

THE SOCIALIST RULE-OF-LAW STATE OF VIETNAM – MAJOR ACHIEVEMENTS OVER A SIXTY-YEAR PROCESS OF ITS BUILDING AND DEVELOPMENT

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The building of a rule-of-law state is becoming an objectively irreversible trend for democratic countries in the modern world. The foundational premise on which this state is based is democracy, which means the power of people is recognized and ensured for its fulfillment. In Vietnam, the political and state regime bears upon initially a populist and profoundly revolutionary nature, because it is this system that was created following the champion of the August Revolution carried out by Vietnamese people under the leadership of the Party and President Ho Chi Minh. The Government, the State of Vietnam is the one of the people, by the people and for the people. Regarding their legitimacy, it is firmly ensured as these power institutions are voluntarily elected by the mass population who act on the right to vote as citizens enjoying complete liberty in a country that independence is established. This article attempts to systematically examine major achievements recorded in the building and development of the State and a legal system over the last sixty years. It also points out lessons learned in the building of a socialist rule-of-law state as well as directions towards strengthening such a state in Vietnam.

I. Major achievements recorded in the building and development of the State and a legal system prior to the Doi Moi (renewal) period

1. Background

Having been elected, the National Assembly within a short period of time with intensive work adopted the first Constitution of Vietnam on 9 November 1946. As such, should the constitutional thoughts had been presented in our country by such patriots as Phan Boi Chau, Phan Chu Trinh, Huynh Thuc Khang, Nguyen Ai Quoc in the early twentieth century, the Constitution 1946 created a new page in the constitutional history of Vietnam.

Parallel with the Constitutions, in the

revolution-making process, the State of Vietnam has formulated and adopted numerous legal documents.

Following the August Revolution, the newly-established government could not create an adequate legal system, there had no such a situation as “one day without law!” though. The Government promptly passed the most essential legal documents regulating daily activities of the social life. These included those relevant to the organized system of a revolution-born government; the removal of privileges given to colonialists and feudalists; the

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fight against hunger and illiteracy enemy; the mobilization of manpower and property capital for the resistance war against the French colonialists; the rights and interests of people, etc. In the initial stage of the Democratic Republic of Vietnam, the State of Vietnam had:

- the Labor Code, adopted by the National Assembly in 1946. The Code was not publicized for its execution due to the war circumstance.
- the Law on Land Reform, passed by the National Assembly in 1953.
- approximately 400 Decrees promulgated by the Government.

As legal system in our country during this period was shaped, though it was inadequate and premature. It was a legal system in the war time. The most common form of legal documents in such system was Decrees issued by the Government. This limitation could be attributable to the arduous war, in which the National Assembly could hardly hold its regular sessions. Furthermore, it must be hasty, flexible and prompt in guiding the war direction.

In the 1954-1976 period, the legislation was more enhanced. The State of the Democratic Republic of Vietnam formulated and adopted 12 laws, 14 Ordinances, 4 Decrees plus many legal documents issued by the Government. As far as the form of legal documents is concerned, should statutory and legislative issues in the 1945-1954 period had been provided by the Government's Decrees, since the peace was re-established in the North Decrees were only utilized for publicizing laws adopted by the National Assembly, and after the adoption of the Constitution 1959, Decrees were replaced by the Order of the President of the State.

Under the circumstance of a barbarous war, social relationships faced various ups and downs, and the State had limited itself to the resistance war. It was partly because of subjective awareness, the National Assembly passed only a few laws, without any Code (particularly such crucial important codes as Penal Code, Civil Code or Procedures Codes). Many statutory documents issued by the executive bore a legislative nature. The legal system was immature, insynchronic and contained overlaps. In some fields and places, social relationships were only governed by the Party's policies or directives of Party committees. One of the remarkable high-points of operational laws in the 1945-1975 period is their translation into reality, fulfilling efficiently revolutionary tasks and meeting aspirations of the mass population. They were efficiently and effectively executed in reality with strict compliance of public officials and people.

