

PEOPLE'S RIGHTS IN THE 1946 CONSTITUTION AND THE DEVELOPMENT OF THE 2013 CONSTITUTION IN VIET NAM

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ABSTRACT

The 1946 Constitution, the first constitution in our history which was approved on November 09, 1946 by the National Assembly of Democratic Republic of Vietnam included 7 Chapters and 70 Articles. The 1946 Constitution was a democratic and advanced constitution which was the optimal result of national and international values, clearly shown in Ho Chi Minh's perspective in 'Legality and Humanity'. It met the desire of national independence and territorial integrity. One of the fundamental contents of this Constitution was the regulations on basic rights of people - the core value that the next constitutions inherit.

Legality development in Vietnam is associated with the development and completion of the socialist legal government which is marked by the creation of different constitutions. The common characteristic of the 1964 Constitution, 1959 Constitution, 1980 Constitution, 1992 Constitution, and 2013 Constitution is that the declaration on human rights is the basic foundation to build Vietnam laws in which the statements in the 1946 constitution is the foundation that is adopted in the next constitutions.

Keywords: 1946 institution, democracy, human right, people, Vietnam

INTRODUCTION

Human rights to the development of Vietnam is both a purpose and motivation of development. The understandings of the Communist Party of Vietnam are based on the ideologies of Ho Chi Minh and Marxism and Leninism. Throughout our legislative and constitutional history, Ho Chi Minh placed special importance on human rights and how to affirm them which made Constitution the most important foundation. Thus, since our first Constitution, the 1946 Constitution, the human rights counted for a huge volume. This was adopted and developed in the amendments of 1959 Constitution, 1980 Constitution, 1992 Constitution, and 2013 Constitution. Nowadays, we focus on the utilization of human resources in social development. In order to properly use those resources, we need to broaden democracy and civil rights. Therefore, Vietnam stay focused in completion of legal system on human rights, particularly stated in the 2013 Constitution.

CONTENT

1. Regulations on Human Rights in 1946 Constitution

The August 1945 Revolution was a rise of the entire country under the leadership of the Communist Party of Vietnam with a spirit of 'liberating ourselves on our own'. It was also the result of the continual revolution throughout 15 years since the establishment of the Party with peak in 1930 – 1931, 1936 – 1939 and the 1939 – 1945 national liberation movement. With the sacrifice and efforts of the entire nation, the success of the August Revolution brought Vietnam to a new era, era of independence and freedom.

Obviously, the most significant outcome of the August 1945 Revolution was the foundation of a new revolutionary government in Vietnam with a distinct feature of a government that was of the people, by the people, and for the people. This was also the efforts and achievement of President Ho Chi Minh after decades of going abroad and finding a way to save the country. From theoretical model of a Communist Government that he studied and from theories on rule of law government in the world history, after the success of the August Revolution with the government on people's side, his ideology was put into practice by the development of Democratic Republic of Vietnam and the creation of 1946 Constitution, the foundation of our legislative history. This Constitution was the legal basis to protect basic rights and benefits of the people, the power of the Government.

To clarify the function of the people, after reclaiming the management, President Ho Chi Minh and the Government, together with the citizens, continuously built and strengthened the civil government. A month after gaining independence, in his work Government is the Servant of the People, Ho Chi Minh clearly stated, 'Government activities are for the sole purpose of finding independence and happiness for its people. Thus, the civil government always puts the benefits of its people first. It does whatever is beneficial to its people and avoids things that are not'[3]. Generally, Ho Chi Minh emphasized the things that might improve civilian life standards. According to him, for a government to be loved and trusted by its civilians, it had to love its people and put their rights first and it had to be public-spirited. He also pointed out the revolutionary and democratic nature of the civil Government when he stated that the strength origin of the government was the relations with its people and its efforts to ensure independence and happiness for its people since citizens were the resources of the Government and the Government was the leader of its people. Thus, the Government and the people needed to form a unique union. Therefore, in the development of a government that was of the people, by the people and for the people, Ho Chi Minh placed significant importance on implementing democracy so that civilians were free to vote for its candidates to be selected to the Government. In the first meeting of the provisional Government of Democratic Republic of Vietnam on September 03, 1945, Ho Chi Minh requested the Government to organize the general election 'ASAP' since this election played an important role since it was a chance for

