

## IMPROVEMENTS OF GRASSROOT DEMOCRACY IMPLEMENTATION TO ENSURE HUMAN RIGHTS IN VIETNAM

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*Political report of Central Committee of the Communist Party (the 10<sup>th</sup> session) at the 11<sup>th</sup> National Congress of the Communist Party of Vietnam has clearly defined one of development goals for 2011 – 2015 is to 'continuously promote democracy', in which focusing on "more effectively implement the Grassroot Democratic Regulations and Ordinance on democracy implementation in communes, districts and provinces."*

*Democracy and grassroots democracy implementation has significantly effected to how human rights are preserved, and has been proven by the result of this process through years. Besides, grassroots democracy implementation is both requirements as well as conditions to ensure the effectiveness of ensuring human rights in Vietnam.*

Democracy and human rights<sup>(\*)</sup> are two of topics discussed all over the world every single day, and are significantly changing due to current circumstance. Based on dimension of academic research, democracy belongs to politics while human rights are a field of jurisprudence. Scholars from various study fields such as politics, philosophy, jurisprudence and sociology are also doing researches on these two concepts and their relationships. Due to this diversified assessments, scholars normally discuss about the conflicts (1)

and the independence (2) between democracy and human rights.

Modern International Law on human rights was evolved together with the birth of United Nations in 1945, and effectively narrowed the disagreements between two sides because rights of human were fully included essential factors to create democracy in international law documents <sup>(\*\*)</sup> (3, see

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<sup>(\*)</sup> In this article, "human rights" và "rights of human" are synonyms and used for replacing each others.

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<sup>(\*\*)</sup> The basic characteristics of democracy are fully mentioned in these below documents as The Universal Declaration of Human Rights (UDHR 1948), International Covenant on Civil and Political Rights (ICCPR 1966), International Covenant on Economic, Social and Cultural Rights (ICESCR 1966), Committee on the Elimination of Discrimination against Women (CEDAW 1979), v.v...They are rights to participate in a free, fair, transparent and peaceful election; a system of

more: 7). Researchers, however, only got the same voice on the relationship between democracy and human rights when the reason of this earthquake was clearly shown out after the third waves of democratization crossed over most of Southern, Eastern and Middle European, North American and Asian countries (see: 4) in the beginnings of 1990,. Up to now, the arguments about the conflicts of democracy and human rights have not come to an end yet (see: 5) but most of scholars, including lawyers in United Nations, completely admitted the dialectic relationship between democracy and human rights (see: 6). Recently, United Nations and its departments are more positive in connecting these two issues by releasing resolutions in order to promote the democracy and see it as a right of human<sup>(\*)</sup>.

Since the days reined by colonialist and feudalist governments, democracy and human rights are always discussed in Vietnam as the aim of fighting for the liberation, national independence, and bringing back the freedom for public. On the other hands, they became the

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rule of law as well as power structure; everyone has the right to freedom of opinion and expression, and freely determine their political status, pursue their economic, social and cultural goals; everyone has the right to take part in the government of his country without any distinction of any kind

(\*) The recognition of the dialectical relationship between democracy and human rights has significantly changed democracy as human rights in World Conference on Human Rights in 1993 in Vienna, Austria. And next was report named "An Agenda for Democratization" of United Nations General Secretary in 1996 v.v... See: Vienna Declaration and Programme of Action 1993. A/CONF.157/23; Report of UN General Secretary in 1996 (Boutros Boutros-Ghali.1996. *An Agenda for Democratization*. New York: United Nations Department of Public Information); and series of resolutions of Human Rights Committee: E/CN.4/Sub.2/2002/36; E/CN.4/2003/L.11/Add.4; Resolution 1999/57.

values and characteristics of a social country where human are ensured to have food, clothing and study under the leadership of Communist Party. Thereafter, the higher target will be "a wealthy people, a strong, democratic, equal, civilised country, firmly advancing toward socialism with the rule of law."

Vietnam Communist Party had approved the renewal policy in the 6<sup>th</sup> National Congress of the Communist Party of Vietnam (1986) and the Communist Party announced the decision of completely improving and changing the renewal progress, including political renewal in the 7<sup>th</sup> Committee. A series of political events, started in the beginning of 1990 and lasted to the middle of this year, were the reason of The Central Committee of the Communist Party (the 8<sup>th</sup> session) publishing the Directive No 30-CT/TW in February 18th, 1998 on "Building and implementing the regulations of grassroot democracy" (see: 15).