During the 1976-1986 period, the law-making work was more promoted than that done in previous periods. The State of the Socialist Republic of Vietnam elaborated and adopted 10 laws, 15 ordinances and statutory documents issued by the Government. Notwithstanding the law-making efforts as such and even though the country had traversed from the war time to the peace time, awareness and thoughts on legal issues were slowly renewed. There were few documents of a legislative nature adopted by the National Assembly, lack of essential Codes and laws. Some documents passed by the executive even regulated issues that should have been determined by laws. The legal system was not synchronic, contained various contradictions and overlaps. Thus, notwithstanding the quantity, legal documents were insufficient; many of them were not

adherent to the reality. Governance in many places was executed in line with guidelines, policies rather than with the law. Serious deficiency was expressed in awareness, thoughts and observance of laws of public officials and people. These were detriments to the grave downward of efficiency and effectiveness of laws.

2. Concerning the organized execution of the state power

It is in the first Constitution - the Constitution 1946 - that the most fundamental principles pertinent to the organized execution of the state power are established. These include, namely, "all powers in the country are vested with the entire Vietnamese people" (Article 1), "creating a strong and brilliant government of the people" (Preamble), "a people's assembly is the highest authority of the Democratic Republic of Vietnam" (Article 22). The above-mentioned principles relating to the organized execution of the state power in the successive Constitutions are amended and supplemented in a more perfect nature. The Constitution 1959, for instance, provides: "all powers in the Democratic Republic of Vietnam are vested with the people. People execute their authority through the National Assembly and People's Councils at all levels elected by people, who hold in turn accountable to the people. The National Assembly, the People's Councils at all levels and other state agencies shall execute the principle of centralized democracy" (Article 4), "the National Assembly the highest state authority of the Democratic Republic of Vietnam". The Constitution 1980 stipulates: "in the Socialist Republic of Vietnam, all powers are vested with the people. People execute their authority through the National Assembly and People's Councils at all levels. They are

elected by the people and in turn hold accountable to the people. The National Assembly and People's Councils at all levels are the political basis of the system of state agencies. The National Assembly, People's Councils at all levels and other authorities of the State are organized and operate in line with the principle of centralized democracy" (Article 6).

In sum, during the two resistance wars, the characteristics and practical experiences of the organizational and operational model of the State of Vietnam are as follows:

It was a command apparatus in the war time, which was organized and operated in line with a highly centralized and subsidiary regime. The executive took over a lot of power vested with the state authority. This was appropriate with the arduous and protracted wars, ensuring the dynamism, flexibility in leading the war, mobilizing in the fastest way and maximizing the man power as well as property capital for the resistance wars, providing the necessities for the people's lives. It was organized and operated in accordance with the objective circumstances at that time that our State clearly demonstrated its superiority, efficiency and efficacy.

During the years of barbarous wars, governments, Party committees at all levels and public officials and Party members were attached to people, taking seriously the people as the root basis, building up thus the reputation, strength, efficiency and efficacy of governments and Party committees at all levels. This was the most valuable and remarkable experience of this period.

However, through out 30 years long of war, Party committees in many places took the objective requirements as a justification for their performance in the role of state

agencies. The political system was arranged and operated according to the "two in one" model: the Party - State. The organization and operation of the National Assembly and People's Councils was embedded in formalism, placing emphasis on sectoral structure, poor in quality, failed to fulfill the role of the people's representative body in executing the state power; while the management and governance capacity of the executive agencies was inefficient and ineffective, demonstrating the bureaucracy, red-tape and detachment from the mass population.

3. Regarding the judicial activity

In the course of building a people's state, judicial bodies have been gradually established and strengthened.

