

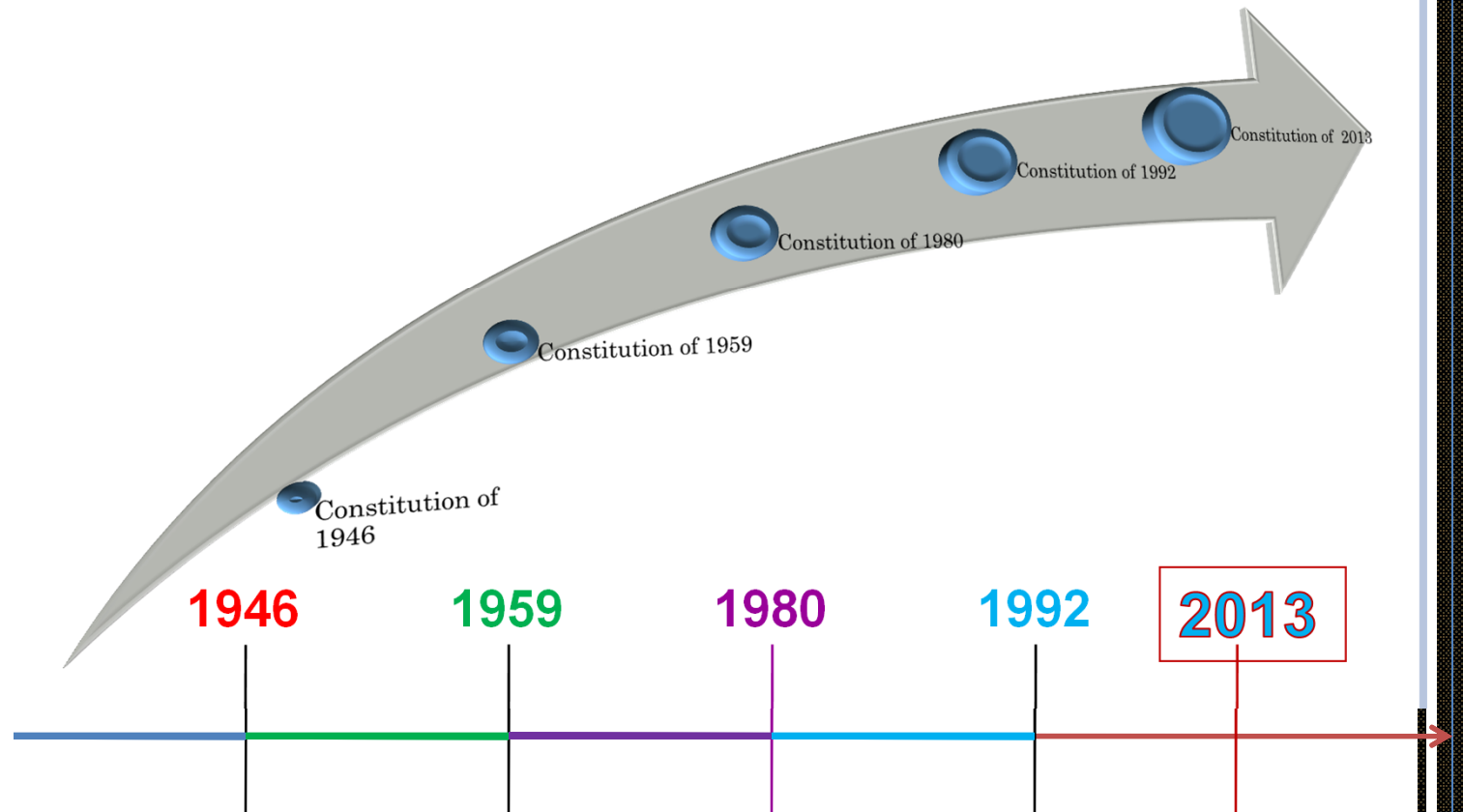
THE IMPACT OF THE CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM OF 2013 ON THE PROTECTION OF FUNDAMENTAL RIGHTS



