate system of checks and balances prevents usurpation of power by any branch.

Basic provisions grant equality to all citizens without discrimination as to sex, religion, race or political party. Minority elements receive special support to bring them into the mainstream of national life. International law is recognized, Communism is outlawed, and all forms of aggression are opposed.

II. Rights and Obligations of Citizens. Articles 6-29

Rights and duties of the citizens are in accord with democratic trends throughout the free world. Search and seizure, arrest, detainment, bail, right to defense counsel, speedy public trials, and the presumption of innocence are adequately safeguarded. Minority compatriots will have Customary Courts enforcing their habits and customs. Religious freedom is guaranteed by the state, which recognizes no state religion. Basic education is compulsory and free. Freedom of thought, speech, press and publishing is preserved to the people if not contrary to morals, national security, etc. Unions and the right to strike are respected. Expropriation is regulated. Farmers will be helped to acquire farm lands. Workers have the right to choose representatives to participate in the management of business enterprises, especially in relation to wages and working conditions, in accordance with law. Military personnel are restricted in relation to election to public office and engaging in political party activities. Minorities are specially protected. All restrictions on the basic rights of individuals must be founded in law. These are some of the more important rights and obligations.

III. Legislature. Articles 30-50

Legislative authority is vested in a bicameral National Assembly. The representatives to the Lower House run on single lists from separate constituencies not larger than provinces, while senators are elected at large, by associated lists, to an Upper House. Representatives serve a four-year term and Senators six years (one-half elected every three years.) The National Assembly enacts legislation, ratifies treaties and international agreements, approves declarations of war or a state of war and peace talks, controls the government in carrying out national policy, and each House validates elections of its members.

Each House of the National Assembly exercises control over national policy by its right to summons the Prime Minister and other government officials to testify on matters relating to the Ministries or to the execution of national policy. The Upper House has the right to conduct investigations of national policy. The National Assembly can pass a vote of non-confidence as to all or part of the government, including the Prime Minister, by a two-thirds majority vote of the total membership of the National Assembly. If the President vetoes such a resolution, the Assembly can override him by a three-fourths majority of the total membership of the National Assembly.

Bills.

The Legislators and the President have the right to introduce bills, which must be submitted to the Lower House. Upon approval or rejection of a bill, it must be submitted to the Upper House within three days. If the Upper House agrees with a bill, it is submitted to the President for promulgation. As to "No Bills", if the Upper House agrees, the bill is abolished. If the Upper House does not agree with a "No Bill" decision of the Lower House, it must submit its version of the bill to the Lower House, together with an explanation. The Lower House can override the resolution of the Upper House by a two-thirds majority vote of its total membership, but failing this, the resolution of the Upper House will prevail. Time limits for debates are based on the time consumed by the House which forwards the bill, the Senate having half the time consumed by the House, and the House twice the time utilized by the Senate. Approved bills must be transmitted to the President within three consecutive days for promulgation. If the President fails to act on a bill within fifteen days (seven days if the National Assembly declares the matter urgent), the bill becomes law. Within the allotted period the President may veto a bill, or a part of it, and return it to the National Assembly together with his reasons therefor. In this event, the National Assembly, in joint plenary session, may vote to approve or to override the veto by an absolute majority of the total number of legislators. In the event the veto is overruled, the bill becomes law automatically and is sent to the President for promulgation.

Budget

The budget must be submitted to the Lower House prior to 30 September each year. Proposals by Senators and Representatives for additional expenditures must be supported by equivalent new revenue. The Lower House must vote on the budget prior to 30 November and submit it to the Upper House by 1 December at the latest. The Upper House must act on the bill before 31 December. If the Upper House reconsiders one or more provisions of a bill, the procedure previously described, in Article 43, must be complied with. If the draft budget is not approved by 31 December, the President may issue a decree authorizing expenditure of that part of the budget equivalent to one-twelfth of the previous budget, on a month-to-month basis, until the Lower House has voted final approval of the draft budget.

Sessions

Each House meets twice a year, on the first Monday of April and of October, each session to last for not more than ninety days. However, a session may be extended by the Lower House when necessary to vote on final approval of a draft budget. The President or one-third of the members of each House may request an extraordinary session. When such a session is convened by the President, he sets the agenda.

IV. The Executive. Articles 51-75

Executive authority is vested in a President, who has authority to:

(1) Determine national policy.

(2) Appoint the Prime Minister, and the Cabinet on recommendation of the Prime Minister.

(3) Preside over the Council of Ministers.

(4) Reorganize all or part of the government on his own initiative or upon recommendation of the National Assembly.

(5) Appoint Chiefs of diplomatic missions and Rectors of Universities with the approval of the Upper House.

(6) Represent the nation in international relations.

(7) Sign treaties, international agreements, and, after ratification by the National Assembly, promulgate them.

(8) Sign decrees in special situations declaring states of emergency, curfew or alert over all or part of the country, subject to later determination by the National Assembly which must be convened not later than twelve days after promulgation of the decree.

(9) Promulgate laws, grant decorations, and grant amnesty or pardon for criminals.

(10) Prolong terms of office of designated elected bodies and appoint some province chiefs during a state of war when elections cannot be held, upon approval of two-thirds of the National Assembly.

(11) Serve as Chairman of the National Security Council.

(12) Dismiss key officials of local governments if they violate the Constitution, etc.

Candidates for President and Vice President run on separate lists and are elected by the entire nation. They must be at least thirty-five years of age on election day and have had continuous residence in Viet-Nam for at least ten years including time spent in political exile and on official business abroad. The term of office is four years, and they may be re-elected once. The Supreme Court establishes the list of candidates, controls the elections, and announces the results. Candidates receive equal support for the campaign. The office of President and Vice President may be terminated by death, resignation, impeachment by the Special Court, or by serious, prolonged illness sufficiently disabling to prevent carrying out the duties of the office. In the latter situation, after a complete medical examination, the disability must be recognized by a three-fourths majority vote of the total membership of both Houses.

If the duties of the President are terminated more than one year prior to the end of his term, the Vice President will assume the office for a period not to exceed three months to permit organization of a new election for President and Vice President, for a new, full term. If there is less than one year of the term remaining at the time of termination, the Vice President will serve for the balance of the term except in case of impeachment of the President. If the Vice President is unable to assume the office, the Chairman of the Upper House will succeed to the office for a period not to exceed three months.

Except for possible succession to the presidency, the only function of the Vice President is to serve as Chairman of the three Constitutional Advisory Councils, and he is expressly prohibited from holding any other government position.

Local autonomy is recognized for provinces, the capital, cities and villages, all of which are to have popularly elected Councils and

Executive heads. Village Councils may, however, elect Village Chiefs. The organization and administration of local administrative units will be prescribed by law. The government will appoint two civil servants to assist executive chiefs and other administrative personnel of the local governments in security and administrative matters. As previously stated, the President may dismiss members of legislative councils and heads of executive agencies of local governments if they violate the Constitution, laws or national policy.

V. The Judiciary. Articles 76-84

Independent judicial power is vested in a Supreme Court and is exercised by the presiding judge. The court consists of between nine and fifteen judges appointed by the President for a term of six years upon the nomination by the National Assembly from a panel of thirty nominees selected by the Association of Judges, the Association of Prosecutors, and the Association of Lawyers. Nominees must be judges or lawyers with not less than ten years' experience.

The Supreme Court is empowered to:

(1) Interpret the Constitution.

(2) Determine the constitutionality of laws, decree-laws, decrees and administrative decisions.

(3) Decide on dissolution of political parties opposed to the republican form of government. (Members of the Executive and Legislative Branches participate to present their views.)

(4) Hear appeals from lower courts.

All lower courts and judges are under the control of the Supreme Court, but the judges make their decisions according to their consciences and the law, and they can be removed only in case of mental or physical incapacity, conviction, or violation of discipline. Prosecuting judges are under the control of the Ministry of Justice. The Supreme Court has a separate budget.

A Judicial Council, composed of judges elected by the Association of Judges, is established to propose the appointment, promotion, transfer and discipline of judges. It also advises the Supreme Court in matters relating to the Judiciary.

Auxiliary functions of the Supreme Court are:

(1) The Chief Justice presides over the Special Court (impeachment proceedings).

(2) Designates one-third of the members of the Inspectorate.

(3) Conducts audits of the personal property of the chairman and the members of the Inspectorate.

(4) Establishes a list of candidates for President and Vice President, "controls the fairness of the election", and announces the results.

VI. Special Institutions. Articles 85-98

Six special institutions are established by the constitution: the Special Court, an Inspectorate, the Armed Forces Council, a Culture and Education Council, an Economic and Social Council, and an Ethnic Council.

The Special Court, chaired by the President of the Supreme Court and consisting of five representatives and senators, is impowered to impeach the President, Vice President, Prime Minister, Ministers, Secretaries of State, Supreme Court judges, and members of the Inspectorate, if guilty of treason or other high crimes. The motion for impeachment must be signed by more than half of the total number of legislators and the decision of the court approved by a two-thirds majority vote of the total number of legislators. In the case of the President and Vice President, greater majorities must vote for the impeachment motion and approval in order for it to carry. After removal from office, the accused may be tried by an ordinary court.

An Inspectorate, consisting of from nine to eighteen members designated in equal numbers by the National Assembly, the President, and the Supreme Court, is adequately empowered to inspect, control and investigate public and private agencies engaged in corruption, speculation, influence peddling, or other acts harmful to the public interest. It also has an inspection and audit function of public and private personnel. In proper cases it is authorized to recommend disciplinary measures or public prosecution.

The Armed Forces Council advises the President on matters relating to the military forces, especially in reference to promotion, transfer and disciplining of soldiers of all ranks.

The other three councils are chaired by the Vice President, and advise the government on plans, programs and legislation affecting their specialized areas. A National Academy will be established. One-third of the members of each council are designated by the President, the remaining two-thirds by related associations and organizations, and serve for four years.

VII. Political Parties and Opposition

Political parties and formalization of political opposition are recognized. The nation will encourage progress toward a two-party system. The Supreme Court is authorized to dissolve political parties whose objectives are opposed to the republican form of government. (See Judicial, infra.)

VIII. Amending Procedure

Proposals for amendments to the Constitution, together with reasons therefor, may be submitted to the office of the Upper House by the President, or by either House upon vote of an absolute majority of the total number of members of the submitting House.

After necessary research by a joint committee and its report to the Joint Plenary Session of the National Assembly, the resolution, in order to pass, must be approved by two-thirds of the total number of Representatives and Senators. The President promulgates laws amending the constitution in accordance with prescribed procedures.

IX. Transitional Provisions

Transitional provisions provide for continuity of the existing Executive and Judicial authority until the establishment of prescribed constitutional organs and elections. The organization of the Supreme Court and the Inspectorate must be accomplished within twelve months after the President assumes office. All other structures prescribed by the Constitution must be established within two years from the date the first National Assembly is established. (Note: The Constitution was promulgated 1 April 1967, the President was inaugurated on 31 October 1967, and the first National Assembly convened in the fall of 1967.

PART TWO. TOPICAL ANALYSIS

Education and Culture.

The Constitution elevates culture and education to the national policy level. Freedom of education is recognized and basic education is compulsory and free. Talented persons of little means will be given aid and support to continue their studies. Research and creative work in science, the letters and the arts are to be encouraged and supported by the state. An appropriate budget must be reserved for the development of culture and education.

University education is autonomous. The rectors of the universities are appointed by the President with the approval of the Upper House of the National Assembly.

The Constitution establishes a Culture and Education Council, chaired by the Vice President, which has the responsibility for advising the government in the development and execution of cultural and educational policy. With the approval of the National Assembly, the

Culture and Education Council may select representatives to brief the National Assembly on subjects of interest to them, and may contribute ideas when the National Assembly considers laws relating to culture and education.

A National Academy is to be established.

The term of the Culture and Education Council members runs for four years. One-third of its membership is designated by the President, and two-thirds by public and private cultural and educational organizations and parent-teacher associations. The details of the organization and regulations of the Council will be prescribed by law.

Economic and Social Life.

Every citizen has the right and the duty to work and to receive fair remuneration, enabling him and his family to live in dignity. The state recognizes and guarantees the right of private property. Freedom of trade and competition is recognized, but it cannot be exercised to secure a monopoly or control of the market. The state encourages and assists economic cooperation which has the character of mutual economic assistance. It gives special support to those elements of society who have a low standard of living, and advocates raising the standards of rural citizens, especially helping farmers to have farmlands. The state advocates a policy of making the people property owners. Expropriation or requisition by the state for the common good must be accompanied by speedy and just compensation at price levels existing at the time of expropriation or requisition.

The state will endeavor to create employment for all citizens.

Freedom to join labor unions and to strike is respected, within the framework and regulations prescribed by law. On the basis of equality and rights, workers have the right to choose representatives to participate in the management of business enterprises, especially in matters concerning wages and conditions of work, in accordance with criteria and procedures to be prescribed by law.

The state endeavors to establish a system of social security. It is the duty of the state to establish a system of social welfare and of public health, and to support the nation's warriors, both spiritually and materially, and to support and raise the nation's orphans.

Every citizen has the duty to pay taxes in accordance with the provisions of the law.

The Constitution establishes an Economic and Social Council, chaired by the Vice President, to advise the government on economic and social matters. One-third of its membership is appointed by the

President, and two-thirds are nominated by industrial and commercial organizations and labor unions and associations having an economic and social character. The term of office of its members is four years, and its detailed organization and procedures will be determined by law. With the approval of the National Assembly, the Council may select representatives to brief the National Assembly on matters within its purview, and may contribute ideas at the time the National Assembly debates draft laws and economic and social programs.

The family is recognized as the foundation of society. The state will encourage and facilitate the formation of families, and assist expectant mothers as well as infants. Marriage is to be based on mutual consent, equality and cooperation, and family cohesion is to be encouraged.

Religion.

Freedom of religious belief, and the freedom to preach and practice any religion, is respected and guaranteed as long as it does not violate the national interest and is not harmful to public safety and order, or contrary to good morals. The state is impartial in the development of various religions and there is no state religion.

Minorities.

The presence of minorities in the Vietnamese community is recognized. The state is to respect the habits and customs of minority compatriots. Customary Courts will be established to pronounce judgments on some disputes involving habits and customs of minority compatriots. A law will prescribe special rights in order to assist them.

The Constitution establishes an Ethnic Council, chaired by the Vice President, representing the ethnic minorities living within the territory of Viet-Nam. The Council has the responsibility to advise the government in matters affecting ethnic minorities. With the approval of the National Assembly, the Ethnic Council may select representatives to brief the National Assembly on related matters. The Council may contribute ideas when draft laws, programs and plans affecting minorities are debated. One-third of the Council's membership will be designated by the President, and two-thirds will be elected by ethnic minorities. The term of office of the Council's members is four years, and its detailed organization and regulations will be prescribed by law.

Local Government.

The Constitution proclaims the principle of local self-government for villages, provinces, autonomous cities, and the national capital.

In each of these units there is to be an elected council and an elected head of the unit's executive agency. Election is by direct and secret ballot. Election of the village chief may be by the Village Council from among its own regularly elected members. The deliberative bodies and the executive chiefs are:

Villages: Village Council and Village Chief.