In order to implement the published Directive of Central Committee of the Communist Party, the National Assembly, Government, Vietnamese Fatherland Front and related departments had issued the resolutions, decrees, decisions and instructions on grassroot democracy implementation, hence creating a more democratic and open environment in society, especially at grassroot level. Because they are the direct places of doing all Party and State's policies, as well as the places needed to directly and widely implemented democracy most. Up to now, there were lot of reviews and evaluations about the implements of

democracy. By step by step legalizing the grassroots democracy as well as the issue of Ordinance on democracy implements in communes, districts and provinces (No 34/2007/PL-UBTVQH11, see: 9) of the Standing National Assembly (the 11<sup>th</sup> session), the implementation process will be more and more stable.

The article, firstly, pointed out the fundamental characteristics of democracy and how they were expressed through human rights in international laws, and then reviewed the important concepts on democracy in Party and State's documents; the results and reviews of some organizations and provinces can also show the link and the necessity of improving democracy implements to ensure human rights.

### **1. The fundamental characteristics of democracy and democracy as human rights in international documents on human rights**

Democracy is the political concept which difficult and almost unable to achieve the agreement between researchers and politician in countries when answering about its meaning as well as characteristics. It is totally able to understand because there are differences in political system, development level, factors of society, cultural values as well as history of each countries (see:10). The argument, however, clearly pointed out three main viewpoints that closely connect to the characteristics of the corresponding democracy. First one is the Liberalism, also called liberal democracy. It mentioned to the free and fair election, freedom of the speech, freedom of the meeting and freedom of press (see: 11).

D.Held added some more characteristics such as the participation of public as well as the responsibility of explanation of governmental staff towards public (see: 12). The second one is the cultural relativism, which mainly discussed about the valuation of the specific culture of each country as well as each area. It disagreed with the Western concepts and approved the viewpoint of Mr. Lee Kwan Yew about Asian Values since the beginning of 1990 (13)<sup>(\*)</sup>. The theory of cultural relativism also discussed about the importance of democracy, democratic building, but stressed on their own characteristics depending on each country's cultural circumstances. The third one agreed with the popularity of democracy when seeing the democracy as a popular value (see: 14), in both Western and Eastern countries. The essential characteristics of a popular democracy values, in general, include the civil and political rights<sup>(\*\*)</sup>, Professor A. Sen said. "The reason is because democracy is a system asking for a high level, not just a mechanical condition (simply understood), and was seen as an independent way" (see: 14), he explained.

In general, three viewpoints have strongly discussed about the value of

<sup>(\*)</sup> Mr. Lee Kwan Yew was Prime Minister of Singapore for the period of 1959-1990. He is the one who first discussed about "Asian Values" in the beginning of 1990. He approved with the Asian values, especially Eastern Asia's values and disagreed with Western values. According to him, Western values such as freedom, democracy and human rights could not be applied in Eastern Asia situation.

<sup>(\*\*)</sup> Civil and democratic rights mentioned by A. Sen including the rights of election, individual liberty, respect to the legalization. The full list can be seen in International Covenant on Civil and Political Rights (ICCPR) of United Nations in 1966 (See: 8).

democracy, and pointed out its importance as well as the connection of democracy and development. The fundamental characteristics included the freedom of the election, the fairness and freedom of speech, freedom of meeting, and the freedom of the press as well as the participation of public together with the duty of officials in explaining queries of public. Besides emphasizing on the civil and political rights, A. Sen also added some more points as self-determination, rule of law, equality and no discrimination.

Democracy as human rights is a new concept<sup>(\*)</sup>, even it was discussed before in international modern laws on human rights in the past six decades. The international covenant about the civil and political rights of United Nations in 1966 (8): The right of self-determination (Article 1), The equal right (Article 3, Article 14 and Article 25.3), the right to freedom of opinions and expressions (Article 19), the right of peaceful assembly (Article 21), the right to freedom of association with others (Article 22), the right to take part in the conduct of public affairs, to vote and to be voted (Article 25.1&2) and No Discrimination (Article 26). However, the arguments about the relationship of democracy and human rights still exist. And it is unable to refuse that the democracy implements also means the ensurement of human rights, and vice versa, the process of this progress is also

established and created a more stable and stronger democracy.

## 2. Grassroot Democracy and its implements

### 1. The establishing progress of legal frame and the basic concepts of grassroot democracy

The system of Party and State's documents, policies, and law regulated the concept on democracy and its improvement, and the civil rights. The limitation of the article is unable to fully discuss on these concepts because it is very large. We here just summerized the basic reviews on grassroot democracy in the Directive No 30-CT/TW in February 18<sup>th</sup>, 1998 of the Central Committee of the Communist Party (the 8th session) on "Building and Implementing the Grassroot Democracy Regulations" (see: 15), some resolutions of National Assembly, States' decrees as well as Ordinance on Grassroot Democracy.