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BRIEF HISTORY OF CONSTITUTIONS IN VIETNAM



1945: Over the victory of Vietnam to France and Japan to be an independent country with the name of Vietnam People's Republic

1959: After Dien Bien Phu battle, win the independence in the North, separation to the North Vietnam (Hanoi) and South (Sai Gon)

1980: After Vietnam War (1975), orientation to build socialism in the whole country follow the model of soviet Union; just allow state-own economic and cooperative sectors, and other inappropriate policies leads to the serious crisis.


1992: the 6th Congress of the CPV (1986) -> Doi Moi (Reform) policy, socialist oriented market economy...

MAIN AIMS OF THE REVISION OF 1992 CONSTITUTION

- Promote and uphold democracy
- **Protect, Promote and Ensure human rights and citizen rights**
- Update the policy on economic, social, education, culture, science and environment fields under the updated Country Development Strategy by the CPV
- Reorganize the State organs to the principle: Rule of Law - State of the people, by the people, for the people. All State power belongs to the people whose foundation is the alliance between the working class and the peasantry and the intelligentsia. State power is unity with delegation of power to and co-ordination and control/supervision among State bodies in exercising legislative, executive and judicial rights.
- Toward the integration of Vietnam to ASEAN and the global world



PROCESS OF MAKING THE NEW CONSTITUTION



- 11th CPV Congress (Jan 2011): decide to research and revise Constitution 1992



- June 2011: Establishment of the Constitution Amendment Commission under the National Assembly



- 1st Draft of the Revision of 1992 Constitution for public consultation and debates: 1 Jan – 31 March 2013 then extent to the end of the year



- June 2013: First discussion at the National Assembly



- 28 November 2013: Adoption of **NEW Constitution of 2013** (take effect from 1 Jan 2014)



- **Implementation**



MAIN TOPICS AT THE CONSTITUTIONAL DEBATES

- **Political regime:** political base of the State, leading role of the CPV, Role the Vietnam Fatherland Front and its members
- **Economic, social, culture... policy:**
 - Ownership of the land; rights of land users
 - Economic development policy, role of the state-owned sector; principle of market economy
 - New regulations on this fields
- **Human Rights and Citizen rights**
- **State power organizations** toward power controlling in implementation of legislative, executive and judiciary power, for promotion of democracy, good governance and anti-corruption; local government organization; judicial reform
- **Model of Constitutional review**
- **Referendum of the Constitution**



SCOPE OF THE CONSTITUTION OF VIETNAM

Political, economic, social system

Organization of the State Organs

Fundamental Rights and Obligations

STRUCTURE OF THE NEW CONSTITUTION (11 CHAPTERS, 120 ARTICLES VS OLD CONSTITUTION: 12 CHAPTERS, 147 ARTICLES

Preamble

Chapter 1: Political regime

Chapter 2: Human rights, fundamental rights and obligations of citizen

Chapter 3-4: Economy, Society, Technology, Environment; Defense and Security

Chapters 5 – 8: The traditional state institutions (National Assembly, the State President, the Government, the Court and Procuracy)

Chapter 9: Local government

Chapter 10: National Electoral Council, State Audit

Chapter 11: Validity and Revision of the Constitution



ACHIEVEMENTS

- Promote further democracy and role of People in relation with State, CPV and state agencies.
 - Direct and indirect democracy
- The leading role of the CPV, but the Party is in close relation to People, serve People, under supervision of People, be responsible for its decision before People.
- The principle of control/supervision of state power to be emphasized for good governance, preventing power abuse and anti-corruption. Reallocate the power among central state institution (National Assembly, President, Government/PM, Supreme Court/Supreme Procuracy)
- Local Government organization, judicial reform are still open with principle regulations.
- ***New approach*** and ***much better regulation*** on **Human Rights and Citizens' fundamental rights and freedom**
- Basic regulation/changes to promote market economy, equality between the elements of the economic sectors (state owned, cooperative and private sectors as well as FDI sector)