the people to utilize the democracy and to show the spirit of union, freedom, and equality. The civilians selected the National Assembly via general election. The National Assembly would assign the Government. That Government belonged to all the people. On September 03, 2015, the provisional Government of North Vietnam stated 6 urgent tasks including the task of building a Government and conducting general selection to select National Assembly to choose a Constitution for Vietnam. President Ho Chi Minh suggested the Government that 'As we were formerly ruled by the absolute monarchy, then the colonial regime which was no less despotic, our country had no constitution and our people could not enjoy democratic freedoms. Therefore, I propose the Government to organize a GENERAL ELECTION as soon as possible according to the universal suffrage regime. All citizens, male and female, aged full 18 years old shall have the right to vote and to stand for the election, regardless of their economic situation, religion, ethnicity.'[3] His suggestion was like a legislative declaration of North Vietnam.

Aside from emphasizing democracy, President Ho Chi Minh placed special importance on managing the country and society using Constitution and laws and focusing on building a legislative Government. In his opinion, building North Vietnam meant building a legislation of the people, by the people, and for the people.

In his perspective, Ho Chi Minh thought that human rights were associated with Constitution. Constitution was not just a document on government organization but it was also a foundation to ensure the implementation of human rights, especially democratic freedom of the Vietnamese.

In Vietnam, regulations on human rights are one of the most important parts of the Constitution shown in the regulations of basic civil rights and obligations. Thus, the Constitution, human rights, and civil rights are closely associated and they all have a fundamental foundation of national independence. In Ho Chi Minh's opinion, the civil independence and human rights of each individual merged into each other. The national sovereignty, civil freedom, democratic rights of each person in the Government had to be specified in Constitution. Since the first days of democracy, He clearly saw the dialectical connection between human rights and Constitution. The most significant feature of the 1946 Constitution is that though it was made in the first years of management of the young civil Government and that Government had to focus on internal and international affairs, that Government still paid special attention on basic human rights. Those are human rights for the Vietnamese after regaining independence.

In the Introduction of the 1946 Constitution, it is stated that 'The August Revolution has regained sovereignty for the country and freedom for the people, and given birth to the democratic republic. The Constitution is the glory achievement of the revolution and it is built based on the basic principles: National unity, irrespective of races, sexes, social classes and religions; Ensuring democratic freedoms; Building a strong and clear-sighted administration of the people.'[6]

The 1946 Constitution consists of 70 Articles, 18 of which are for regulations on interests and obligations of civilians in Chapter two 'Obligations and Interests of Citizens'. The human rights in this Constitution are shown by Vietnamese people's rights including:

Right to be equal: 'All Vietnamese civilians are equal when it comes to politics, economy, and culture'[6] (Article), equal before the law, able to join the government and country development process (Article 7), ethnicities are equal (Article 8), male and female are equal (Article 9).

Freedom: The Constitution affirms: 'Vietnamese citizens shall enjoy freedom of speech, press, associations and demonstration, belief, residence, travel abroad and in Vietnam.'[6] (Article 10), inviolability of body, mail, and house (Article 11)

Democracy: Foremostly the democracy in politics 'All Vietnamese citizens shall join the government and the country development process' [6] (Article 7); The election process is publicized. The election must be free, direct, and secret. All Vietnamese citizens shall, upon reaching the age of eighteen, have the right to vote and, upon reaching the age of twenty-one, have the right to stand for election and have the right to disapprove candidates (Article 20), rights to ratify the Constitution and issues related to national destiny (Article 21).

Rights on economy and culture are also fully stated: right to own property, rights of the intellectual (Article 12) and the workers (Article 13). About education, the 1946 Constitution also states the compulsory basic education and tuition-free education. 'At local primary schools, ethnic people could study in their own mother tongue. Poor students got support from the government. Private schools were free to open but had to follow state education programs.'[6]

Social rights: stated in the Article 14 of the 1946 Constitution, according to it, the senior citizens and disable ones get government support and children are taken care of as far as education is concerned.

The policies on civil rights in the 1946 Constitution had significant meaning to Vietnam after a long time being ruled by the colonists. From being exploited with limited rights, after the Constitution, everything was changed and they became a true 'citizen'. People were in charge of their nation and of themselves. And, their role as a power factor of the state was also confirmed.