Following the creation of a republic, the Government moved quickly to establish courts of law. During the resistance war against France, military courts, soldiers courts, ordinary courts, ad hoc courts, etc. With the re-establishment of peace in the North, some courts created in the resistance war against France (Frontline soldiers' courts, people's courts in temporarily occupied regions) and ad hoc courts set up in the land reform were dissolved. The judiciary was initially strengthened with the establishment of the People's Supreme Court and the People's Public Procuratorate. The system of legal courts and the judicial system were detached from the Ministry of Justice and affiliated to the Government's Council. The next fundamental step was that with the adoption of the Constitution 1959 the court system and the system of peoples procuracies (the peoples procuratorate was transformed into the peoples procuracy) were not affiliated to the Government's Council, instead the People's Supreme Court and the People's Supreme Procuracy

are accountable to the National Assembly or the Standing Committee of the National Assembly in the intervals between the two sessions of the National Assembly. As such, the judiciary was separated from the executive.

One can realize that following the founding of the Democratic Republic of Vietnam, the system of judicial bodies had been gradually established and strengthened. In the field of judicial activity, the Party's line, policies of the State and the Constitutions ascertained the principle of equality, justice, ensuring that all violations would be handled, strengthening public security, and protecting citizens' rights. However, due to objective and subjective reasons, for a long period of time (1954-1959), the court system was affiliated to the executive (the Government). Having been separated from the executive, the judicial activity was still subjected to impacts of and dependent on the guidance from Party committees and governments at all levels. This was one of the impacts on the independence of the judiciary - a fundamental factor of a rule-of-law state. The issue of wrongful sentence and impunity still remained. Jurisdiction was vacant in some fields (economic, labor, and administrative); the needs for protection of citizens were not met.

4. In the field of human rights and the rights, legitimate interests of citizens

Following the victory of the August Revolution, the Party and the State have constantly dedicated attention to human rights, and the rights, legitimate interests of citizens.

One of the three basic principles set forth in our first Constitution was: "ensuring democratic freedoms". It should be noted that the Constitution 1946 had a chapter on "Duties and Rights of Citizens", which was behind the chapter "Political Regime". A

series of rights and duties of citizens was defined, including the right to equality, freedom of speech, freedom of publication, freedom of assembly and association, freedom of beliefs. In the Constitutions 1959 and 1980, these rights and freedoms of citizens were more comprehensively and specifically recognized.

Immediately in the post period of the August Revolution, in the context of countless difficulties, the Government dedicated all efforts to the fight against hunger and illiteracy enemies. In early 1946, the Government issued a series of Decrees stimulating freedoms of press, assembly and association, demonstration, beliefs, the rights to physical inviolability, housing, correspondence, etc. During the resistance war against France, the Government gradually came up with implementing rent and interest reduction, ensuring that ploughmen could access to cultivating land. In the course of championing the resistance war, the Government promulgated step-by-step such policies aimed at specifying democratic freedoms recognized in the Constitution 1946 and the Decree of 12 May 1950 on amending certain old civil regulations, the policy of 22 June 1953 on ethnic affairs, the policy of 4 October 1953 on religious affairs.

During the resistance war against Americans for national salvation, various democratic freedoms were incorporated in such laws as the Law on Press, Law on Freedom of Assembly and Association, Law on the Right to Association, Law on Physical Liberty and Inviolability to Housing, Objects and Correspondence of Citizens, the Decree providing violations caught in action and emergencies, Law on Labor Union, Law on Marriage and Family.

Such enormous efforts had brought in the public confidence in a state which is truly of the people and for the people, generating life-air in the political sphere.

II. The Socialist rule-of-law state of the people, by the people and for the people in the course of 20 years of renewal

1. Achievements in the theoretical work

The renewal of thinking and shaping viewpoints, ideology of a socialist rule-of-law state of the people, by the people and for the people is closely adherent to the planning and implementation of a comprehensive renewal policy of the country, consistent with economic, political-social antecedents as well as subjected to the impact of the international economic integration.