Provinces: Provincial Council and Provincial Chief.

Cities and the Capital: Municipal Council and Mayor.

Hamlets, subdivisions of villages, are organized under the present law.

The government will appoint two civil servants, who have the responsibility to assist mayors, province chiefs and village chiefs in administrative and security matters, as well as other administrative personnel.

Members of the various councils and the executive heads of the local administrative units may be dismissed from office by the President if they violate the Constitution, the laws of the nation, or national policy.

Legislation will further develop the organization and regulation of local administration.

Public Morality.

Members of the National Assembly may not hold any other elected or assigned function except to serve as instructors at universities or advanced technical schools, and they and their spouses are forbidden to participate in a bid or to sign a contract with any government agency. The President, the Vice President, the Prime Minister, and members of the government may not hold any position in the private sector, whether remunerated or not. Their spouses may not participate in government bids or contracts.

As previously noted, the Constitution establishes an Inspectorate with prime responsibility for investigating corruption, etc. of personnel in private and public agencies. Broad powers are given to inspect and audit property of public agencies, including the President, the Vice President, the Prime Minister, members of the National Assembly, and the Chief Justice of the Supreme Court.

CONSTITUTION OF THE REPUBLIC OF VIET-NAM

PROMULGATED 1 APRIL 1967

AN UNOFFICIAL TRANSLATION

This translation revised and verified 12 August 1967.

THE CONSTITUTION OF THE REPUBLIC OF VIET-NAM

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THE CONSTITUTION OF THE REPUBLIC OF VIET-NAM

PROMULGATED 1 APRIL 1967

PREAMBLE

Confident that the patriotism, indomnitable will, and unyielding traditions of the people will assure a radiant future for our country:

Conscious that after many years of foreign domination, followed by the division of our territory, dictatorship and war, the people of Viet-Nam must take responsibility before history to perpetuate those hardy traditions and at the same time to welcome progressive ideas in order to establish a republican form of government of the people, by the people and for the people whose purpose is to unite the nation, unify the territory and assure independence, freedom and democracy with justice and altruism for the present and future generations,

We, 117 Deputies of the National Constituent Assembly representing the people of Viet-Nam, after debate, approve this Constitution.

CHAPTER I. BASIC PROVISIONS.

Art. 1. 1. Viet-Nam is a territorially indivisible, unified and independent Republic.

2. The National Sovereignty belongs to the whole people.

Art. 2. 1. The State recognizes and guarantees the basic rights of all citizens.

2. The State advocates equality of all citizens without discrimination of sex, religion, race or political party. The minority compatriots shall receive special support to keep pace with the progress of the population as a whole.

3. It is the duty of every citizen to serve the interests of the nation and the people.

Art. 3. 1. The functions and powers of the legislative, executive and judicial branches of government must be clearly delineated. Activities of these three branches must be coordinated and harmonized in order to realize public order and prosperity on the basis of freedom, democracy, and social justice.

Art. 4. 1. The Republic of Viet-Nam opposes Communism in any form.

2. Every activity designed to publicize or effect Communism is prohibited.

Art. 5. 1. The Republic of Viet-Nam shall comply with those provisions of international law which are not contrary to its national sovereignty and the principle of equality between nations.

2. The Republic of Viet-Nam is determined to oppose all forms of aggression and strives to contribute to the building of international peace and security.

CHAPTER II. RIGHTS AND DUTIES OF CITIZENS.

Art 6. 1. The State respects human dignity.

2. The law protects the freedom, lives, property and honor of every citizen.

Art. 7. 1. The State respects and protects the safety of each individual and the right of every citizen to plead his case before a court of law.

2. No one can be arrested or detained without a legal order issued by an agency duly conferred with judicial powers except in case of flagrant violation of the law.

3. The offender and his next of kin must be informed of the accusation against him within the time limit prescribed by law. Detentions must be controlled by an agency of the Justice Department.

4. No citizen can be tortured, threatened or forced to confess. A confession obtained by torture, threat or coercion shall not be considered as valid evidence.

5. An offender is entitled to a speedy and public trial.

6. An offender has the right to a defense lawyer for counsel in every phase of the interrogation, including the preliminary investigation.

7. Any person accused of a minor offense who does not have a previous record of more than three months imprisonment for an intentional crime may be released pending trial, provided he or she has a job and a fixed residence. Women pregnant for more than three months and accused of minor offenses but who have a job and a fixed residence may be released pending trial.

8. Accused persons shall be considered innocent until the judgment recognizing their guilt is handed down.

In the event of doubt, the court shall rule in favor of the accused.

9. If unjustly detained, a person has the right to demand compensation for damages from the State after he has been adjudged innocent, in accordance with the provisions of law.

10. No one can be detained for indebtedness.

Art. 8. 1. The private life, home and correspondence of every citizen must be respected.

2. No one has the right to enter, search or confiscate the property of a person unless in possession of orders from a court or when it is necessary to the defense of security and public order duly provided by law.

3. Privacy of correspondence is protected by law. Any restriction imposed thereon shall be determined by law.

Art. 9. 1. The State respects and guarantees freedom of belief and freedom to preach and practice religion of every citizen provided that it does not violate national interests and is not harmful to public safety and order or inconsistent with good morals.

2. No religion is recognized as the State religion. The State is impartial in the development of various religions.

Art. 10. 1. The State recognizes freedom of education.

2. Basic education is compulsory and free of charge.

3. University education is autonomous.

4. Capable persons who do not have facilities shall be given aid and support to continue their studies.

5. The State encourages and supports research and creative work by the citizens in the fields of science, letters and the arts.

Art. 11. 1. Culture and education must be considered matters of national policy, on a national, scientific and humanistic basis.

2. An appropriate budget must be reserved for the development of culture and education.

Art. 12. 1. The State recognizes freedom of thought, speech, press and publishing provided that it does no harm to personal honor, national security or good morals.

2. Censorship is abolished except for motion pictures and theatres.

3. Press regulations shall be prescribed by law.

Art. 13. 1. Every citizen has the right to free gathering and form associations in accordance with conditions and procedures prescribed by law.

2. Every citizen has the right to vote, run for office and participate in public affairs on an equal basis and in accordance with conditions and procedures prescribed by law.

3. The State respects the political rights of all citizens, including the right to petition freely and engage in overt, non-violent and legal opposition.

Art. 14. 1. Every citizen enjoys freedom to choose his place of residence and freedom of movement including the right to go and return from abroad except in cases of legal restriction for reasons of public health, security or national defense.

Art. 15. 1. Every citizen has the right and the duty to work and receive fair remuneration enabling him and his family to live in dignity.

2. The State shall endeavor to create employment for all citizens;

Art. 16. Freedom to join labor unions and to strike is respected within the framework and regulations prescribed by law.

Art. 17. 1. The State recognizes the family as the foundation of society. The State encourages and facilitates the formation of families, and assists expectant mothers and infants.

2. Marriage must be based on mutual consent, equality and cooperation.

3. The State encourages family cohesion.

Art. 18. 1. The State endeavors to establish a system of social security.

2. It is the duty of the State to establish a system of social welfare and public health.

3. It is the duty of the State to support the nation's warriors both spiritually and materially, as well as to support and raise the nation's orphans.

Art. 19. 1. The State recognizes and guarantees the right of private property.

2. The State advocates a policy of promoting the people's private ownership.

3. Expropriation or requisition by the State for the common good must be accompanied by speedy and just compensation at prices existing at the time of expropriation or requisition.

Art. 20. 1. Freedom of enterprise and competition is recognized, but it cannot be exercised to secure monopoly or control of the market.

2. The State encourages and assists economic cooperation which has the nature of mutual economic assistance.

3. The State gives special support to those elements of society which have a low standard of living.

Art. 21. 1. The State endeavors to raise the standard of living of the rural citizens, and especially helping farmers to have farm land.

Art. 22. 1. On the basis of equality between duties and rights, the workers shall have the right to choose representatives to participate in the management of enterprises, especially in matters concerning wages and conditions of work within the framework and procedures prescribed by law.

Art. 23. 1. Military personnel elected to public office or serving in the central government may option to resign from the Military or take leave without pay.

2. Military personnel on active duty are not permitted to engage in political activities.

Art. 24. 1. The State recognizes the presence of the ethnic minorities in the Vietnamese community.

2. The State respects the habits and customs of the minority compatriots. Customary courts shall be established to pronounce judgments on disputes involving habits and customs of the minority compatriots.

Art. 25. 1. Every citizen has the duty to defend the country and the Republic.

Art. 26. 1. Every citizen has the duty to defend the Constitution and respect the law.

Art. 27. 1. Every citizen has the duty to fulfill his military obligations as prescribed by law.

Art. 28. 1. Every citizen has the duty to pay taxes in accordance with the provisions of law.

Art. 29. 1. Any restriction upon the basic rights of the citizen must be prescribed by law and the time and place within which such a restriction is enforced must be clearly specified. In no event can the essence of all basic freedoms be violated.

CHAPTER III

THE LEGISLATURE

Art. 30. 1. Legislative authority is vested by the people upon the National Assembly. The National Assembly includes two Houses: The Lower House and the Upper House.

The Lower House

Art. 31. 1. The Lower House includes from 100 to 200 Representatives.

2. Representatives are elected by universal suffrage, direct and secret ballot. Candidates shall run on single lists in separate constituencies no larger than provinces.

3. Representatives' term of office is four years. They may be re-elected.

4. The election of a new Lower House shall be completed at least one month prior to the expiration of the term of the old Lower House.

Art. 32. Citizens meeting the following qualifications may run for the Lower House:

1. Vietnamese citizenship at birth or having held Vietnamese citizenship for at least seven years, or having recovered Vietnamese citizenship for at least five years, as of the day of election;

2. At least 25 years old as of the election day;

3. Enjoy full rights of citizenship;

4. Have draft status in order.

5. Meet other conditions specified by the electoral law.

The Upper House

Art. 33. The Upper House includes from 30 to 60 members.

1. Senators are elected at large by universal suffrage, direct and secret ballot. Election is by associate lists and on a basis of plurality. Each list includes from one-third to one-sixth of the total membership of the House.

2. Senators serve for six years. One-half of the Upper House is elected every three years. Senators may be re-elected.

3. Members of the first Upper House shall be divided into two groups by drawing lots. The first group shall serve six years, the second group three years.

4. The election of one-half of the Upper House shall take place at least two months before the term of that half of the Upper House ends.

Art. 34. 1. Candidates for the Upper House must be thirty years of age by election day. They must meet all the conditions prescribed in the Upper House election law and those prescribed in Art. 32 herein.

Art. 35. 1. In case a vacancy occurs in the Lower House more than two years prior to the end of the term, an election shall be held within three months to choose a replacement.

2. If for any reason a vacancy occurs in the Upper House, the election of the replacement shall be held concurrently with the next regular election of one-half of the Upper House.

Art. 36. 1. Procedures and conditions for the candidacies and election of Representatives and Senators, including ethnic minority Representatives, shall be prescribed by law.

Guarantees for Representatives and Senators

Art. 37. 1. Representatives or Senators cannot be prosecuted, pursued, arrested or judged for any statement or vote in the National Assembly.

2. During their entire term of office, Representatives and Senators cannot be prosecuted, pursued, arrested or judged without the approval of three-fourths of the total number of Representatives or Senators, except in cases of flagrant violation of law.

3. In cases of flagrant violation of the law, prosecution or detention of Representatives and Senators shall be suspended upon request of the House concerned.

4. Representatives and Senators have the right to keep secret the origin of documents presented to the National Assembly.

5. Representatives and Senators may not hold any other elected or assigned function.

6. Representatives and Senators may serve as instructors at universities and advanced technical schools.

7. Under no circumstance may a Representative or Senator or his spouse participate in a bid or sign a contract with a government agency.

Art. 38. 1. In case of treason or other serious crime, Representatives or Senators may be removed from office by the House concerned.

2. The removal from office must be proposed by two-thirds of the total number of Representatives or Senators.

3. The resolution to remove a member from office must be approved by three-fourths of the total number of Representatives or Senators.

4. The Representative or Senator concerned has the right to defend himself in debate during all phases of the removal procedure.

Authority of the National Assembly

Art. 39. The National Assembly has the authority to:

1. Vote legislation.

2. Ratify treaties and international agreements.

3. Approve declarations of war and peace talks.

4. Approve declarations of a state of war.

5. Control the government in the carrying out of national policy.

6. Within the limits of each House, pass on the validation of the election of Representatives or Senators.

Art. 40. 1. Each House, with the agreement of one-third of its membership, has the right to request the Prime Minister or government officials to appear before it to answer questions regarding the execution of national policy.

2. The Committee Chairmen in each House have the right to request government officials to participate in sessions of their Committees to report on problems relating to the Ministries concerned.

Art. 41. 1. The Upper House has the right to open investigations regarding the execution of national policy and to request the public agencies to produce documents necessary to its investigations.

Art. 42. 1. The National Assembly has the right to recommend the replacement of part or all of the government members by a two-thirds majority vote of the total number of Representatives and Senators.

2. The recommendation shall be binding unless the President has special reasons for rejecting it.

3. In the event of rejection by the President, the National Assembly has the right to vote final approval of the recommendation by a three-fourths majority vote of the total number of Representatives and Senators. This recommendation by the National Assembly shall be binding from the day it is voted.

Legislative Procedures

Art. 43. 1. Representatives and Senators have the right to introduce bills.

2. The President may introduce bills.

3. Bills must be submitted to the office of the Lower House.

4. Whether a bill is approved or rejected by the Lower House, it must be transmitted to the office of the Upper House within three consecutive days.

5. If the Upper House agrees with the Lower House, the bill shall be transmitted to the President for promulgation or abolishment.

6. If the Upper House does not agree with the Lower House, it shall return the bill to the Lower House within three consecutive days, along with an explanation for its action.

7. In the latter case, the Lower House has the right to vote final decision on the bill with a two-thirds majority of its total membership.

8. If the Lower House is unable to reach a two-thirds majority, the viewpoint of the Upper House shall be considered as conclusive.

9. The time limit for debating and voting on a bill in the Upper House may not exceed half the time required to debate and vote on the bill in the Lower House. The time limit for debating and voting on a bill in the Lower House may not exceed twice the time required to debate and vote on the bill in the Upper House.

Art. 44. 1. Bills approved by the National Assembly shall be transmitted to the President within three consecutive days.

2. The President shall promulgate the law within fifteen days from the date of receipt.

3. If the National Assembly appraises the matter as urgent, the bill must be promulgated within seven consecutive days.

4. If the President does not promulgate the bill within the specified period of time, the bill shall automatically become law and shall be promulgated by the Chairman of the Upper House.

Art. 45. 1. Within the period allowed for promulgation, the President has the right to send a message outlining his reasons requesting the National Assembly to reconsider one or more articles of the bill.

2. In this case, the National Assembly will meet in joint plenary session to have a final vote on the bill with an absolute majority of the total number of Representatives and Senators. If the National Assembly votes to reject the amendment proposed by the President, the bill shall automatically become law and shall be transmitted to the President for promulgation.

Art. 46. 1. The draft budget must be submitted to the office of the Lower House prior to September 30.