The Directive no 30-CT/TW was issued when "the democracy of public was violent in many fields; bureaucracy, corruption, disturb to public with messy orders and other social issues are popular and extremely serious because we are unable to prevent or push back these situations. The viewpoint of public's rights as to be informed, to be consulted, to inspect and supervise, and to decide directly is unable to concretize into official law or regulations yet" (see: 15). Hence, the core concept is to implement the grassroot democracy according to the Directive so that improving the public involvement, attracting them to participate in State's management such as examining, supervising State. Other matters are to

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(\*) Read some articles on this issue: Thomas M. Frank. Democracy as a Human Rights. *Studies in Transnational Legal Policy* 26: 73-101, 1994; Henry J. Steiner. Political Participation as a Human Right. *Human Rights Yearbook* 1: 77-134, 1988; Joshua Cohen. Is there a human right to democracy? *Synowich: The Egalitarian Conscience* 11: 226-250, 2005.

recover from the recession, and reduce the democracy imbalance as well as corruption. It can be found out some general characteristics of the two phrases of this regulation. Firstly, for the citizen themselves, it is the self-determination (rooted from the civil rights), in which it related to the election for who they approve as well as the direct self-affected issues. Thereafter public can directly or indirectly take part in State's activities and government at grassroot level. Secondly, it is the explanation duty towards public of governmental staff.

In order to legalize the concepts approved through Directive No 30-CT/TW, the Standing National Assembly issued the Resolution no 45/1998/NQ-UBTVQH10 in February 26<sup>th</sup> 1998 on "Regulation on democracy implements in communes, districts and provinces" (see: 16). The Resolution no 45 firstly reviewed the motto of public rights as being informed, being consulted, supervise and decide directly as the foundation by which the Government will issue the Regulation on democracy implements in communes, districts and provinces (Regulation). According to the instruction of National Assembly in the Resolution no 45/1998/NQ-UBTVQH10, the resolution has to ensure the improvement of people involvements, for example, gathering the public's ideas on what they are discussing, consulting as well as supervising and deciding. Public's accessments to information and the explanation duty of Government such as informing the State's decisions for public, the budget statements,

situations of settlements as well as explaining reports).

Right after the Resolution no 45/1998/NQ-UBTVQH10 was issued, Government has quickly made Resolution on other concepts and requirements into decrees. Firstly, the Decree no 29/1998/NĐ-CP in May 11<sup>th</sup>, 1998 was about "Democracy implementation at communes" (see: 17) and after 5 year implements of the Decree no 29/1998/NĐ-CP as well as conducting the instructions of Secretariat of the Central Committee in Directive no 10-CT/TW in March 28<sup>th</sup>, 2002 on "Keep improving the establishment and implements on Grassroot Democracy" (see: 18). Government also issued the Decree no 79/2003/NĐ-CP in July 7<sup>th</sup>, 2003 on "Regulation on Democracy implements at communes" (see: 19) (Decree no 79/2003/NĐ-CP, replacing for the Decree no 29/1998/NĐ-CP).

The Decree no 79/2003/NĐ-CP focused on four main points such as: (1) to be informed; (2) decide directly; (3) to be consulted; and (4) investigate and supervise. Basically, this Decree still remains the core concepts regulated in Decree no 29/1998/NĐ-CP with some suitable additions. On the other hands, the Decree no 79/2003/NĐ-CP will be more realistic on both jobs and those who conduct them. In fact, the Decree no 79/2003/NĐ-CP is seen as the next step for 'improving the Democracy Regulations into Law' or based on the instructions of Secretariat of the Central Committee in the Directive no 10-CT/TW.

Year 2007 is the time point of establishing the law frame of grassroot democracy foundation through the

Ordinance no 34/2007/PL-UBTVQH11 of the Stading National Assembly on “Democracy implementation in communes, districts and provinces” (see: 9), replacing for the Decree no 79/2003/NĐ-CP. Besides the higher level of meaning and law values, the Ordinance also re-confirmed the valuation of four main concepts in the Decree no 79/2003/NĐ-CP, hence figured out three new points. First thing is to concretize and make clear the method of implements; improving the responsibilities of conducting the officers is the second point; and thirdly, to emphasize on the effectiveness as well as the explanation's duty of relevant governmental staff.

Up to now, the legal frame in macro level has fully adjusted the grassroot democracy implements in Vietnam. The target of all four main concepts in Regulations, Decrees or Ordinances is to develop the civil rights, improve their responsibilities as well as the explanation duty of governmental staff towards public. Comparing these concepts with the democracy's characteristics, there are the similarities, but also reflecting the values of human rights in International Covenant on the Civil and Political Rights of United Nations in 1966 (see: 8).

## 2. Grassroot Democracy implementation

After implementing the Directive no 30-CT/TW of Central Party (the 8<sup>th</sup> session), and after Ordinance no 34/2007/PL-UBTVQH11 has worked for 4 years, there are a lot of summarized reports of grassroot democracy implements. All of them vividly reflected on two main issues as results achieved and its limitations.