The most important lesson learned over the last 20 years of renewal relating to the building of a rule-of-law state lays with the idea that building a rule-of-law state in Vietnam is not trying to create a new model of state, which escapes from general theories of Marxism-Leninism, Hochiminh's thoughts on a socialist state. Historical dialectic of the building and development of our state shows that the state, on the one hand, can only be a rule-of-law state with the leadership of the Communist Party of Vietnam; on the hand, the leadership of the Party can only be effective when the Party renews its leading means and ways appropriate with the organized authority of a socialist rule-of-law state.

In summarizing the theoretical work of the Party concerning the building of a socialist rule-of-law state of the people, by the people and for the people in our country in this period, one can point out the following characteristics:

First, the Party consistently emphasizes the nature of the state, which is the one of the people, by the people and for the people; all powers of the state are vested with people.

Second, the Party clearly points out that the organized operation of the state apparatus must be in line with the principle of united state authority with a division and coordination between institutions in implementing the executive, the legislative and the judicial authority.

Third, the Party ascertains the role, position of law in state and social management, ensuring the supremacy of the Constitution in the public life.

Fourth, human rights, citizens' rights are ensured; the legal responsibility between the State and citizens is enhanced; democracy is promoted in parallel with strengthened disciplines.

Fifth, awareness of the state's obligations in implementing its commitments in international and regional integration is gradually increased.

Sixth, the leadership of the Communist Party of Vietnam over the State in the building of a socialist rule-of-law state of the people, by the people and for the people is guaranteed.

2. Concrete outcomes

The nature of our state as stated in the Constitution 1992 is that "the State of the Socialist Republic of Vietnam is a proletarian totalitarian State", which is clearly determined as "of the people, by the people and for the people".

The state apparatus, which was organized in accordance with the principle of socialist centralized authority (in line with the model of socialist countries), is reorganized based on the principle of united state authority with a division and coordination

between state institutions in implementing the executive, legislative and judicial authority.

The National Assembly is defined as the highest representative body of the people, the highest state authority of the Socialist Republic of Vietnam; the only institution that has the constitutional and legislative authority, executing the supreme supervision power of the operation of the State and deciding the important issues of the country. As in the past, in theory, the state authority was destined to the National Assembly, but in practice the executive stepped over the National Assembly's field-ground. Now that, the National Assembly holds more real power; the National Assembly's activity is democratically promoted, overcoming the formalism. The quality of the National Assembly's sessions is improved; the composition and quality of National Assembly deputies are of progress. Functions and duties of the National Assembly are basically based on provisions set forth in the Constitution 1980, but have some new points. The authority of the National Assembly, for instance, in giving its powers where necessary is removed; the National Assembly is given an additional power in holding votes of confidence on positions elected and approved by the National Assembly, etc. Particularly, the organizational way of the National Assembly is renewed; thereby the Standing Committee of the National Assembly, which is a permanent body of the National Assembly, is re-established. The position, role of the Chairman of the National Assembly is also positively changed. Renewal is also seen in the organizational way and activity of the Ethnic Council, Committees of the National Assembly, composition of the National Assembly

deputies, etc...

The State presidency is re-established (the collective Head of State provided in the Constitution 1980 is replaced by an individual Head of State). The President of the State is the head of the State, representing the State in both internal and external affairs.

The Council of Ministers (as provided in the Constitution 1980) is transformed into the Government whose position is no longer recognized the highest public administrative authority affiliated to the highest state authority, but instead is considered as the highest administrative authority of the Socialist Republic of Vietnam. The Government is "an executive body, the highest public administrative of the Socialist Republic of Vietnam". It is no longer an institution of a mere council nature characterized by collective leadership, but instead it is organized and operates in a combined means of collective leadership (the Government) and the position of Prime Minister.