As the leader of the Government, as well as the director of the Committee of Constitution Preparation, President Ho Chi Minh utilized the intelligence of the Party and the whole nation, together with the National Assembly established on January 06, 1946, to make the democratic Constitution, the first constitution of Vietnam. After the successful August Revolution, the new revolutionary government built in 14 months had the Constitution approved by the Assembly I, the second Meeting dated November 09, 1946. This was considered to be a significant phenomenon of the world revolution history. With our country situation at that time, the

Vietnam Revolution had to take on two tasks at a time: to fight the enemies and develop the country and to surpass countless difficulties and challenges. The approval of the Constitution was even more meaningful in practice and legality. This is also a great outcome of the development of legislative Government of the people, by the people, and for the people under the leadership of the Communist Party of Vietnam and President Ho Chi Minh.

Ho Chi Minh's perspective on human rights was based on his opinion on the function of human in revolution and in history. According to him, civilians are the key factor in all aspects from politics, economy, to society, and from small things related to personal interests to great things like choosing the mechanism and the leader of the Government and making decisions on issues associated with national destiny. Ho Chi Minh's perspective on democracy in general and civil rights in particular was the combination between traditional and modern ideologies, between theory and practice. He brought democratic value to a whole new level that was scientific and humane.

Why would civilians have such great power? He explained clearly that it is because civilians were the root of the country. It's the civilians who sacrificed their blood to build and protect the country. A country only existed when civilians did. They provided the Party with the best children. The force of the Party only grew thanks to civilians. They built and protected the Party, its officials. Civilians were like water and officials were like fish. A fish couldn't live without water. Civilians made the policies of the Party come true. Thus, if there were no civilians then the existence of the Party would mean nothing, same as Government and civil organizations.

In short, civilians were the force to build the country and an element to form, nourish and protect political organizations. Thus civilians had rights to own the country, the mechanism, and all aspects of social life. For civilians to do that, Ho Chi Minh suggested we have a mechanism to ensure their ownership rights. In other words, the Party had to lead them to build a Government of the people, by the people, and for the people. That Government had to have a legal system to protect its civilians' rights and build a group of officials that were talented and morally good and served the country and the Revolution.

To confirm the role and function of civilians, the power of the Government, Article 1 of the 1946 Constitution states, 'Vietnam is a democratic republic country. All powers in the country belong to Vietnamese civilians, regardless of genders, financial status, classes, and religions.' [6] According to Ho Chi Minh, the Government power belonged to civilians in the following aspects:

First, laws since, in his opinion, laws were made to protect people's right of freedom and democracy;

Second, Government organization system with three components: Congress, legislative agent; Government, executive agent; Court, judicial agent. He realized that our Government was a government of the people whose sole purpose was to serve people's interests. He explained the

relationship between the Government and the people via the nature of the mechanism. The mechanism that we were building was democratic mechanism in which the civilians were the owner and held power in the Government and the society. The Government was a servant to the civilians. Thus the civilians had the right to accelerate and criticize the Government. The Government had to serve the people's interests under any circumstances. With that great power, the civilians had to support the Government, following the Government disciplined and its planned policies so that the Government could fulfill the tasks assigned by the civilians.

The 1946 Constitution affirmed the ownership of the civilians. It was the first time in the history that the legal position of the civilians was established associated with our regaining of independence. Although it was born in a rather difficult situation, the first Constitution officially affirmed the human right values that our people fought so hard for. It was also the core value of a democratic Constitution. President Ho Chi Minh commented on this Constitution, 'that Constitution is not perfect but it was made in an actual situation. That Constitution announced to the world that Vietnam is now independent. It also confirms to the world that women are equal to men when it comes to enjoying all freedom rights. It also confirms a strong united spirit among the Vietnamese peoples and an equal dignity of the classes.' [3] That Constitution showed a democratic and contemporary spirit, condensation of all invaluable values of the entire area and it showed the rule by law spirit of President Ho Chi Minh. The ideological content of the 1946 Constitution was shown in values of history, politics, legality and noble humanity. Those were major and most stable values that were adopted in the following Constitutions in Vietnam.