2. Representatives and Senators have the right to propose additional expenditures but must at the same time propose equivalent new receipts.

3. The Lower House must vote on the budget prior to 30 November and transmit the approved version to the Upper House by 1 December at the latest.

4. The Upper House must vote on the draft budget before 31 December.

5. During the above mentioned period, if the Lower House is requested to reconsider one or more provisions in the draft budget, the procedures outlined in Article 43 shall be applied. In the event the draft budget has not been finally voted by 31 December, the President has the right to sign a decree-law authorizing expediture of part of the budget equivalent to one-twelfth of the previous budget until the Lower House has voted final approval thereof.

Regulations

Art. 47. 1. Each House shall meet in regular and extraordinary sessions.

2. Every year each House shall meet in two regular sessions: one beginning on the first Monday of April, the other on the first Monday of October. A session cannot last for more than ninety days. However, the Lower House can extend its session in order to vote final approval of the draft budget.

3. Either House may meet in extraordinary sessions when so requested by the President or one-third of the Representatives or Senators. When extraordinary sessions are convened by the President, the President shall set up the agenda.

Art. 48. 1. Each House shall meet in open session except when more than one-half of the members present in the House request a closed session.

2. In open sessions, complete reports of the debates and documents shall be published in the Gazette of the Republic.

Art. 49. 1. Each House shall elect its Speaker and staff officers.

2. Each House shall establish permanent and special committees.

3. Each House is responsible for establishing its own internal rules.

4. The offices of the two Houses shall meet together to determine procedures for maintaining liaison between the Houses.

Art. 50. 1. The Speaker of the Upper House shall convene and preside over joint plenary sessions of both Houses.

2. If the Speaker of the Upper House is unable to perform his function, it will be carried out by the Speaker of the Lower House.

CHAPTER IV. THE EXECUTIVE

Art. 51. 1. Executive authority is vested by the people in the President.

Art. 52. 1. The President and Vice President run together on one list and are elected by the entire nation by direct and secret ballot.

2. The term of office of the President and Vice President is four years. They can be re-elected once.

3. The term of office of the President and Vice President ends precisely at 12:00 noon on the last day of the forty-eighth month from the day they took office, and the term of the new President and Vice President begins at that time.

4. The election of the new President and Vice President shall be held on a Sunday, four weeks before the term of the President in office ends.

Art. 53. Citizens who fulfill the following conditions may run for President or Vice President if they:

1. Have Vietnamese citizenship from birth and continuous residence in Viet-Nam for at least ten years as of the date of the election. Time spent abroad on official assignment or in political exile is considered as residence in Viet-Nam.

2. Be 35 years of age as of election day.

3. Have legal draft status.

4. Enjoy full rights of citizenship.

5. Meet all other conditions set forth in the Presidential and Vice Presidential election law.

Art. 54. 1. The Supreme Court shall establish a list of candidates, control the validity of the election, and announce the results thereof.

2. The candidates shall receive equal means to carry out the electoral campaign.

3. Procedures and conditions governing the candidacies and election of the President and Vice President shall be prescribed by law.

Art. 55. 1. When assuming office, the President, witnessed by the Supreme Court and the National Assembly, shall take the following oath before the Nation: "I solemnly swear before the Nation to protect the Fatherland, respect the Constitution, serve the interests of the people, and to the best of my ability fulfill my duties as President of the Republic of Viet-Nam."

Art. 56. 1. The duties of the President and Vice President may terminate prior to the expiration date of their terms of office in the following circumstances:

a. Death.

b. Resignation.

c. Impeachment.

d. Serious and prolonged illness such that the incumbent can no longer carry out his duties. This disability must be recognized by three-fourths of the total membership of the two Houses of the National Assembly after a complete medical examination.

2. In the event the duties of the President are terminated more than one year prior to the end of his term of office, the Vice-President shall temporarily assume the Presidency for a period not to exceed three months in order to organize the election of a new President and a new Vice President for a new term of office.

3. In the event that the duties of the President are terminated within one year prior to the expiration date of his term of office, the Vice President shall assume the Presidency for the remainder of the term, except in cases of impeachment of the President.

4. If for any reason the Vice President is unable to assume the Presidency, the Speaker of the Upper House shall assume the office for a period not to exceed three months in order to organize the election of a new President and new Vice President for a new term of office.

Art. 57. 1. The President promulgates laws within the period determined in Art. 44.

Art. 58. 1. The President appoints the Prime Minister. Upon the proposal of the Prime Minister, the President appoints members of the government.

2. The President has the right to reorganize all or part of the government on his own initiative, or upon recommendation of the National Assembly.

Art. 59. 1. The President appoints, with approval of the Upper House, Chiefs of diplomatic missions and Rectors of Universities.

2. The President represents the nation in international relations and receives letters of accreditation of diplomatic envoys.

3. The President signs and, after ratification by the National Assembly, promulgates treaties and international agreements.

Art. 60. 1. The President is the Supreme Commander of the Armed Forces of the Republic of Viet-Nam.

Art. 61. 1. The President grants all types of decorations.

2. The President has the right to grant amnesty and commutation to criminals.

Art. 62. 1. The President determines the national policy.

2. The President presides over the Council of Ministers.

Art. 63. 1. The President communicates with the National Assembly by message. In each regular session, and whenever the President considers it necessary, he shall inform the National Assembly of the situation in the country and of the government's domestic and foreign policies.

2. The Prime Minister and other government officials may participate in sessions of the National Assembly or its committees in order to present and explain matters relating to the national policy and the execution thereof.

Art. 64. 1. In special situations, the President may sign decree-laws declaring states of emergency, curfew or alert over part or all of the territory of the country.

2. The National Assembly shall meet no later than twelve days after the promulgation of a decree-law to ratify, amend or reject it.

3. If the National Assembly rejects or amends the President's decree-law, the special situations which were decreed shall end or be modified accordingly.

Art. 65. In a state of war, and when elections cannot be held, the President, with the approval of two-thirds of the National Assembly, has the right to prolong the terms of office of a number of elected bodies of the country and to appoint a number of province chiefs.

Art. 66. 1. The Vice President is Chairman of the Cultural and Educational Council, the Economic and Social Council, and the Ethnic Minority Council.

2. The Vice President cannot hold any other position in the government.

Art. 67. 1. The Prime Minister operates the government and the national administrative agencies.

2. The Prime Minister is responsible to the President for carrying out national policy.

Art. 68. 1. The President, Vice President, Prime Minister and members of the government cannot hold any position in the private sector whether with remuneration or not.

2. Spouses of persons holding the above positions may not participate in any government bids or contracts.

Art. 69. 1. It is the task of the National Security Council to examine all matters relating to national defense; propose measures appropriate to the maintenance of national security; propose declarations of states of emergency, curfew, alert or war; and propose declarations of war or the holding of peace talks.

2. The President is Chairman of the National Security Council.

3. A law shall prescribe the organization and operational procedures of the National Security Council.

Local Administration

Art. 70. 1. The principle of separation of power of the local administrative agencies is recognized for the legal regional entities: villages, provinces, cities, and the capital.

2. The organization and regulation of local administration shall be prescribed by law.

Art. 71. 1. Deliberative bodies and the heads of executive agencies of local administrative units shall be popularly elected by direct and secret ballot.

2. At the village level, Village Chiefs may be elected by Village Councils from among Village Council members.

Art. 72. 1. The heads of executive agencies of local administrative units are:

Villages	-	Village Chief
Provinces	-	Province Chief
Cities	-	Mayor
Capital	-	Mayor

Art. 73. 1. The deliberative bodies of local administrative units are:

Villages	-	Village Council
Provinces	-	Province Council
Cities	-	Municipal Council
Capital	-	Municipal Council

Art. 74. 1. The government shall appoint two civil servants who have the responsibility to assist Mayors, Province Chiefs and Village Chiefs in administrative and security matters, as well as other administrative personnel.

Art. 75. 1. Members of deliberative bodies and heads of executive agencies or local administrative units may be dismissed by the President if they violate the Constitution, the laws of the nation, or the national policy.

CHAPTER V. THE JUDICIAL

Art. 76. 1. Independent judicial power is vested in the Supreme Court and is exercised by the presiding judges.

2. A law shall establish the organization and administration of the Judicial Branch.

Art. 77. Every court must be established by law with presiding judges and prosecuting judges professionally qualified. The courts must respect the rights of defense of the offenders.

Art. 78. 1. The responsibilities of the presiding judges and prosecuting judges are clearly delineated, and both are governed by separate regulations.

2. The presiding judges make decisions according to their consciences and the law, under control of the Supreme Court.

3. Prosecuting judges monitor the application of the law in order to protect public order, under control of the Ministry of Justice.

Art. 79. The presiding judges can be relieved of their functions only in case of mental or physical incapacity, conviction, or violation of discipline.

The Supreme Court

Art. 80. 1. The Supreme Court includes from nine to fifteen judges chosen by the National Assembly and appointed by the President from a list of thirty jurists elected by the Association of Judges, Association of Prosecutors, and the Bar Association.

2. Judges of the Supreme Court must be judges or lawyers who have served at least ten years in the Judicial Branch.

3. The term of office of the judges of the Supreme Court is six years.

4. The number of electors of the Association of Judges, the Association of Prosecutors, and the Bar Association must be equal.

5. The organization and regulations of the Supreme Court shall be prescribed by law.

Art. 81. 1. The Supreme Court is empowered to interpret the Constitution, to decide on the constitutionality of all laws and decree-laws, and to decide on the constitutionality and legality of decrees, arretes and administrative decisions.

2. The Supreme Court is empowered to decide on the dissolution of a political party whose policy and activities oppose the republican regime.

3. In these cases, the Supreme Court shall meet in plenary session. Representatives of the Legislative and Executive Branches may participate in order to present their viewpoints.

4. Decisions declaring the unconstitutionality of a law or the dissolution of a political party requires a three-fourths vote of the total number of Supreme Court judges.

Art. 82. 1. The Supreme Court is empowered to rule on appeals from lower courts.

Art. 83. 1. The Supreme Court has a separate budget and is empowered to establish regulations governing the judiciary.

Art. 84. 1. The Judicial Council has the following responsibilities:

To make recommendations for the appointment, promotion, transfer and enforcement of discipline against the judges, and

To advise the Supreme Court in matters relating to the Judiciary.

2. The Judicial Council shall be composed of judges elected by the Association of Judges.

3. The organization and regulations of the Judicial Council shall be prescribed by law.

CHAPTER VI. SPECIAL INSTITUTIONS

Special Court

Art. 85. The Special Court is empowered to remove from office the President, Vice President, Prime Minister, Ministers, Secretaries of State, Supreme Court Judges, and members of the Review and Inspection Institute in cases of treason or other high crimes.

Art. 86. 1. The Special Court is chaired by the Chairman of the Supreme Court and consists of five Representatives and five Senators.

2. When the Chairman of the Supreme Court is concerned, the Special Court shall be chaired by the Chairman of the Upper House.

Art. 87. 1. A motion for prosecution citing reasons therefor must be signed by more than one-half of the total number of Representatives and Senators. The motion must be approved by a two-thirds majority vote of the total number of Representatives and Senators. In the particular case of the President and Vice President, the motion must be signed by two-thirds of the total number of Representatives and Senators and must be approved by a majority vote of three-fourths of the total number of Representatives and Senators.

2. The functions of the accused must be suspended from the date of approval of the motion by the National Assembly until the decision of the Special Court is rendered.

3. The Special Court decides removal from office by a three-fourths vote of its membership. In the particular case of the President and Vice President, the decision must be by a four-fifths vote of the total number.

4. The accused shall enjoy the right of defense during the entire proceedings.

5. After having been removed from office, the accused may be tried by an ordinary court.

6. The organization, administration and procedure of the Special Court shall be prescribed by law.

The Inspectorate (Review and Inspection Institute)

Art. 88. The Inspectorate is empowered to:

1. Inspect, control and investigate personnel of all public and private agencies directly or indirectly engaged in corruption, speculation, influence peddling or acts harmful to the national interest;

2. Inspect accounts of public agencies and commercial enterprises.

3. Audit the property of personnel of public agencies, including the President, Vice President, Prime Minister, National Assembly members, and the Chairman of the Supreme Court.

4. In the case of the Chairman and members of the Inspectorate, the audit of personal property shall be conducted by the Supreme Court.

Art. 89. 1. The Inspectorate is empowered to make recommendations for disciplinary measures against guilty persons or to request prosecution by competent courts.

2. The Inspectorate has the right to make public the results of its investigations.

Art. 90. 1. The Inspectorate includes from nine to eighteen inspectors, one-third designated by the National Assembly, one-third by the President, and one-third by the Supreme Court.

2. Inspectors shall enjoy guarantees necessary for them to carry out their duties.

Art. 91. 1. The Inspectorate has an autonomous budget and is empowered to establish regulations governing its internal organization and the Inspectorate Branch. The organization and regulation of the Inspectorate shall be prescribed by law.

Armed Forces Council

Art. 92. 1. The Armed Forces Council advises the President in matters relating to the Armed Forces, especially promotion, transfer and discipline of soldiers of all ranks.

2. The organization and regulation of the Armed Forces Council shall be prescribed by law.

Cultural and Educational Council

Art. 93. 1. The function of the Cultural and Educational Council consists of contributing ideas on bills concerning culture and education, and on the implementation of the government policy relative to culture and education.

A National Academy shall be established.

2. With the approval of the National Assembly, the Cultural and Educational Council may select representatives to report to the National Assembly on related matters.

3. The Cultural and Educational Council may contribute ideas on bills concerning culture and education prior to debate at the National Assembly.

Art. 94. 1. The membership of the Cultural and Educational Council comprises one-third designated by the President, and two-thirds elected by public and private cultural and educational organizations and by parent-teacher associations.

2. The term of office of the Cultural and Educational Council shall be four years.

3. The organization and regulations of the Cultural and Educational Council shall be prescribed by law.

Economic and Social Council

Art. 95. 1. The Economic and Social Council has the responsibility to advise the government in economic and social matters.

2. With the approval of the National Assembly, the Economic and Social Council may select representatives to report to the National Assembly on related matters.

3. The Economic and Social Council may contribute ideas on bills relating to economic and social matters before they are debated at the National Assembly.

Art. 96. 1. The membership of the Economic and Social Council shall comprise one-third designated by the President, and two-thirds by industrial and commercial organizations and by labor unions and associations having an economic and social character.

2. The term of office of the Economic and Social Council is four years.

3. The organization and regulations of the Economic and Social Council shall be prescribed by law.

The Ethnic Council

Art. 97. 1. The Ethnic Council has the responsibility to give advice to the government on matters related to ethnic minorities.

2. With the approval of the National Assembly, the Ethnic Council may select representatives to report to the National Assembly on related matters.

3. The Ethnic Council may be consulted on bills relating to ethnic minorities before they are submitted to the National Assembly for debate.

Art. 98. 1. The membership of the Ethnic Council shall comprise one-third designated by the President, and two-thirds elected by the ethnic minorities.

2. The term of office of the Ethnic Council is four years.

3. The organization and regulations of the Ethnic Council shall be prescribed by law.

CHAPTER VII. POLITICAL PARTIES AND OPPOSITION

Art. 99. 1. The Nation recognizes that political parties play an essential role in a democratic system.