HUMAN RIGHTS PROTECTION IN THE 2013 CONSTITUTION

- Human rights protection was one of the guiding idea for the drafting of the constitution. Human rights conventions were frequently referred to including the UN Declaration of Human rights, UN Conventions on Human Rights (ICCPR, ICESCR..., Declaration of Human Rights of ASEAN).
- The Chapter on Human rights, Fundamental Rights and Obligations of the Citizens is the **highlight** of the New constitution.
- The first time, HUMAN RIGHTS brought directly into Constitution with clear and strong regulation beside the Vietnamese citizen rights



NEW APPROACH ON HUMAN RIGHTS AND CITIZEN RIGHTS

Change the title and contents of the Chapter/change the position of the Chapter to Chapter 2 (instead of Charter 5):

Main principles of human rights are recognized and respected

Clear regulations on human rights (Everybody) and Citizen rights (Citizen)

New rights: the right to live (Art. 19), the right against torture (Art. 20.1), to own body and body part donation (Art. 20.3), the right to social security (Art. 34), the right to marriage and divorce (Art. 36, same-sex marriage not allowed); right to live in a fresh environment (Art.43)

Strengthened rights: the right to information access (Art. 25), the right to vote in a referendum (Art. 29), the right to do business in any area unrestricted (Art. 33). Rights to justice (Art. 31) (old and new): right to presumption of innocence, *right to be tried in timely manner, right to public and fair trial, right against double conviction, right to defense early in criminal procedure, right to state compensation.*

Rearrange/reorder the rights

ARTICLE 14

1. In the Socialist Republic of Vietnam, human rights and citizens' rights in the political, civil, economic, cultural and social fields shall be *recognized, respected, protected and guaranteed* in accordance with the Constitution and law.
2. Human rights and citizens' rights **may not be limited** unless prescribed by a law solely in case of necessity for reasons of national defense, national security, social order and safety, social morality and community well-being.



Citizen rights (Citizen)	Human Rights – (Everyone)
To vote at elections and referendums	To live
Social and state management participation	To physical inviolability and to have their lives, health, honor and dignity protected by law; against torture
To have legal accommodation	To donate own part or whole body
Freedom of movement and residence inside the country, go abroad and come back	Inviolability of privacy and personal/family secret
Freedom of Speech, Press, Information access;	Inviolability of Mail/phone/communication secret.
Freedom of Assembly, Association and Demonstration	Inviolability of place of residence
To social security	Freedom of belief and religion
To work	To lodge complaints or denunciation
To learn/study (also obligation)	To be considered not guilty until effective court's decision
To ethnic identification, use mother language, choose communication language	To ownership of property
	Freedom of doing business in unrestricted areas
	To get married and divorce
	To entitle health care
	To undertake scientific and technical research, and to engage in literary, artistic creation and enjoy their benefit
	To live in a fresh environment

THE IMPACT IN PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL RIGHTS

New approach to human rights and fundamental rights -> not an aim, being a principle

New way of regulation: toward direct implementation, restricted limitation

New regulation: adaption to the international human rights treaties and the fact of life

Efforts of the GoV in protecting and promoting human rights and citizen rights

Role of scholars, CSOs and the People

UPR process



WORKING AGENDA OF THE NATIONAL ASSEMBLY IN 2014 – 2015 ON HUMAN RIGHTS AND CITIZEN RIGHTS

<i>Prepare and adopt</i>	<i>Prepare the bill on</i>
Election Law Law on detention Law on referendum Law on demonstration Law on military obligation Civil code Criminal code Criminal/Civil/Administrative procedure codes Organic laws	Press Law Law on religion and belief Law on information access





THANK YOU FOR YOU ATTENTION

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