The position, duties, responsibilities and authority of the Government is further clarified. Administrative reforms have been initially effective (administrative reforms have been synchronically conducted in the fields of organizational apparatus, institution and administrative procedures); organizational activity, operation and governance of the Government have been renewed, in which more focus has been given to macro-management, creation of mechanism, planning, etc; at the same time, closer and more dynamic guidance is committed. The state management function is gradually detached from the management of production and business activities; the centrally-planned, bureaucratic and subsidiary system is removed. The Government's apparatus has been

streamlined one step; the contingent of state management and economic governance officials has been strengthened.

Local governments have been consolidated. The decentralization is strongly enhanced; duties and authority of individual local governments are also clearly defined.

Judicial bodies have been strengthened and initially renewed in respect of organization and operation. Concretely, courts are determined as the centre of judicial reforms. As far as the organization of people's courts is concerned, there are some new points: the election of judges is replaced by the appointment of judges; in the context of socialist-oriented market economy development, ad hoc chambers have been established in the system of people's courts. The jurisdiction of courts at different levels has been re-ascertained. The trial of courts is aimed at ensuring that all citizens are equal before the law, being conducted in a democratic and impartial manner. Judgments given by courts are primarily based on proceedings at the trial as well as taking into full account of evidence, opinions from prosecutors and concerned parties. Judicial bodies shall undertake to enable defense lawyers to involve in the procedures, etc.

Functions and duties of procuracies have been re-adjusted, by which procuracies are only entitled to execute the procuratory authority and supervise judicial activities. Procuracies at all levels are responsible for wrongful and unjust punishment relating to arrest, temporary seizure, and detention within their approval authority. The reporting procedures done by Chairmen of local procuracies are subject to changes (Chairmen of local procuracies are subjected to the questioning of deputies of

People's Councils); local people's procuracies are subjected to the supervision of local people's councils.

Parallel with the renewal of the political system and freshment of the state thinking, leadership content and means of the Party versus the State have been renewed, ensuring the strengthened leadership role of the Party and at the same time bringing the responsibility and proactivity of state agencies into play. It has been a common scene that governments at all levels, from the Central Government, Prime Minister of the Government to leaders of local governments, have regular contacts with businesses, listen to and respect their opinions.

It can be confirmed that achievements of the renewal of the political system and the State, from the renewal of thinking, policies, laws to the organized operation of the State apparatus, has laid a firm foundation for the renovation and socio-economic development, maintaining the national defense-security in the past time. The nature of the working class, the national identity and populism of the State is strongly maintained and strengthened. This is a basic strength of the political system and democracy of our country.

3. Weaknesses and shortcomings in the organization and operation of the State, and the existing legal system

Apart from achievements attained in the renewal process, the Party has promptly realized weaknesses of the political system, the State apparatus, lying difficulties and obstacles that need to be tackled. Among others:

a. The State apparatus of country is not explicitly clean, strong. Corruption, extravagance, bureaucracy and red-tape are

still desperately serious and not yet suppressed. Governance and management capacity is not compatible with the new situation; social disciplines are loosely relaxed.

b. State management is incompatible with requirements posed in the renewal period; positive aspects of a market economy are not yet brought into play, or its negative and wild-cat impacts are not constrained. Land, state assets are not strictly managed, wastefully utilized, leading to their serious drainage. The key role of the public economic sector is not yet strengthened; economic cooperatives are not yet developed, and economic sectors' capacity is not brought fully into play. The renovation of these sectors is lag behind the requirement of the international integration process. A segment of enterprises is illegally doing business, and economic crimes are on the rise in terms of scope and tactics. A body of public officials abuses their positions, authority to corrupt and make rich unjustly.

c. The State apparatus is still rather cumbersome, subjected to the division and coordination amongst state agencies in implementing the three authorities: legislative, executive and judicial. The demarcation of functions, duties, the central-local decentralization is vague and unspecific (such as in terms of investment and financial management, operational apparatus, vertical and territorial management, etc.), making the bureaucracy and red-tape, partiality slowly remedied.