2. Political parties may be organized and may operate freely, according to the procedures and conditions prescribed by law.

Art. 100. 1. The Nation encourages progress toward a two-party system.

Art. 101. 1. The Nation recognizes the political opposition.

Art. 102. 1. Regulations governing political parties and political opposition shall be prescribed by law.

CHAPTER VIII. AMENDING THE CONSTITUTION

Art. 103. 1. The President or an absolute majority of the total number of Representatives or an absolute majority of the total number of Senators has the right to propose amendments to the Constitution.

2. The proposal must cite reasons, and must be submitted to the office of the Upper House.

Art. 104. 1. A Joint Committee shall be established to study the proposed amendment and report it to the joint plenary session of the National Assembly.

Art. 105. 1. The resolution to amend the Constitution must be approved by two-thirds of the total number of Representatives and Senators.

Art. 106. 1. The President promulgates a law amending the Constitution according to the procedures prescribed in Art. 4.

Art. 107. 1. Article 1 of the Constitution and this article may not be amended or deleted.

CHAPTER IX. TRANSITIONAL PROVISIONS

Art. 108. The Constitution takes effect from the date it is promulgated, and the Provisional Charter of 19 June 1965 is automatically invalidated.

Art. 109. During the transitional period, the National Assembly elected on 11 September 1966, representing the people of the Nation in the legislative sphere, shall:

1. Draft and approve: election laws for the election of the President and Vice President, Upper House and Lower House; laws organizing the Supreme Court and the Inspectorate; political parties and press regulations.

2. Ratify treaties.

Art. 110. 1. Effective the time the first President and Vice President take office, the Assembly elected on 11 September 1966 assumes legislative powers until the first National Legislative Assembly is convened.

Art. 111. 1. During the transitional period, the National Leadership Committee and the Central Executive Committee shall continue in power until the first President and Vice President take office.

Art. 112. 1. During the transitional period, courts presently in operation shall continue to exercise judicial authority until the judicial organs prescribed in this Constitution are established.

Art. 113. 1. The Assembly elected on 11 September 1966 shall establish a list of candidates, control the legality of the elections, and announce the result of the election of the first President and Vice President.

Art. 114. 1. During the first presidential term, the President may appoint province chiefs.

Art. 115. 1. The election of the President and Vice President must be organized no later than six months from the date of promulgation of this Constitution.

Art. 116. 1. The election of the National Assembly and the organization of the Supreme Court and Inspectorate must be carried out no later than twelve months from the date the first President assumes office.

Art. 117. 1. The other structures prescribed by the Constitution must be established no later than two years from the date the first National Assembly is established.

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Appendix I

(An Unofficial Translation)

PROGRAM OF ACTION

OF THE MINISTRY OF JUSTICE 1967 - 1968

Hon. Tran-Minh-Tiet
Minister of Justice
Republic of Viet-Nam
July 1966 - Nov.1967

Objective.

In keeping with the free and democratic spirit of Viet-Nam, the Ministry of Justice in striving to respond to the aspirations of the people seeks to further strengthen the concept of a constitutional democracy, to make justice available to everyone, and to develop individual capabilities and personal values with a view to the progress of the nation within the framework of national discipline and protection of the law.

Program to Carry Out This Objective.

The program of action of the Ministry of Justice is directed toward attaining the following three goals:

- New legislation to end the discrimination between the different sections of the country which currently prevails under existing law.
- Developing a modern judicial system to apply the new laws with a true spirit of equality.
- Widely publicizing the new laws to promote among the people an understanding of and confidence in national justice, and in their protection under the law.

These are to be implemented in coordination with the national policy of the government of building a new society based on justice and democracy.

The mobile, or circuit, courts provide a means for justice to be more readily available to people in remote districts and villages. This is part of the continuing rural pacification program and has been established to help the people of Viet-Nam to distinguish between legal acts which enjoy the protection of the law, and illegal acts which are punishable under the law.

Unification and Modernization of the Law.

Concept.

The law must be modernized and standardized so as to implement national sovereignty and unity, and to create the necessary juridicial conditions for the development of a new society.

Plan.

- To establish committees for drafting the five basic Codes: the Criminal Code, the Code of Criminal Procedure, the Civil Code, the Code of Civil Procedure, and the Commercial Code.

- To draft other laws to amend or replace obsolete laws no longer appropriate to the present situation of the country and to the developed society. In this endeavor the Ministry solicits suggestions and recommendations; to make them more readily obtainable the Ministry will organize seminars of judges, lectures and conferences among lawyers and judges of Viet-Nam and other countries, and meetings with the nation's lawmakers.

Accomplishments.

The five basic Codes have been drafted and submitted to the Chairman of the Central Executive Committee for presentation to the National Leadership Committee, as has been the draft law determining relations between lessors and lessees of commercial or industrial properties.

Improvement of the Judicial System.

Concept. It is very difficult for a man to try a man. It is a most delicate mission and requires that the judge have a high degree of instruction, technical knowledge, and experience coupled with the virtues of clearsightedness, firmness, impartiality, and so on. The courts should hold trials promptly in order that the rights and interests of the people may be effectively protected, and the use and application of the laws should be explained. To this end, the organizational structure of the judicial system needs to be improved and modernized, and its personnel must be increased.

Organization. At the central level, the agencies of the Ministry of Justice require reorganization, and there should be established a Judicial General Administration Directorate and a Directorate General of Inspection of the Courts to supervise and direct the activities of the judicial agencies. Further, there should be established a Central Records and Archives Service, and a Commercial, Civil and Criminal Statistics Service.

At the court level, the following are required:

- Establishment of Judicial, Criminal and Civil Bureaus at the Courts of Appeals of Saigon and Hue.

- Establishment of additional Examining Judges at the Court of First Instance in Saigon.

- Establishment of judicial courts at provinces where no court presently exists.

- Changing a number of Justices of Peace with Extended Jurisdiction to Courts of First Instance, and Justices of Peace to Justices of Peace with Extended Jurisdiction.

- Consideration of the need to establish additional Courts of Appeals where necessary, such as at Phong-Dinh.

- Establishment of Customs Courts for the Highlanders.

- Study of the reorganization and operation of the Juvenile and Labor Courts.

Among Judicial Assistants, it is proposed to appoint principal Process Servers to replace the provisional appointees now serving. Chiefs of provincial police departments now act as Process Servers.

With regard to personnel in the organization of the Ministry of Justice, the following steps are planned:

- To increase the number of judges, clerks and staff to meet the needs of the various courts.

- To study the status of judicial career personnel, such as judges, notaries and clerks.

- To establish as a career position the office of Chief Clerk.

- To study the status of Auctioneers.

- To establish a status for Curators, Liquidators, Auditors at the Courts of Appeals, Experts, Consigners, and others, including the definition of their profession, and codes of conduct and discipline.

- To furnish training, including in-service training, to the judicial personnel of all grades and levels.

- To organize seminars on the responsibilities of the Courts and of the Judges in accordance with the new concepts and laws.

Operations. Goals include simplification of the administrative procedures, changing the criminal and civil court fees, and reorganization of the record keeping procedures in the Offices of the Clerks. A Committee for the Judicial Reorganization was established by Decision No. 875/BTP/ND of 9 September 1966.

Bringing Justice Nearer to the People,
Promoting the People's Respect for the Law.

Concept. To strengthen the constitutional democracy, the courts should be more accessible to the people in order to help prevent corruption, to suppress village and other local tyrants, to publicize civic instruction, and to give to the people confidence in their protection under the law.

Plan. With regard to the organization of mobile courts, it is planned to hold sessions at the district level, and later at villages and hamlets in so far as security conditions permit. A schedule will be established for follow-up and control purposes. These mobile sessions of the Courts of First Instance and Justices of Peace with Extended Jurisdiction try simple cases involving criminal, civil or land matters which have a direct bearing on the lives of the rural citizens.

Mobile sessions of the Courts of Appeals will be held in Nha-Trang, Phong-Dinh, Dalat, and other major centers.

Following each court session, the judges are to lecture on the subject matters involved in the trials and endeavor to explain the legal problems. Instructions in civic education are also to be given.

While on circuit the judges will have an opportunity to instruct and guide local administrative authorities on such as proper keeping of civil status records, and execution of legal documents.

Another major step in the dissemination of knowledge of common law, regulations, rights of the citizens, and so on, is being accomplished by the distribution of pamphlets prepared by the Ministry. Copies have been distributed to the province officials, and more will be made available to the districts, villages and hamlets throughout the country. Additional pamphlets on other legal matters will be prepared and similarly distributed. As time and funds permit, it is also planned to produce plays and movies demonstrating the various points of law and the protection of the people under the law.

Technical training is another step in the strengthening of the judicial system. Vocational training will be provided in judicial matters for district administrative personnel, and to the Civil Status Officers, Police Officers and others on Village Councils. Lectures on the responsibilities of the process servers in the villages will also be arranged. In-service training will be made available to judges, clerks and other employees of the judiciary.

It is also planned to inaugurate a system of regular inspections of the courts, from the central level to the provinces, districts, villages and hamlets. In the course of the inspection trips, the judges will make every effort to meet with the people in the various localities to learn from them their desires and needs.

APPENDIX II

(An Unofficial Translation)

PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL LIBERTIES

WITHIN THE PATTERN OF VIETNAMESE LEGISLATION AND POLICY.

Hon. Tran-Minh-Tiet
Minister of Justice
Republic of Viet-Nam
July 1966-Nov. 1967

After recovery of her national sovereignty and freedom, Viet-Nam became a breeding ground for international communism. Although divided and continually ravaged by a subversive war, she nevertheless stands on and fights with a strong determination to win so as to safeguard freedom and human dignity.

This document is for the purpose of presenting the efforts made and the initiatives taken by the country to institute a true democratic regime at the same time that on the battleground her troops continue to fight to overcome the Communist aggression.

Such an essay must start with a relatively recent date and deal essentially with current projects and achievements or those which will be realized in the near future. It is therefore felt best to select as the starting date the Revolution of 1 November 1963. Its objective was to abolish the dictatorial regime of Ngo-Dinh-Diem and to establish a form of government which would safeguard human dignity and fundamental liberties.

This document is divided into two parts: the first will cover the post-revolutionary period marked by political instability, and the second will deal with the projects and achievements of the National Leadership Committee and the War Cabinet. We will try to outline the

facts which are of interest to us from the standpoint of respect for human dignity through the recognition of human rights in the institution of a true democratic regime.

I. The Revolution of 1 November 1963 and the Post-Revolutionary Period

It is true that the Constitution of 26 October 1956 instituted the legal infra-structural organization of the First Republic and dedicated itself to the respect of human rights and fundamental liberties in line with the honorable principles of the United Nations Declaration of Human Rights. However, the strong presidential regime established was not responsible to the National Assembly and thus that body had no effective control over the Executive. This in a country which had never known any traditional democratic principles and where, because of the war, collective security for the national defense required necessary restrictions on individual liberties. Thus that constitution left the door open to dictatorship. As a matter of fact, in its last years the Ngo-Dinh-Diem regime was increasingly ruling by individual power under a dictatorship. To this disastrous political deviation were added other mistakes, but a discussion of them in this document would serve no useful purpose.

It resulted in widespread dissatisfaction among the populace. The "Buddhist Affair" was only the last drop added to a full glass and precipitated the long-expected fatal blow to the regime.

The Revolution of 1 November 1963 was attributable to the firm determination of the Vietnamese people and of the Army to put an end

to a situation which had worsened daily, and to institute a new regime capable of implementing the legitimate aspirations of the people, particularly the development of human values of justice, freedom and dignity.

1. Line of Action of the Military Revolutionary Committee and the Provisional Government.

On the day following the revolution, in its proclamation of 1 November 1963 the Revolutionary Committee, presided over by General Duong-Van-Minh made it clear to the people that the Army did not favor a dictatorial regime and that the best weapon with which to defeat the Communists must be disciplined democracy and freedom in a nation at war. The Constitution of 26 October 1956, promulgated by Ngo-Dinh-Diem for governing the First Republic, was abolished. The National Assembly which had been elected on 27 September 1963 was dissolved. Public power from then on was exercised under the Provisional Constitutional Act No. 1 of 4 November 1963 promulgated by the Military Revolutionary Committee. By virtue of this Act, Legislative and Executive powers were vested in the Military Revolutionary Committee. The President of that Committee concurrently assumed the function of Chief of State. A President of the Provisional Government was appointed and he selected, with the approval of the Military Revolutionary Committee, the members of the government. Existing laws and regulations temporarily continued to apply.

The Provisional Constitutional Act was very brief because its authors wanted to emphasize to the people their willingness to promulgate a constitution for the country. The concentration of power in

the hands of the Military Revolutionary Committee was a "must" pending official institution of a constitution. Martial Law was proclaimed after 1 November 1963. Only the Judicial Branch remained free of trouble. De jure as well as de facto, it continued to operate within the new national context, always based on the principles of separation of powers and independence of the judges in the performance of their legal duties.

To have representatives of the various social classes participate in the national power, a consultative council called the Council of Notables was created by decree on 6 November 1963. The Council had the obligation, upon request of the Government, to give its opinion on problems relating to the rights of private ownership and other fundamental rights, and could take the initiative in making constructive recommendations or suggestions to the Government.

The Provisional Government was headed by Mr. Nguyen-Ngoc-Tho. Responsibilities were heavy and covered a wide range, from purging all remnants of the old regime to reconstruction of the country on a new foundation and with new objectives. Conditions for carrying out these responsibilities were not promising. A minor problem was easily subject to criticism by people overly excited by the revolution. On the other hand, and this was very serious, the Communists took advantage of the post-revolution confusion and disorder and intensified their activities both in the military and the political fields. But the most difficult problem was undeniably the lack of an appropriate general policy and a constructive program of action during this transitional period. Instead of strengthening and reorganizing the

"Strategic Hamlets" to develop the program on a larger scale, the Military Revolutionary Committee not only did nothing constructive, but, worse, let the hamlets fall into the destructive hands of the Viet-Cong. The political situation was not much better: while the confused situation was still unfavorable, the Military Revolutionary Committee adopted the disastrous policy of favoring the creation of even very small political parties with memberships of only about a dozen. This was made even more serious by the fact it was possible to belong to several parties simultaneously.

The publication of newspapers was all the more confused. With disconcerting easiness no less than thirty newspapers were authorized to publish, all competing for the very limited number ofreaders. This figûre does not include the many malicious publications specializing in articles which served personal grudges, sometimes to extort money from the victims of the articles.

Unable to disentangle the situation, the Military Revolutionary Committee in fact made it more confused, to the point of being hopelessly inextricable. The country needed clearsighted leadership to fill the vacuum. The lack of it was the basic cause of the political instability which characterized the post-revolutionary period.

In the judicial field, for the safeguarding of human rights and fundamental liberties two legislative documents were promulgated in the form of decree-laws by the First Revolutionary Government:

No. 083-SL/CT 29 January 1964. This decree-law granted amnesty to a number of offenders whose crimes were committed prior to 1 November 1963, and to a number of crimes tried before that historic

date. Amnesty was also granted to some categories of political prisoners, such as personnel of the Army of the Republic of Viet-Nam, civil servants and others, and to juvenile delinquents who had committed either minor or serious offenses before 1 November 1963.