### a. Results achieved

After four years of implementing the Directive no 30-CT/TW, Secretariat of the Central Committee clearly pointed out that the grassroot democracy implements had created a more democratic and opening environment in society, better reflecting the civil rights, consolidated public trust, especially on fields of economic development, infrastructure building in communes, districts and provinces. Hence, making an innovation of thoughts and working style of Party and governmental staff. The changing point now is focus on getting close to public, respecting them and having responsibility for them. (see: 19). For those who are in grassroot level, the Regulations help better understand their own rights as to be informed, to be consulted, to supervise and to directly decide at their provinces. (20)<sup>(\*)</sup>.

Reports of some provinces also showed the positive changes as well as the public involvement to economic and social life. Hanoi, for example, citizen encouraged the State and public's partnership movement. Hence within three years since 1998 to 2000, public took part in the building 1,208 constructions with State, the total expense as 132 billion VND, in which there are 26% of them were from public (21).

In Hué, the old system of communes was improved through the wide and democratic election. The proportion of public participated in the election was up to 85% to 90%; people positively join in discussing their communes' matters as agricultural structure's transition, building

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<sup>(\*)</sup> [rights] – Author's emphasis.

convention and rules so on; establishing and implementing the method of supervising and examining of public as well as creating the record books for every single household in communes such as Bình Điền, Lộc Hải, Hương Phú, An Cựu etc (see: 22).

The positive results achieved through the grassroots democracy implements were also clearly seen in other provinces as Nghệ An, Hải Dương, Yên Bái so on (see: 20).

#### *b. Limitations*

Limitations of grassroots democracy implementation, however, were not just some. The most general point in all reports from provincial to central level is just the implementation from outside, lacking of the reality (see: 20)<sup>(\*)</sup>; the awareness of Governmental and Communist Party staff is limited while some of them are not good enough examples for public to follow (see: 22).

The review of 10 years after implementing grassroots democracy regulations (1998 - 2008) has pointed out that the result just stuck in some specific events with the slowing down trend as public does not really care much. The public rights of being informed, being consulted, supervising, directly deciding are only the slogan while there is not remarkable changes in behavior of governmental staff like bureaucracy, ignoring the national discipline and lack of responsibilities. The public democracy was expressed throughout the representative organizations hence there is limitations

and difficulties of dividing the power of politic, State and public based on the civil rights. People have limitation in contributing their opinions for the making of policies or laws as well as plans or programme in their own communes (see: 23).

Recently, there is an improvement of the legality of grassroots democracy implements with Ordinances, the public's petition however still appear everywhere. Mr. Trương Vĩnh Trọng also shared his feeling with the public that he understood the hardness and difficulties of people who went to the courts. They did not have the intention against the Government or Communist Party. Most of them were kind, and all government's policies are for public's benefits because public are root of a country. Public did these petitions because of their depression with some parts of government (see: 23).

#### **3. Some conclusions**

Issuing legal documents on Grassroot Democracy of CPV can be seen as the most effective method of improving the civil rights. "The result of implementing the legal frame of grassroots democracy up to now can give us useful and effective lessons as well as figure out the limitations and challenges in the process of ensuring the democracy because we are expecting the democracy is not only at the grassroots level, but also in a whole system"<sup>(\*)</sup> (see: 20).

The relationship between democracy and civil rights are proven through reality with international laws on human rights. The nature of democracy is human rights;

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<sup>(\*)</sup> Speech by Prime Minister Phan Văn Khải at the National Conference on the implement of the Directive 30-TC/TW "Grassroot Democracy Regulations together with strengthening local authorities" (March 4<sup>th</sup>, 2002).

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<sup>(\*)</sup> Speech of the Former General Secretary Đỗ Mười at National Conference on implements of the Directive no 30-CT/TW "Experiences for improving the quality of Grassroot Democracy Regulations" (March 4<sup>th</sup>, 2002).

and its implements are the proof of the existence of democracy and can only be ensured in a democratic society. The positive results of grassroots democracy implements show us an improvement during time; the limitations, however, questioned us about how to be more realistic and better in protecting the human rights.

Directive no 10-CT/TW of the Secretariat of the Central Committee also pointed out the possibility of upgrading the Democracy Regulations into Ordinance or Law. National Assembly issued the Ordinance four years ago, but the reality questioned us would it be enough with such an Ordinance? Would the legal valuations of Ordinance be strong enough to ensure the realistic democracy implements? Would it be necessary to upgrade the Ordinance into Law? These questions asked for a serious discussion because there is difference between an ordinance and a law principle. However, either ordinance or law about grassroots democracy issued, there is necessary to have another solutions together with if we want to ensure the real implements. They can be the improvement of awareness of both staff and public in order to complete the target as “a wealthy people, a strong, democratic, equal, civilized country”. It will be a practice of culture in a social country with the rule of law.

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