As regards the uniformity, division and coordination of the state power, it is generally agreed, but specific differences remain in thinking. Thus, action in reality still faces obstacles, overlaps and is not properly synchronized, hardly bringing

efficiency and efficacy of the state apparatus into play. The judicial work shows various limitations. Criminal, civil and procedures legal institutions represent numerous shortcomings are slowly revised and supplemented. The contingent of judicial, judicial aid personnel is insufficient; professional quality, political stuff of a segment of officials is weak, some even decrease in terms of professionalism and ethics. The prevalence of wrongful and unjust punishments remains in investigation, arrest, detention, prosecution and trial.

d. A number of preventive and punitive measures has been undertaken to suppress bureaucracy and red-tape, corruption and extravagance in the state apparatus, but such measures are not yet effective. Thus, the prevalence of these evils remains, decreasing the confidence of the public versus the government and leaving negative impacts on the society. People are unsatisfied with the lack of transparency and impartiality of a segment of officials in the public service, adversely impacting socio-economic development.

e. The leadership capacity of the Party does not meet the requirement of the renewal of the organized operation of the State. Mismanagement, functional overlaps still remain, thus not bringing efficiently and effectively the role of the Party leadership and operation of the state apparatus into play.

f. The international integration has posed the demand to our laws for being compatible with international legal norms, including international rules, treaties and customary practices, as well as rules of international and regional organizations. It can be said that this is at the time being a big challenge to our country's legal system.

g. One of the shortcomings of the laws is

that they are lack of permanence and practicability. Notwithstanding great efforts are dedicated to their formulation, many legal provisions that are enacted not so long previously have to be revises and amended. This problem makes our laws more difficult to keep up with the socio-economic development pace of the country as well as more incompatible with the international legal space.

h. The planning, means and ways of formulating and making our laws have been much renewed over the last years, though generally it does not yet meet the needs for both quantity and quality of law formulation activities.

There are quite a number of reasons attributable to weaknesses of the political system and the state apparatus, one of which is that the building of a socialist rule-of-law state is taking place in the context of economic transformation; our understanding of it is still limited. There is a wide range of things that we do, but at the same time have to inquire into them and draw out experience in the process. We sometime do not handle properly and promptly issues that arise in the renewal practice, especially those increasingly becoming more serious such as bureaucracy and red-tape, extravagance, corruption, irresponsibility in the state apparatus; reform measures, particularly in administrative and judicial reforms, are inadequate and inefficient; the organized execution and relevant guidance is not so strong and resolute enough that to bring in positive changes with a view to overcoming such shortcomings and weaknesses.

III. Lessons learned in the building of a socialist rule-of-law state and directions for improvement

Having traversed for 60 years of founding

and development, particularly over nearly 20 years of leading the renewal drive, we can have drawn out some lessons in the building a socialist rule-of-law state in Vietnam as follows:

Firstly, the building of a socialist rule-of-law state must be adherent to the strengthening of the Party leadership, which is a factor that drives the State operation in the apt direction with a view to achieving correct goals and in the orbit of serving the people. The ideological foundation of the socialist rule-of-law state of Vietnam is Marxism-Leninism and Hochiminh's thoughts.

Secondly, in building a socialist rule-of-law state, it is necessary to fully observe the principle that all powers of the state are vested with people, to implement democracy, bring peoples creativity into play, and to selectively learn experience of mankind.

Thirdly, laws must be highly upheld. It is imperative to fully, synchronically rectify laws in a way that is compatible with the objective development needs of society, properly protecting legitimate and legal rights and interests of the people.

Fourthly, constant education of laws should be provided to all strata of people. Social ethics should be raised up, making it a foundation for strengthening socialist statutory institutions.

Fifthly, it is necessary to found a contingent of public officials who possess good ethics and are well trained in order to improve the quality of the public service of the socialist rule-of-law state.

Sixthly, the State is also required to renew its operational directions, be it dynamic, creative and compatible with the real situation of Vietnam.

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