Article 5 of that decree-law provided particularly that within a period of one year of its promulgation, all offenders who had been prosecuted or tried and punished, whether for minor or serious offenses, whether by jurisdiction of the common law or by exception, could solicit the President of the Military Revolutionary Committee for amnesty by virtue of the decree-law if the offenses were committed prior to 1 November 1963 with the intention of struggling for the national ideology and in opposition to the Ngo-Dinh-Diem regime.

No. 4/63 of December 1963. This decree-law instituted in each Court of Appeals a "sui generis" Court of Re-examination to revise sentences in accordance with the urgent needs of the situation.

These Courts of Re-examination would, upon request of the Attorney General or of the individuals concerned, re-examine the prosecution and condemnation briefs on crimes committed by nationalist elements in opposing and attempting to overthrow the Ngo-Dinh-Diem government for the sake of the nation. Art. 1 of the decree-law provided that such acts, although illegal at the time of their commission, would not be prosecuted and any sentences already imposed would be removed, and that persons detained for their commission would be released by order of the Public Prosecutor.

2. Assumption of Power by General Nguyen-Kanh, 1 January 1964.

Following his coup, General Nguyen-Khanh assumed power and became President of the Military Revolutionary Committee, simultaneously holding the office of Prime Minister. He reaffirmed, in the name of the Armed Forces, that the objectives of the Revolution of 1 November 1963 were to institute true democracy and to intensify the war against the Communists. Within the limitations necessarily imposed by the all-out struggle against the Communists, the military government also reaffirmed its respect for individual basic liberties, especially those of freedom of belief and of religion. Buddhists, Christians, Cao-Daists, Hoa-Hao-ists, Bah'ais and all others enjoyed very wide liberties in the practice and propagation of their religions. The Vietnamese Unified Buddhist Association was officially recognized by Decree-Law No. 158-SL/CT of 14 May 1964. The practice and propagation of the Bah'ai Sect was officially authorized by Decision No. 1950 NV of 8 October 1964.

The legitimate rights of the ethnic minorities in the Highlands was also recognized. The Government was willing to give them brotherly assistance and support in order that their progress and development might be on a par with the other sections of the nation.

Constitutional Act No. 2, promulgated on 7 February 1964, amended Act No. 1 to allow separation of the offices of Chief of State and President of the Military Revolutionary Committee and provided for the appointment of the latter by the Military Revolutionary Committee. By virtue of this Act, General Nguyen-Khanh retained General Duong-Van-Minh as Chief of State.

The Council of Notables, created 6 November 1963, was dissolved on 4 April 1964.

The effort of the Government to democratize the regime resulted in a series of decrees: Nos. 203-a, b and c NV 31 May 1964 establishing People's Councils at city, province, village and hamlet level. The main purpose of those decrees was to secure participation by the people in the management of the affairs of the nation. Village and hamlet elections were held in August and September 1964 to elect members of Communal Councils and Chiefs and Deputy Chiefs of hamlets.

Meanwhile, on 13 June 1964 a convention of political parties was held in Saigon to discuss the institution of a code to govern their activities. Regrettably, due to personal interests and ambitions of some of the participants, the convention was unsuccessful.

Gradually the government under Nguyen-Khanh engaged in ways dangerous to the nation. On 16 August 1964 he promulgated a charter, known as the "Charter of Cap Saint Jacque" where it was drafted. In that Charter fundamental democratic liberties were recognized but too much power was vested in the Military Revolutionary Committee: it was empowered to elect the President of the Republic and to appoint the members of the Provisional National Assembly. After its promulgation riots and demonstrations broke out. Students and Buddhists denounced the dictatorial ambitions and machinations of General Nguyen-Khanh. The Military Revolutionary Committee was forced to unconditionally revoke the Charter on 27 August 1964. In a statement made the same day, the Committee announced its dissolution and the establishment of a Committee for the Management of the Nation and the Army.

The national political situation was worsening and there was an abortive coup d'etat against General Nguyen-Khanh. The troubles finally resulted in the transfer of power from the military to a civilian government.

- A decision on 8 September 1964 by the Committee for the Management of the Nation and the Army established the High National Council to draft a Provisional Constitution with the objective of making a complete transfer of powers to the civilian government.
- The Provisional Charter of 20 October 1964 was promulgated.
- Mr. Phan-Khac-Suu was selected Chief of State by the High National Council.
- Mr. Tran-Van-Huong was appointed President of the Government by the Chief of State.

3. Civilian Governments.

- Tran-Van-Huong, 31 October 1964 - 1 January 1965.
- Phan-Huy-Quat, 16 February 1965 - 11 June 1965.

The country was governed in principle by the Provisional Charter of 20 October 1964 during the time of both civilian governments. But General Nguyen-Khanh, who controlled the Armed Forces, became an arbitrator of sorts and interfered in all difficulties and problems of the governments. His "counter-weight" policy of playing alternately to either side, based on division and opposition between various parties, was a most dangerous game.

The High National Council was dissolved on 20 December 1964 by decision of the Council of the Vietnamese Armed Forces.

After assuming power, Mr. Tran-Van-Huong became entangled in his problems with the Unified Buddhist Association of Vietnam, and spent a major part of his time endeavoring to quell demonstrations and riots directed against him by the Buddhist Institute.

On 27 January 1965 the Council of the Vietnamese Armed Forces removed Mr. Tran-Van-Huong from power and on 26 February 1965 appointed Mr. Phan-Huy-Quat as head of the Government.

On 17 February 1965 General Nguyen-Khanh, in the name of the Army of the Republic of Viet-Nam, decided on the formation of a National Legislative Council, with members appointed by the Council of the Army of the Republic of Viet-Nam after consultation with religious groups and political parties. The Legislative Council took the place of the High National Council and carried out legislative responsibilities as defined by the Charter of 20 October 1964.

The Charter of 20 October 1964.

Although a provisional charter, this document nevertheless contained essential elements of a democratic regime.

- Separation of powers.
- Respect of fundamental liberties.
- Promotion of social justice.

It was the first document since the Revolution of 1 November 1963 to declare that national sovereignty belongs to the people who shall exercise it by their elected representatives, and that a national Congress shall be instituted to assume legislative powers. During the transitional period, the High National Council shall exercise the powers vested by the Charter in the National Assembly.

Art. 5, Para. 1 of the Charter provides that "fundamental liberties dedicated by the United Nations Declaration of Human Rights, such as freedom of thought, expression, the press, belief, worship and propagation of faith, assembly, association, movement, etc. are guaranteed by laws and regulations in force, with due respect to the rights of others and with no attempt upon national defense, public security or public order."

Following are some of the actions taken by the civilian governments.

- Decree-Law No. 2-QT/SL of 22 January 1965. In establishing the Charter of 20 October 1964, this decree-law provided for the composition of and formalities for convening a National Congress. However, the document was never put into effect.

- Decree-Law No. 4-QT/SL of 25 January 1965. This was the second of its kind during the post-revolution period to grant amnesty for offenses committed prior to 7 July 1954, which was before the Ngo-Dinh-Diem regime, by patriots who struggled for the independence of their country and prosecuted therefor on charges of rebellion, attempts against the security of the nation, etc.

- Decrees No. 67, 68 and 69 NV of 9 April 1965. This series of decrees, enacted following the People's and Administration Convention of 15-17 March 1965 amended Decrees Nos. 203-a, b and c of 31 May 1964, brought about a larger decentralization of power in the cities, provinces and municipalities. Members of the city, provincial and municipal councils, elected by universal suffrage with direct and secret ballots, would exert extended powers and would participate in an efficient manner in the management of the local interests.

These Councils would also have power to make decisions on all matters and exert control over the prefecture, provincial and municipal administrations. They could also make recommendations to the national government so that when necessary warnings could be issued to the responsible local authorities.

Under the laws then in force, on 30 May 1965 elections of council members were held in Saigon, four municipalities and 44 provinces.

A People's and Administration National Congress was convened on 15-17 March 1965. Its purpose was to establish close contact between the people, the local authorities and the central government, and to enable the central government to know the actual desires of the people.

The High National Council had expressed a desire to have elections for a National Assembly, which would be the fundamental democratic institution of the entire nation. However, the government did not have time to accomplish this. The situation had continued to worsen, both in the military and in the political fields. A second coup d'etat was staged against General Nguyen-Khanh and, although abortive, it led to his removal from power by the Council of the Vietnamese Armed Forces.

The cooperation of the various political parties as formulated by the Phan-Huy-Quat government did not materialize. On 11 June 1965, to resolve a conflict which had developed between himself as President of the government, and Mr. Phan-Khac-Suu, Chief of State, Phan-Huy-Quat turned the power of the state to the Armed Forces of the Republic.

II. The National Leadership Committee and the War Cabinet

14 June 1965 to date

The council of the military leaders of the Armed Forces, in its decision of 14 June 1965, decided on the formation of a National Leadership Committee to be composed of ten generals and to be responsible for the affairs of the nation. The Committee is responsible to the Congress of the Armed Forces. General Nguyen-Van-Thieu was appointed Chairman of the Committee, and General Nguyen-Cao-Ky was appointed Chairman of the Central Executive Committee.

The National Legislative Council was dissolved. A new charter, called the Constitutional Charter of 19 June 1965, was promulgated and the Provisional Charter of 20 October 1964 was abolished.

The 19 June 1965 charter established the National Leadership Committee. Its Chairman holds the office of Chief of State and represents the Republic. The Chairman of the Central Executive Committee functions as would a prime minister. The Secretary of the National Leadership Committee is responsible for studying and shaping the general policy of the state and for drafting legislation necessary to the carrying out of such policy.

The charter, in its preamble, reaffirms that it is the desire of the people of Viet-Nam to build a peaceful, free and independent country. The mission of the Armed Forces of the Republic of Viet-Nam was to accomplish this earnest desire regardless of the cost. The entire populace should unite and direct their efforts to the front line so that the Communist agressors will be repelled. The rear lines

should be stabilized so that the infra-structure may gradually be solidified and strengthened in order that freedom and democracy may develop.

Objectives.

In an appeal to the nation, General Nguyen-Van-Thieu defined the main objective of the National Leadership Committee: to face the situation and deal with the aggravating political crisis of the country while in the midst of combatting a war of aggression against it. As Chairman of the National Leadership Committee he solemnly declared that the Army, though assuming the powers of the State for the second time, had no intention of imposing any form of dictatorship, not even military. He promised that the Committee would respect the fundamental human and citizenry rights, and that the power of the government would be turned over to the elected representatives of the people on the day that security and order are restored and freedom is assured.

In his speech at the dedication of the formation of the War Cabinet on 19 June 1965, General Nguyen-Cao-Ky presented a brief expose of the then current situation, which was very dark indeed.

Everywhere along the front the Communist war of aggression was fierce. The Viet-Cong, with their growing forces, applied harder military pressures and intensified their subversive activities. The failures and mistakes of the government were fully exploited by their active, many-sided propaganda. In a word, the Communists were waging a most cruelly intensified all-out war while the government reaction was weakening.

Following the Revolution of November 1963, the lack of a program of action to fight the Communists was a disaster common to the successive governments. In the political field, the lack of efficient leadership and the instability of the government's policies contributed seriously to the crisis. The national administrative machinery was deteriorating, and even collapsed in some areas. Local administrations lost their control, and the Army lost its support. Frequent demonstrations and riots clearly showed the increased dissatisfaction of the people.

In such a situation economic and financial activities could not fare well. The cost of living soared and seriously menaced the already precarious way of life of the people.

Meanwhile, the nation's leaders were seriously divided in their opinions, and splits and dissension among the various political groups and associations ensued. The Unified Association of Buddhists of Viet-Nam split, and the General Association of Vietnamese Buddhists, the Co-Son-Mon and the Theravada Sections were formed. Among the Catholics, many small splinter groups more or less political in nature were founded. The Cao Dai had long had a dozen or so sects. There was divergence of views among the Hoa Hao Buddhists. The workers of the country were split into three unions. There were as many as thirty-two new political groups, large and small, added to the already existing five. Some Tactical Region Officers indicated their willingness to become Regional Lords, independent of the Central Government.

Presented with this situation, it was necessary to form a revolutionary government with enough strength and power to make prompt decisions to promote national unity and solidarity, cooperation between

the people and the Army to continue the war until final victory, and to improve the social organization of the country by means of a true democracy based on social justice, development of human values, liberties, dignity and national pride.

The new Government's program of action included twenty-six points, with particular emphasis on the following:

- To continue the war until final victory.
- To rehabilitate the economic and financial situation.
- To put into effect the principles of democracy by building a new life for the people within the framework of brotherly cooperation, freedom and human dignity.

Ordinance No. 1/UBLDQG of 24 June 1965 proclaimed a state of war in the territory of the Republic, which of course entailed some restrictions on individual liberties. Special documents were promulgated to ensure maximum security and public order. Decree-Law No. 004/65 of 19 July 1965 provided particularly serious penalties for speculation, hoarding, illegal transfer of currencies, smuggling, corruption, abuse of power, insubordination, desertion, rebellion, attempts against national security, and Communist activities in any form.

Being resolute in its determination to carry out the program it had established, the Government tackled all the problems simultaneously.

On the battlefield, the Vietnamese and the Allied armed forces regained the initiative and commenced a general offensive, and, at the rear line, political life of the country slowly stabilized.

The people of the countryside had in fact become tired from so much trouble. They were the main victims of the riots and disorders, and the imminent danger of a Communist advance was always present. The Communist underground cadres had exploited the riots and disorders, as they also had exploited the internal divisions among the political parties, the religous groups, and the regional lords. The return to a stabilized, normal situation was most welcome and had a far-reaching influence. Maximum effort was expended to institute a true Vietnamese democracy consistent with the deep aims and desires of the people.

Measures Taken to Safeguard Human Dignity and to Acclaim the Declaration of Human Rights.

It is worthy of note that in the area of freedom of worship and belief, several decree-laws were promulgated to guarantee that freedom:

- To the Vietnamese Unified Association of Buddhists by No. 5/66 of 26 February 1966,
- To the Cao Dai by No. 3/65 of 12 July 1965, and
- To the Hoa Hao by No. 2/65 of 12 July 1965.

Seminar on Juvenile Delinquency.

A seminar on the prevention of juvenile delinquency and re-education of delinquents was held for the first time in the capital from 23 January to 2 February 1967 with the cooperation and participation of the UNAFEI, the USAID and the ASIA Foundation. There were many participants from among magistrates, professors at the universities, army officers, high officials of the government, and representatives of charitable associations.

The problem had long been of concern to the leaders of the nation, and it was recognized that the mass evacuations of refugees, the undertainties of their day-to-day existence, their accumulated and assorted miseries as well as their immediate needs, and separation of parents from their children, or their carelessness as to their welfare, were all factors aggravating the seriousness of the situation.

Prevention of crime, rather than its punishment, has always been more profitable to society, and the question of how to prevent had resulted in many administrative measures and much legislation based on the humanitarian concept that bad children should be re-educated rather than punished. The solicitude of the legislature for the young delinquents was evidenced by the law of 3 July 1958 creating Juvenile Courts and providing special procedures therein.

A Re-education pilot center at Thu Duc was established in 1948. Another is under construction at CanTho. Necessary funds have been set aside for construction of a center at Hue this year. Meanwhile, two other centers, at Ban-Me-Thuot and at Nha-Trang are under consideration, with the matter of funding being the only obstacle to their early implementation.

Commemoration of the Eighteenth Anniversary of the Declaration of Human Rights.

This anniversary was solemnly celebrated in Saigon on 10 December 1966. The ceremony was presided over by the Prime Minister and was held in the presence of a large audience comprised of members of the government and diplomatic corps, Deputies of the National Assembly, dignitaries, civil servants, students and others. In a remarkable

speech the President of the Vietnamese Council of State outlined the significance of the Declaration, underlined the responsibility of the Executive in the creation of the favorable conditions necessary to the exercise of human rights, and strongly emphasized the role of the Judiciary in the safeguarding of these fundamental rights and liberties.

Promulgation of the Geneva Convention of 1949.

It is interesting to note that in this same field, safeguarding of human rights, the Chairman of the National Leadership Council on 31 March 1967 signed Decree-Law No. 009/67 promulgating the Geneva Convention of 12 August 1949 and approved by the Government of Viet-Nam on 9 November 1953. This Convention included provisions covering

- Welfare of the wounded and sick in the operational Armed Forces,
- Welfare of the wounded and sick of the Navy while at large,
- Treatment of prisoners, and
- Protection of the civilians during time of war.

The Building of Democracy.

Following is an outline of the measures taken by the new regime through government activities, legal documents, etc.

Government Activities.

In requesting the participation of all the people in the common task of promoting national unity, the government strived to develop an atmosphere of democracy by increasing contacts with the public through regional or national meetings for consultation on important administrative and political problems and others. The First National Administrative Conference was held 11-12 October 1965, the Second

National Administrative Conference from 23-25 March 1966, the National Political Congress from 12-14 April 1966, and the People-Army National Congress on 24 May 1966.

Enlargement of the National Leadership Committee and Establishment of the People-Army Council.

Upon recommendation of the People-Army National Congress of 24 May 1966 on the enlargement of the National Leadership Committee, and after consultations with different groups, the following decisions were made on 1 June 1966:

- To enlarge the National Leadership Committee by inviting ten civilians to join the ten General Officers on the Committee.
- To establish a People-Army Council.

The enlargement of the National Leadership Committee was realized by Decision No. 6/QLVNCH/QD of 6 June 1966, and the People-Army Council, with consultative responsibilities, was established by Decree-Law No. 20/66 of 10 June 1966. In a communique the National Leadership Committee underlined that these decisions were again an indication of the determination of the leaders to build the democracy.

The Constituent Assembly.

The idea of convening a Constituent Assembly to draft a constitution and provide a democratic structure for the country was considered and accepted at the Second National Administrative Conference in March 1966. The National Political Congress in April 1966, which gathered one hundred seventeen representatives of religious groups, political parties, professional, youth and student associations, etc., was

unanimously agreed on the need to organize, in the shortest period of time, a Constituent Assembly to establish the juridicial foundation for the organization of public power.

The opinions expressed by those groups and associations corresponded to the unchanged position of the National Leadership Committee. In the closing ceremony of the convention of the National Political Congress on 14 April 1966 the Chairman of the National Leadership Committee signed a decree-law providing for the convening of a Constituent Assembly.

Following a preliminary meeting on 23 April 1966, the committee in charge of drafting a decree-law established the electoral procedures of a Constituent National Assembly and it was organized by decree-law on 6 May 1966.

On 11 September 1966 national elections, by univeral suffrage and direct and secret ballot, were held under Decree-Law No. 22/66 of 19 June 1966 to elect a Constituent Assembly. This free election was organized despite the situation resulting from the country being at war. Several observers from foreign countries were invited to Viet-Nam to observe the electoral operations.

Decree-Law No. 22/66 had provided for necessary measures to be taken to ensure the impartiality of the elections, such as establishment of local commissions at prefectoral, provincial and municipal levels presided over by the local presiding judge or magistrate appointed by the Ministry of Justice. These commissions were comprised of two representatives of the prefectoral, municipal or provincial council, and three representatives of the voters. Their duties were

to examine the files and determine whether or not candidates for office would be permitted to run. They also ensured that the local committees in charge of the polls would exert strict control of ballot-casting during the elections. The commissions pronounced the results of the voting, whether regular or contested, and proclaimed the official returns for each constituency. Contestations and challenges were also anticipate

At a higher level, a central board was established to consider complaints made as a result of acceptance or refusal of candidacies. The board was presided over by the Presiding Judge of the Court of Cassation and included the President of the Council of State or an administrative magistrate appointed by him, the President of the Bar Association or a lawyer-member of the Bar, and five representatives of the People-Army Council.

Each candidate or each associate list was authorized to designate representatives to scrutinize balloting and vote checking, and these representatives were assigned equitably to all voting tables.

These and other measures were taken to guarantee the impartiality and honesty of the elections. The figures show that out of 5,291,965 registered voters, 80%, or 4,277,835 went to the polls throughout the country and voted. It was a strong indication of the determination of the Vietnamese people to stay with the free world.

Exactly as prescribed in Decree-Law No. 21/66 of 19 June 1966, after six months of work the Constituent Assembly had voted the Constitution on 18 March 1967 and it was promulgated on 1 April 1967.

The Constitution of 1 April 1967.

The deputies to the Constituent Assembly were primarily concerned with the two main responsibilities incumbent upon them:

- To establish a strong and stable executive power so that the Executive would be in a position to pacify the country and to put into application a large program of national reconstruction; and

- To avoid any and all possibilities of a return to any form of dictatorship.

The Constitution institued a specific structure because of the situation peculiar to the country. It states substantially in its preamble that the people of Viet-Nam, conscious of their historical background and circumstances, should take the responsibility of establishing a republican regime of, by and for the people to unify the nation, preserve its hard-won independence, and safeguard liberty and democracy in justice and fraternity.

That legal document cannot be said to be perfect. However, it responds to the current requirements of building a constitutional foundation of a legal regime and, as such, has made all Communistic or other aggressive maneuvers illegal. It gives reason to hope, with its many guarantees of freedom and citizens' rights, with political opposition authorized, and a separation of powers between the Executive and the Legislative, that stability and development of the country's political life will be insured and favorable conditions created for the realization of social justice.

Without making an elaborate analysis of its provisions, let us outline some characteristic features of the Constitution.

- Special interest in the protection and guarantee of rights of citizens, of fundamental liberties for all without distinction as to sex, religion, ethnic minorities or political affiliation. Also, in dealing with individual safety and the right of defense counsel, Art. 7 of the Constitution contains nine items guaranteeing protection of these rights, some of which follow:

Art. 7.

(2) Except in case of flagrant violation of the law, no one shall be arrested without a legal order issued by a qualified agency.

(6) The accused has the right to defense by counsel even in the preliminary phase of the investigation, at the police station.

(7) In a case of minor offense, if the accused does not have a previous record of more than three months' imprisonment for an intentional crime, he may be released temporarily pending trial, provided he has a job and a fixed residence.

(9) If unjustly detained, a person has the right to demand compensation for damages from the state after being pronounced innocent, in accordance with provisions of the law.

(10) No one can be detained for indebtedness.

- Priority of the Legislative over the Executive. This is based on experience drawn from the past. It is true that the President of the Republic, elected by universal suffrage, direct and secret ballot in a national election, is vested with the executive power. However, he can only act with the accord of the Prime Minister, who, in accordance with Art. 67 of the Constitution, is the head of the government and of the national administration.

The preponderance of the authority of the Legislative lies in its control of the Government in carrying out national policy (Art. 39 of the Constitution) and in the recommendations it is empowered to make in the removal, partial or total, of government officials. (Art. 42.) These recommendations are mandatory in certain situations.

- The independence of the Judicial power is implemented by the institution of the Supreme Court and the formation of two different bodies of magistrates: the Presiding Judges and the Prosecuting Judges. The Supreme Court has an autonomous budget and is empowered to establish regulations governing the Judicial Branch. (Arts. 76, 78 and 83.) Such a judicial organization strongly guarantees the independence of the judges in providing equality for the individual before the law and effective protection from despotic public power.

Reorganization of Village Administration
Based on Larger Decentralization of Power.

Along with other endeavors, the government recognized the great importance of reorganizing village administrations to make them more efficient, to place them in a position wherein they might fulfill their responsibilities in the life of the nation. If in the past local administrations were not equal to the task, it was because the organizational structures were irrational, management methods were inappropriate, administrative procedures were complicated, and the civil servants were not employed according to their capabilities. With such an administration, no policy can be effectively carried out regardless of how good or how well conceived it is.

On the contrary, a good administration can support the men at the front line while dedicating itself to the complicated and difficult operations which represent an exceptional feature at the present time: promotion of a new life for the people based on liberty, social justice and national unity.

The First National Administrative Conference gathered ninety-eight delegates. Administrative assistants to the government delegates of the four tactical regions, mayors, province chiefs, counsellors of the Prefecture of Saigon, and heads of municipalities convened with central government officials to examine current problems, particularly those relating to refugees from Communist terrorism, to pacification, and to an administrative reorganization.

The Second National Administrative Conference followed, with one hundred eighty-five delegates from various local administrative organizations participating. Also present were representatives of various ministries and central agencies. The Minister of Interior in his statement to the Conference declared that its purpose would be to review in general the results obtained from the program of action developed by the first Conference, to study other problems and set up new objectives and plans, and to develop modern scientific working methods. Three principal points were on the agenda:

- Organization of local administration, primarily at the village and hamlet levels.
- Rural pacification and development.
- Improvement of the working methods of civil servants.

In the reorganization of village and hamlet administration, the Conference was agreed on continuing the separation of powers between the People's Councils and the Village Administrative Committes, and on the enlargement of their separate responsibilities to enable them to participate more actively and efficiently in the rural development programs.

Following the two conferences, a project for structural reorganization at village and hamlet levels was set up for consideration.

Decree No. 198-SL/DUHC of 24 December 1966 brought about important changes directed toward restoring to the villages their autonomy and traditional position in the national community.

In general, large decentralization of administrative powers was accomplished. Since then, not only the People's Councils in the villages are elected by universal suffrage, direct and secret ballot, but also the chairmen of the communal administrative committees. The difference is that the latter, elected by the people to be members of the People's Councils, are assigned the functions of chairmen of the administrative committees.

The People's Councils, the chairmen of the administrative committees, the hamlet chiefs and deputy chiefs, are all now elected officials, which is a bold democratization of the national infrastructural administration.

These representatives govern the village, and in so doing exert the increased powers vested in them. The provincial and district authorities no longer have power to directly interfere in their operations. Instead, they are their tutors, and then only in some very clearly specified instances.

To begin the reorganization described above, village elections commenced in early April 1967. As a preventive measure against Viet-Cong sabotage, they were carried out in two phases.

The election procedures were established by Decree No. 199-SL/DUHC of 24 December 1966, which provided the necessary guarantees therefor. In each province and district a committee was appointed to examine and decide on the registration of the voters and of the candidates. The committee also verified the results of the election. The provincial committees included the Presiding Judge of the Provincial Court or a magistrate representing him. Candidates were permitted to appoint checkers to scrutinize and verify the balloting to assure the integrity of the election.

In the first phase, which was very recently completed, elections were held in five installments, at an interval of one week each, in the 993 villages having adequate security. The following figures were compiled upon termination of the first phase: out of 3,233,441 registered voters 2,511,453, or 77.6%, had voted. This is a highly encouraging and significant percentage, inasmuch as throughout the period of the elections the Communists had tried by every means, including terrorism, threats, assassinations, kidnappings, and, of course, insidious propaganda, to sabotage and undermine the elections.

The second phase of the rural elections, in 275 villages, took place in July 1967. Thus, elections have been held in 1,268 of the total of 2,526 villages throughout the country, or 49%. Elections could not be held in the remaining villages because of security conditions in many of them, and in others because of the scarcity of

the population. Councils for 928 of those villages will be officially appointed by the government. It is not currently planned to have councils in the remaining 330 villages because of their very light population.

The large number of candidates, 12,719, competing for the 8,964 seats, indicates the enthusiasm of the rural people and their determination to serve the community in which they live. It should be noted that among the 8,964 elected candidates, there were 7,782 politically new faces, including among them 274 women. No one can deny the interest of the people, both men and women, in public affairs.

One most remarkable fact was that of the four Viet-Cong returnees who were candidates, three of them were elected. Is this not a most striking and sincere evidence of the success of the Open Arms policy?

Regarding our Montagnard compatriots, we note that among the 8,964 elected candidates there were 335 Montagnards of the Viet-Nam Central Highlands, 113 Montagnards of North Viet-Nam who are refugees in South Viet-Nam, 78 Chams, and 172 Cambodian descendants.

Based on the total of 3,770,914 registered voters in both phases in 1,268 villages, and using the ratio of 100/45 which is recognized to be a valid indice, it is estimated that about 12,000,000 of the total population are now living under government protection. This includes over 2,000,000 in the cities of Saigon, Hue, DaNang, Dalat, Vung-Tau and Cam-Ranh, and 1,700,000 refugees from Communism.

The high percentage of voters going to the polls indicates once again the strong determination of the people to live in democracy and freedom, the only regime that properly befits them, that answers to

their profound aspirations and to the centuries-old traditions with which they live: honor, dignity, love, and national solidarity.

The elections also strongly emphasized the tenacious efforts of the government to institute a Vietnamese democracy. Coinciding with the promulgation of the new Constitution, which encompasses the supra-national structure, the democratic organizations at the village and hamlet levels are also strengthened. 80% of the population live in rural areas, in the villages and hamlets, and in these administrative entities the social foundation, the actual life of the nation, remains steadfast.

The target of the government in organizing the elections and instituting democratic administration in the rural areas is to intensify the concern of the citizens there in the national pacification and development efforts. Only by so doing can we hope to unite our people in the struggle against Communist imperialism.

Within the framework of revolutionary development and rural reconstruction, village elections enable the people to freely choose their representatives, selecting those men whom they judge to be capable of taking care of the rural administration and the interests of their community.

It is hoped that a new era will open for the rural people who in the past, and during all the time of foreign domination, have lived a truly miserable life at the mercy of foreigners and oppressors.

In the light of this document, one cannot deny the efforts and determination of the nation's leaders to save this country from Communist domination and, by the nurturing and development of a modern, democratic form of government, to make possible a better way of life for all its citizens.

The Policy of National Unity
and the Open Arms Campaign.

Open Arms lies within the framework of the general policy of the government and is aimed at realizing national unity through patriotism, comprehension and love.

The sustained and intensified campaign conducted by active, efficient personnel, experienced and devoted in their work, and having adequate facilities, recorded during 1966 more than 20,000 returnees, nearly one-half of the total returnees since 1963.

During the week ended 11 March 1967 a total of 1,198 Viet-Cong rallied to the government. Of these, 677 brought with them weapons and documents. During the two previous weeks, other thousands of Viet-Cong had returned. We can say that the "Spring in Union" campaign launched on the Vietnamese New Year 1967 has been most successful to date. In the first two months of the campaign 7,474 political and military cadres broke with the Communists and returned to the national community.

Some of the returnees helped the national forces to uncover and to launch raids against important enemy bases. In 1966 alone, 25 operations against the Viet-Cong were based upon information given by the returnees, resulting in 650 Viet-Cong killed, 664 others captured, and 543 weapons seized.

The policy of national union was solemnly proclaimed on the anniversary of King Hung-Vuong, 19 April 1967. In an appeal to the nation the government of the Republic declared that to bring to life the spirit of the new Constitution, great solidarity of the people within the framework of a strong nationalist ideology, is an integral element for the freedom of men and the fatherland from Communist

imperialism. The three main principles of the policy of the nation are (1) "People", a unified people, united in one single bloc to oppose Communist aggression, (2) "Understanding", to harmonize the foundations of the democratic regime, and finally, (3) "Progress", to help the nation progress and keep pace with the other freedom-loving, democratic nations in the world. Within the framework of these principles, the government has set forth the following lines of action to implement unity and reconciliation of the people:

(1) Any person who definitely breaks with the Viet-Cong to return to the national community shall be warmly welcomed by the people and shall enjoy full rights of citizenship as recognized by the Constitution, including the right to be protected by law in their freedom, life, property and honor, the right to vote and be a candidate for office, the right to join their families, to freely select their residence, and to be assisted by the state to make their living.

(2) Returnees shall be employed by the government as any other citizen and in accord with their capabilities. In this way, every Vietnamese without distinction shall have the opportunity to contribute his efforts to the work of national reconstruction.

(3) Returnees who had previously committed offenses or violations of law by oppression of Viet-Cong deception shall receive the generous treatment guaranteed by the Constitution. The state shall be lenient to enable them to serve the country.

Always within the true meaning of the Open Arms policy and the principles and lines of action delineated above, the government on such various occasions as National Day, New Year's Day, Buddha's Birthday, the anniversary of the promulgation of the Constitution, and others,

have granted leniency in the following situations: 301 prisoners released before complete serving of their prison terms; 554 penalties mitigated; 4 death sentences commuted to labor for life; 5 sentences to labor for life lowered to limited hard labor, and 4 grants of amnesty.

Codification and Improvement of Existing Legislation and Education of the Populace.

Democracy does not consist solely in universal suffrage or in an organization functioning with an appearance of democracy. It must be implemented and materialized in the minds of the citizens who must know their rights and who are prepared to fulfill their obligations resulting from their rights. It is therefore very true when it is said that democracy is a way of life which consists in the active respect of one's self and of others.

Therefore, parallel with the organization of a national democratic structure, we should endeavor to develop this new way of life in the minds of the people and to educate them in the exercise of their rights.

In a newly independent and free country such as Viet-Nam at this point in its history, civic education is necessary. Only when the people understand their rights and carry out their responsibilities in an appropriate manner can the regime become strengthened and enduring.

The basic programs of action for the Ministry of Justice in 1967-1968 include the following three essentials:

(1) Codification, unification and improvement of legislation.

(2) Reorganization of the judicial system, and formation and training of the cadres.

(3) Bringing justice more meaningfully to the people, and developing a popular, broad civic education program.

Point (1). Codification, Unification and Improvement of the Legislation.

The work of unifying the Codes is mandatory so that there may be an end to the multiple legal systems which have existed ever since the French domination, when Viet-Nam was divided into three parts, or "Kys", each with a different judicial system. Moreover, a number of our present laws and regulations have become outdated, and change and improvement is necessary to bring new ideas and methods to the general national administration, to the development of the people, and particularly to respond to the new situation of a free and independent Viet-Nam.

The laws promulgated by the French were to insure the position of the rulers, not to protect the rights and fundamental liberties of the people. As a result, the French laws were unable to obtain the adherence and compliance of the people. How can there by respect of law by a people who do not understand it, even distrust it, and who therefore ignore it?

Along with other changes made necessary by the passage of time, legislation should be enacted to provide for a new basic judicial system in society. With the clearsightedness of the legislators, the correct and appropriate adaptation of the new laws will bring progress, unity and harmony in a modern world community.

Such are the basic ideas which serve as guides for the codification and improvement of legislation. The committees in charge of this work to date have completed five Codes: the Civil Code, the Criminal Code, the Civil Code of Procedure, the Criminal Code of Procedure, and the Commercial Code.

The Legislation Services of the Ministry of Justice, within the limits of their facilities and responsibilities, will prepare a number

of decree-laws to amend or complement old and outmoded documents.

The promulgation of the Constitution of 1 April 1967 has turned a new page in Vietnamese national history. However, the work of democratization must continue, geared to the provisions of the Constitution so as to bring new guarantees for human rights and fundamental liberties.

The Ministry of Justice has established a committee in charge of legislative studies. This committee, established by Decision of 30 March 1967, is chaired by the Minister himself and includes ten members appointed from among the experienced magistrates. It is responsible for revising the Codes already drafted, and to study, among other matters, legislation on banking operations and installations, maritime insurance, associations, foreign investments, international public law, administrative law, and judicial systems.

In 1968 the committee is to be transformed into a Legislative Study Center, responsible for studying international law, comparative law, and others, so as to keep pace with world progress in these fields. The Center is also to have a section responsible for providing additional training for the magistrates. It will set up training programs and inspect and monitor the courses from time to time. Another section of the Center is to assume responsibility for editing legislative texts in Vietnamese so as to achieve uniform judicial terminology. It will also give opinions on bills forwarded to the Center for comments.

Point 2. Reorganization of the Judicial System. Formation of Cadres and Training.

A total reorganization of the judicial system is necessary to bring into actuality the new concepts of the Ministry of Justice in the

building up of democracy and the role of the magistrates in the national development. These new concepts, directed for the benefit of the people, are aimed at widely disseminating the law of the land and cultivating in the minds of the people a democratic spirit and respect of the law. This can only be realized in the bringing of justice to within the reach of the people via access to the courts and through a civic education program.

No longer must the magistrate, to safeguard his independence in the performance of his legal duties, isolate himself from the public in order to win their esteem and respect. In the fierce battle going on in Viet-Nam, the struggle to safeguard human rights and liberties, to develop the country and to promote social justice, the magistrate has an excellent opportunity to participate. Full utilization must be made of his education and knowledge, and the prestige conferred on him by reason of his position, together with his intellectual and moral qualities, his sense of justice, his professional conscience, and his independence of action. Besides his official function, the Vietnamese magistrate also has an integral role in the comprehensive work of national stabilization and reconstruction. He explains the laws to the citizens to enable them to understand, and in this manner will develop the people's confidence and faith in national justice. He assists in the civic education of the people, introduces in their minds the clear concept of what democracy can give to them and what it requires from them. This confidence and faith, this moral conscience, will result in the people supporting and strengthening the regime. The role of the magistrate is all the more important in a country where the majority of the people do not care to

understand or respect the law of the land. They ignore it because they do not understand it, and also because they live so far away from the public powers and have never been advised of the existence of the laws or their interests thereunder.

The reorganization as scheduled by the competent authorities will include the Ministry of Justice, its various departments and services. The process will include the establishment of Justices of Peace with Extended Jurisdiction in the provinces and important districts where no courts at all have existed, and in the elevation of some Justices of Peace with Extended Jurisdiction to Courts of First Instance. In the personnel field, emphasis will be placed on the formation and training of judicial personnel and the organization of seminars on the mission of Justice and the role of the magistrates according to the new concepts.

This reorganization, which has already been partly accomplished, will continue in furtherance of the new principles set forth and the new structural organization of the Constitution.

It is of interest to mention here the organization of the Montagnards Customs Courts, and the Land Reform Courts.

The Montagnards Customs Courts.

This relatively new addition to the judicial system was established by Decree-Law No. 6/65 of 22 July 1965 and is an application of the policy of national unity vis-a-vis the Montagnard.

Having been separated from the rest of the world for a thousand years, the people in the Highlands, some 800,000 inhabitants, still

live a primitive life heavily influenced by superstition and mystery. There are more than fifteen tribes living in the mountainous regions of Central Viet-Nam, and they are divided into sub-tribes, each having its own beliefs, traditions and customs. Among the most civilized of them all are the Rhades, Bhanars, Sedangs, Djarais, N'nongs and Kohos.

Many tribes still follow a matriarchal regime and entirely ignore the national judicial system. Tribal justice is based on superstition and confused and uncertain beliefs. Without distinction between civil and criminal matters, penalties consist in payment of damages in kind or in cash, and in propitiatory sacrifices to obtain the pardon of the spirits or genii. When there are no witnesses to a case, trial by ordeal may be resorted to. The Rhades will force the accused to drink alcohol for many hours, even for a whole night, and if he becomes drunk, which is natural, he will be pronounced guilty. The Bahnars and Djarais order the accused to sink his hands in boiling gum. If they are burned by it, he is adjudged guilty. Witnesses and magicians who are convicted as criminals must be able to safely put their hands in melting plumb to prove that they in fact are innocent. Other ordeals such as boiling water, burning charcoal, and others may be employed.

All this indicates how the ethnic minorities are far less developed than the people in the Delta, and how different are their ways of life and thoughts. Lack of a meaningful policy of assimilation will only lead to a deeper separation of these people from the rest of the national community, further augmenting their complexes and distrusts.

Successive governments during the post-revolution period set forth policies of assistance and encouragement based on the principle of national unity and the development and promotion of human values on a

basis of equality of all the citizens. Only a short-range policy is required, its need ceasing to exist when the gaps between the Delta people and the Highlanders cease to exist.

The new Constitution, in Art. 2, provides that "the minority compatriots shall receive special support to keep pace with the progress of the population as a whole." In fact, several important political and administrative positions are now held by Montagnards, including the Special Commissioner for Highland Affairs (equal to the rank of Deputy Minister), the Chief of the Province of Pleiku, and deputy chiefs of many of the provinces in the Highlands. Nine Montagnards are members of the National Constituent Assembly.

The courts of the Highlands are incorporated in the national administrative and judicial structure at various levels. At the village level the court is composed of a Presiding Judge, who is the Chief of the Village, and two Montagnard Assessors. At the district level, the court is presided over by the District Chief, acting as Justice of the Peace, assisted by two Montagnard Assessors. At the province level there is within the office of Justice of Peace with Extended Jurisdiction a Montagnard Affairs Section chaired by the Presiding Judge and assisted by two Assessors, all being Highlanders. At the national level, when trying cases involving Highlanders the Court of Appeals will have an enlarged composition to include, additionally, two Montagnard Assessors. In criminal sessions the court will have two Montagnard Assessors replacing the two Vietnamese Assessors.

Except when otherwise provided by law, the Customs Courts have jurisdiction over the Montagnards and before those courts the accused enjoys the same right of defense as at any national court.

The Court of Appeals has a special obligation to ensure that good judicial administration is maintained by the district courts and the Montagnard Section of the provincial courts. It is interesting to note some characteristics of this judicial system:

- With the courts thus commencing at the very lowest level, the system is in close contact with the people and is in a position to develop new concepts in the role of the courts in the building of democracy.

- The Montagnard Judges, Assessors and Presiding Judges of the Montagnard Sections of the provincial courts are elected by the Montagnards themselves by a very simple procedure: free designation by raising of hands at a meeting at the village or district headquarters.

- The Customs Courts make judgments along the line of the local customs and traditions, provided they are not prejudicial to public order. In criminal matters, when public order is involved, national laws apply.

It is hoped that with the clearsightedness of the Montagnard leaders the Highlanders will progress and attain a living standard on a par with their compatriots in the Delta and, in harmony with them, contribute to the over-all development and growth of the nation.

The Land Reform Courts.

These courts were established by Decree No. 498/DT/CCDD of 27 November 1957 and handle all conflicts and disputes caused by application of Land Reform Ordinance No. 57 of 22 October 1956.

The existence of these courts indicates the continued determination of the responsible authorities in government to succeed in a policy that responds to the requirements of the country and contributes to the

implementation of social justice in the national struggle against the Communist dictatorship which denies the right of private ownership.

The Land Reform Court is presided over by the Presiding Judge of the Court of First Instance, or the Justice of Peace with Extended Jurisdiction, assisted by two assessors who are officials of the local administration. A Judge Advocate assumes the function of the Public Prosecutor.

The Land Reform Court handles only cases which have already been brought before a village or district court in an effort to effect a compromise. It is interesting to point out that in these cases the farmers are entitled to judicial assistance, for otherwise the expenses involved would be far too heavy for them.

While the judgment of the Land Reform Court is conclusive, it is not effective for execution purposes unless approved by the National Land Reform Council, established by Decree No. 74/DT/CCDD of 4 July 1957, amended by Decree No. 217-CTNT of 18 June 1964. This Council in its composition has an administrative, technical and judicial character. Representatives of the various ministries, including Agriculture, Justice, Interior, Economy, Finance and Labor are present.

From the date of its establishment to 31 December 1966, a total of 1,850 judgments were submitted by the Land Reform Court to the National Land Reform Council, and 1,693 of the judgments were approved by that body.

Institution of a New Judicial System According to the Constitution of 1 April 1967.

As has been said above, the Constitution of the second Republic has brought about new concepts in the judicial system, setting forth

true independence of the courts. The institution of this new system will bring about large and profound changes. In addition to the establishment of a Supreme Court, which will result in the deactivation of the Court of Cassation and the Council of State, the twenty-two present Justices of the Peace with Extended Jurisdiction will become Courts of First Instance and will have larger staffs to assume the separate powers of prosecution, examination and judgment.

There will be some problems to solve, among them:

(1) Reclassification of the existing magistrates into two distinct categories: presiding judges and prosecuting judges, each with an appropriate operational status.

(2) Recruitment of new magistrates, clerks and administrative staffs for the proper functioning of this new judicial machine. There are now only 149 magistrates and they are assigned among the 39 different courts, far less than can meet the requirements of a country of fourteen million inhabitants.

(3) Training and orientation of magistrates and of lawyers, since they will be called upon to hold high judicial positions, to further their professional training and to enhance their proper qualities and pride which are becoming to dignified officials of the national judicial system.

Point 3. To Bring Justice Near to the People, and to Give Them a Civic Education.

The post-revolution period was marked by a dangerous political instability coupled with over-excitement of the people ensuing from the successful overthrow of the dictatorial regime. Order had to be restored,

and the government, under the National Leadership Committee, was successful in doing so.

Within the framework of the government programs and in support of the activities of the Ministry of Revolutionary Development, the Ministry of Justice's third point of action is to select the best qualified personnel for its staff and to introduce a new spirit in the minds of the people: the democratic spirit, trust in the law, and faith in the future of the country. These are of paramount importance in the building of democracy, comparable to the importance of the soul to the human body. Democracy presents irresistible characteristics. But it is also like a two-edged razor in that it can injure anyone who does not know how to handle it. It is not sufficient to say that democracy is built into a governmental system based on some popular foundations. There should be a soul to make it alive and long lasting, and that is a basic judicial knowledge, a degree of civic education, among the populace.

I want to speak of the inhabitants of the villages and hamlets who live scattered in the countryside in the Highlands, in the Delta, in every remote corner of the country, since it is in these places, these small village communities, that Viet-Nam lives.

The following improvements have been achieved:

Inspection of the Provincial Courts.

A wide program of inspection of the provincial courts was instituted by the Ministry of Justice to prepare the ground for a civic education program for the purposes explained above.

The inspectors were all senior officials of the courts, including such men as Attorneys General of the Court of Cassation and the Courts

of Appeals, the President of the Council of State, the Presiding Judges of the Courts of Appeals, the Counsellors, and so on. They gave a strong impetus to the movement. They supervised the operations of the local courts, helped to establish the proper keeping of records, gave advice, corrected errors, and performed numerous other tasks, all in a very constructive manner. They also looked into the work of the magistrates, into pending cases, and gave necessary instructions as to their proper resolution. The inspection efforts have in fact resulted in a rapid improvement at several courts which, prior to inspection, were far below the desired level.

The inspectors also visited the local jails, called Re-education Centers, to obtain information at first hand on the management. They drew attention of the responsible officers to the problems of hygiene, food for the prisoners, their education, their vocational orientation, and the separation of common prisoners from political prisoners, of women, children, and so on.

What interested the inspectors most was the excellent reaction to the introduction of new concepts of the role of the magistrates and other judicial personnel, as amply evidenced during their conversations with administrative authorities, members of the provincial courts and People's Councils, and other dignitaries.

From August 1965 through the end of October 1966, twenty-seven teams of inspectors were sent out to visit all the provincial courts and Justices of the Peace, an unprecedented record in the history of Vietnamese justice.

The inspections have resulted in the increase of authority and prestige of the courts over the people by tightening the relationships

between these remote judicial organs and the central government. They provided a stimulus to the development of the Mobile Court program.

Organization of Mobile Courts of First Instance and of Justices of the Peace with Extended Jurisdiction.

According to the plan established for the courts of provincial level, several mobile sessions have been organized in different districts, villages and hamlets where security conditions permitted.

In criminal matters, the Mobile Courts judge simple cases not involving many persons. As an example of the far-reaching effects of such sessions, on 12 October 1966 in the district of Tuy-Phuoc, 14 K from the Court's office, the Court of Binh-Dinh tried a criminal case in the presence of a large gathering. The hearing had a good influence on the local people in that they obtained the distinct impression that they were actually protected by Justice which was prompt in acting to punish the culprits.

In civil matters, the hearings were devoted to administrative affairs, such as issuance of judgments taking the place of birth certificates, etc. On Phu-Quoc island, in the Gulf of Thailand, 100 K from the Chief Town of Kien-Giang, two hearings were held on the 15th and 16th of Odtober 1966 by the Justice of the Peace with Extended Jurisdiction of Kien-Giang. The second hearing was held upon the request of the local citizens who came from all over the island to solicit judgments in lieu of unobtainable birth certificates for their children. 400 such cases were cleared, thus enabling 1,287 small children on the island to have the requisite documentation for admission to school.

In addition to the hearings, the magistrates spent their time to help the local officials in their work for the common interest of the people of the island. They checked the operations of the village administrative committees in the keeping of civil status records and in their judicial police responsibility, and inspected the performance of the district chiefs in their legal functions as Justices of the Peace.

The most interesting, and most rewarding work is, of course, that of educating the public in civic matters through direct contact wherein the judges explain and advise. Several talks were given by the magistrates on the application of common laws, such as birth or death certificates, procedures of marriage, maintaining civil status records, separation of powers, respect of law in a democratic regime, the police power of the Police Member on the Village Administrative Committee, fundamental human rights and liberties, outlines of the national judicial system, and other subjects of importance to the villagers.

Emphasis was placed on knowing how to distinguish the legal from the illegal, the good from the bad, and the importance of respecting legality, for people will only defend democracy when they know what it is.

From September 1966 through March 1967, 147 mobile court sessions were held by the provincial courts. They were warmly welcomed by the local people, who saw in them a really independent and effective judicial system taking interest in their welfare and determined to protect them in their legal rights.

Mobile Sessions of the Courts of Appeals.

Mobile sessions of the Courts of Appeals of Saigon and Hue were authorized by Decision No. 1060/BTP/ND of 27 October 1966. Through the end of March 1967 seven sessions of these courts had been held, in Dalat, Can-Tho and Nha-Trang. The effect on the local people was good, and the results were very encouraging for similar sessions to be held in the future.

Popularization of the Law.

To supplement the training by the judicial personnel and to make a substantial contribution to the civic education of the masses, the Ministry of Justice took the initiative by publishing small pamphlets dealing with legal problems of a direct and practical interest to the people in their daily living. The distribution of these pamphlets down to villages and hamlets in remote corners, to the village authorities as well as to the people, was in fact a precious service in the democratization of the country. Five such pamphlets have been printed and distributed, covering "Practical Knowledge in Civil Status Matters", "Judicial Assistance", "How to Obtain a Court Judgment in Lieu of a Civil Status Certificate", "To Establish a Death Certificate", and "Natural Children".

Twenty other pamphlets will be ready soon, covering such topics as filing a petition at a court, how to appeal in criminal or civil matters, the Emergency Court, the House Lease Court, labor accidents, Land Reform Courts, the police Register, adoption of children, responsibilities of proprietors, drivers, custodians and sellers of automobiles, requisitions, rights to confiscation, the judicial role of the police member in the village, marital separation and divorce, and so

on. In these pamphlets the subjects are discussed and explained, and during the mobile sessions the magistrates distribute them and comment on them.

It is to be noted also that the provincial courts have been instructed to prepare, along the lines of these pamphlets, questionnaires and answers, followed by about ten examples for each subject drawn from practical cases, for wide distribution to the villagers.

Intensified Activities of the Information Office.

There is to be established at the headquarters of each provincial court an Office of Information, headed by the Chief Clerk or other clerk, for the purpose of giving information and guidance to the people on legal matters so they cannot be cheated by less scrupulous people. The creation of these offices is in line with the policy established by the Ministry of Justice, and their activities will be under its supervision. The express purpose is to further contribute to the education of the people in moral and civic matters.

CONCLUSION.

This book has the sole purpose of presenting to its readers the outline of the great work of building democracy in Viet-Nam.

In the revolution of 1 November 1963 the Vietnamese people decisively indicated their determination to break with dictatorship and to institute a free regime. But several months have passed with trouble, disorder and confusion, all very unfavorable to constructive work.

There must have been a true resumption of conscience of the entire people to enable the stabilization of the political life of the nation before juridicial foundations of the new regime were built.

With the promulgation of the Constitution of 1 April 1967, even with the efforts made in all fields, reconstruction has only begun. New additional political institutions are to be founded, while the existing administrative organizations need revision and changes to bring them in line with the new constitution.

Education of the people as outlined above must be continued and intensified, since it really builds the foundation of democracy.

With their long history of struggle, which marks an incoercible determination to live in freedom, we have every reason to believe that the Vietnamese people will survive in freedom and in the development of human dignity.

APPENDIX III

PROCEDURES OF TRANSACTION, REQUISITION AND EXPROPRIATION

I. Procedures for Transactions in Real Estate

1. Transaction made by a Notary. When a buyer and a seller of real estate agree on a transaction, they may request a Notary to draw up a bill of sale. Since the Notary is responsible for this transaction he must be certain that there is no wrongful or illegal ambiguity in it. Therefore he requires that the seller comply with the following conditions:

A. If the seller is married, the spouse must consent. (According to Vietnamese family law, the properties of a married person must be under the regime of joint estate.)

B. The seller must present:

i. A certificate issued by the service of taxation that there is no tax delinquency on the property.

ii. A land title certifying that the real estate in the transaction is his property.

iii. An abstract of the land title issued by the Service of Land Survey attesting that the real estate is not subject to any mortgage or seizure.

If the requirements are complied with, the Notary prepares a bill of sale, bearing his signature and those of the buyer and the seller. Payment is made in his presence. He then must complete the procedures of transcription of title of the property at the Service of Land Survey, and the procedures of registration at the Service of Registration.

When the transaction procedures are completed, the land title and a copy of the bill of sale are delivered to the buyer who is then the owner of the real estate.

The customary Notary fees are about 3% of the value of the real estate involved.

2. Transaction by Private Deed. The procedures are simpler, but the buyer is exposed to the possibility of being duped by the seller.

Upon reaching agreement, the buyer and seller prepare, in duplicate, a bill of sale. These, with the land title, are taken to the Village Council or to the District Administrative Office, for attestation of their signatures on the bill of sale. The buyer then must complete the transcription and registration procedures.

II. Procedures for Requisition

Requisition is governed exclusively by Decree-Law No. 20/60 dated 15 August 1964. Requisition for military purposes is contained in the following provisions of that Decree-Law:

1. In case of general mobilization, partial mobilization, operations, maintenance of order, troop concentration or maneuvers, requisitioning may be effected without the need of an advance decree. In other circumstances, the military right to requisition may be effected by a Decree of the Prime Minister after deliberation by the Cabinet. In principle, the right to requisition is exercised by the Minister of National Defense, but in practice he may delegate that right to local military authorities.

Administrative authorities may also issue an order of requisition to satisfy the needs of the Armed Forces. (Article 2.) In case of emergency, requisition may be effected within five days, and the right to requisition can be delegated to the District Chief. (Article 17.)

The requisitioning authority must issue an order of requisition prior to its execution. This order must be served to the owner by the administrative authorities. Notification by military authorities is permitted only when they are unable to obtain access to the administrative authorities for such service. In an emergency, the order of requisition may be posted at public places.

To facilitate establishing the compensation for requisitioned property, a record of the actual condition of the land, buildings and crops must be made by the requisitioning authority. Compensation is on the basis of the current local prices. If conflict as to proposed compensation arises, it will be determined by a Commission on Evaluation set up in accordance with Arrete 2548-NV of 30 December 1964, with the following composition:

- Chairman: The mayor, prefect or province chief.
- Members: The Chiefs of the Services of Economics, Registration, Land Survey, and Finance.

  A representative of the requisitioning authority.

If agreement is not reached, the case will be referred to a competent civil court.

2. Requisitioning will be effected immediately, despite opposition by the owner, if there is conflict as to compensation. (Articles 4, 5.)

3. Real estate cannot be requisitioned for more than five years.

4. Requisition can only be exercised for military purposes when the military authority cannot buy or rent the property by normal procedures. (Article 23.)

III. Procedures for Expropriation for Public Purposes

Order 580.Cab/SG dated 19 November 1951 prescribes procedures for expropriation applicable in Central Viet-Nam.

Decree dated 15 June 1930 prescribes those applicable in South Viet-Nam and in the City of DaNang.

1. Procedures in Central Viet-Nam

Based on a report submitted by competent authority as to the need of a public utility, the Minister of Interior issues an order of expropriation. Thirty days notice of this Order is compulsory, and it must be published in the Official Gazette of Viet-Nam. A Commission on Evaluation will determine the compensation for the real estate, buildings, trees and crops. The Minister of Interior then issues an Order for Compensation and payment must be made prior to the expropriation, except that if payment cannot be effected within ninety days because of opposition by the owner, expropriation will be completed without the consent of the owner.

If there is conflict as to the amount of compensation, the case will be referred to a Conciliation Board composed of a representative of the Ministry of Interior, an official of the local administrative authority, and a representative of the Service of Registration. This Board appoints an expert to make an appraisal within thirty days.

Two copies of the compensation list must be furnished for each village.

Compensation may be paid to an expropriated owner even though he is unable to furnish his land title if the Village Council attests to his ownership.

Expropriation for military purposes can be effected in a very short period by means of an order issued by the Prime Minister. The notification must be for three days, public notice of the order for eight days, and the appraisal, in case of opposition, must be accomplished within five days.

Expropriation proceedings are completed after transcription of the title to the property. The expropriated real estate then becomes public property.

2. Procedures in South Viet-Nam and the City of DaNang

Article 1 of the Decree of 15 June 1930 provides that expropriation can only be accomplished by a court decision.

A. Ordinary Procedure. There are two stages.

1. Administrative stage.

The Prime Minister issues a decree to authorize a public work after considering the report submitted by a competent authority. The Minister of Interior orders the First Administrative Inquiry, which lasts twenty days. The public must be notified of the purpose of the expropriation so as to have an opportunity to make complaints and such complaints must be forwarded to the Ministry of Interior. If the expropriation is approved, the initiating authority will be informed by the Ministry of Interior so that it can request the Prime Minister to issue an Order to declare the nature of the work of the public utility. The Second Administrative Inquiry is ordered by the Minister of Interior. Within thirty days the provincial authority must compile a list of the lands under expropriation and set up a Commission on Evaluation which must make a report fixing both the compensation of clearing out and the compensation for expropriation.

Upon completion of the Second Administrative Inquiry, the Minister of Interior issues an Order of Transferability. Through the provincial authority, negotiations will be conducted to arive at a price and to establish a bill of sale. If negotiations fail, the judicial stage begins.

2. Judicial stage.

The Ministry of Interior, through the Office of the Prosecutor General, refers the case to a court, which must forward its decision to the expropriated owner within three days. The authority responsible for the expropriation will notify him of the compensation. If the owner complains within fifteen days, an appraisal will be made within three months by three experts appointed by the government and three experts appointed by the expropriated owner. The Court of First Instance will rely on the report of the experts in fixing the compensation.

B. Expropriation for Urgent Military Works.

The Prime Minister issues to the military authority an Order authorizing the work and declaring its emergency nature. The military authority forwards the order to the court having jurisdiction at the location of the residence of the expropriated owner, and the court will issue an order for conveyance of the property in a period of ten days. Notification procedures are also carried out.

The judge will immediately make a report in the presence of the military authority and the local administrative authority. Appraisals are made by two experts, one appointed by the judge and the other by the local administrative authority. If negotiations to establish an amicable bill of sale fail, the decision of the court will be executed in five days if the property has no construction thereon, and in ten days if there is construction.

APPENDIX IV

ACQUISITION BY FOREIGNERS OF REAL ESTATE IN VIET-NAM

Law 6/60 of 28 October 1960, modifying Ordnance No. 26 of 20 April 1956, provides that any foreign person or foreign corporate entity must have authorization in advance from the President of the Republic of Viet-Nam to acquire real estate in Viet-Nam.

Application for acquisition must be submitted to the Ministry of Finance, together with the following documents:

- An offer to sell the real estate, identifying it by location and land title number.

- Certificates provided by various provincial Services of Land Survey stating whether the applicant has been registered as the owner of any real estate.

- An abstract of the land title.

The application must include details as to the nationality of the applicant, his occupation in Viet-Nam, the purchase price of the real estate, and the purpose of his acquiring it.

The Ministry of Finance reviews the application, conducts necessary investigations in coordination with other governmental agencies, makes its recommendation, and forwards the application to the Prime Minister for final decision. Several factors may affect the recommendation, among which the following are important:

- Purpose of the proposed purchase.

- Nationality of the purchaser, his conduct and political activities during his stay in Viet-Nam.

- Degree of importance of the land purchased.

From six to twelve months are normally required for processing before a final decision is reached. However, if the purchase is by diplomatic missions to Viet-Nam, such as embassies or consulates, while the same procedures must be followed, they can be expedited.

Source: Tax Division, Ministry of Finance.