President Ho Chi Minh was one of the first Vietnamese people to pay attention on human rights. This issue went with him his entire revolutionary life. Starting by the Declaration of Freedom of the Democratic Republic of Vietnam, he quoted the definition of human rights in the American Declaration of Freedom to make it a foundation for the fight to regain our freedom. After we regained freedom, the birth of the Democratic Republic of Vietnam and 1946 Constitution affirmed all the nature of the civil democratic mechanism and Ho Chi Minh legal basis. Before passing away in 1969, he made a testament to the nation and He did not forget to emphasize human rights.

Ho Chi Minh adopted traditional values and he was influenced by the Marxist and Leninist dialectical materialism concepts when he addressed the function and power of civilians. According to him, civilians has ultimate powers and he trusted that power since the civil powers once gathered could make great things happen, even change the court of history. The actual situation of Vietnam Revolution proved that his opinion was completely right. The most important factor in politics is Government power institution. Political power is the core issue of any social revolutions. To Ho Chi Minh, the Government was of the people, by the people, and for the people and, due to civilians, Government power belonged to civilians. That Government should never stay out of our above citizens. Actually, that Ho Chi Minh associated

politics with citizens' will meant he embedded politics with its deep and stable foundation. Ho Chi Minh's civil political view stucked with making civilians able to fulfill their ownership function.

2. The 2013 Constitution and its Inheritance of the 1946 Constitution on Human Rights

The 2013 Constitution, approved at the sixth Meeting, Eighth Congress taking effect on January 01, 2014, was built on the foundation of previous Constitutions of Vietnam, especially the 1946 Constitution. This Constitution had new features on contents and legislative technique. The Constitution showed the advanced democracy of the rule by law Government in a full and clearer manner, particularly statements on human rights.

The concept of human rights is quite familiar to the international legal history. On December 10, 1948, in the international Declaration on human rights of the United Nations General Assembly determined that all people were born with freedom and equality of dignity and human rights. Thus human rights, of course, were accepted globally.

The 2013 Constitution of Vietnam was built on legal documents in our legislative history. In the Constitution, regulations on human rights took an important position and great volume. Compared to the 1992 Constitution, the 2013 Constitution added more regulations on human rights and basic rights and obligations of citizens. This is shown in the following points:

The 2013 moved 'Basic Rights and Obligations of Citizens' from Chapter 5 to Chapter 2. This was a change in perspective and confirmed the important position of citizens to the State. This change was an inheritance of the 1946 Constitution and other advanced constitutions in the world. Importantly, the 2013 Constitution resolved the confusion between human rights and civil rights. The two terms 'everyone' and 'citizens elaborated the human rights and civil rights. This helped broaden the meaning of right in which the vulnerable like children and elder were mentioned.

With an entire volume for the human rights and civil rights, the 2013 Constitution of Vietnam was one of a few constitutions in the world that had such large part on human rights. For instances, the Constitution had 36 Articles out of 120 Article to regulate human rights and basic rights and obligations of civilians. Besides, it mentioned the legal rights and interests, land use, labor and work (Articles 51, 54, and 57). This Constitution also stated the human rights like: Equal before the law (Article 16); shall not be tortured, violated, insulted regarding their body, health, dignity,(Article 20); Private life protection (Article 21); Information access (Article 25); Joining administration of the state and society (Article 28); gender equality (Article 26); voting when the Government asks for public opinion (Article 29); being judged fairly and publicly (Article 31); ensuring social welfare (Article 34); occupation right (Article 35). In particular, the 2013 Constitution stated that private life, personal secrets, family secrets, health, dignity, personal reputation, and other kind of private exchange of all people should be protected, (Articles 20, 21). In addition, the 2013 Constitution also elaborated some new rights

compared to those of the previous constitutions like: Right to live (Article 19); Right on doing scientific and technical research, literature and art creation and benefiting from those works (Article 40); Right to enjoy and approach cultural values and join cultural life and use cultural bases (Article 41); Right to determine his or her nationality, use his or her mother language and select his or her language of exchange (Article 42); right to live in a clean environment (Article 43); shall not be expelled or extradited to other nations (Section 2, Article 17).

Compared to the previous Constitutions, particularly the 1992 Constitution, and the 2013 Constitution had a lot of outstanding advantages, especially regulations on human right. Those advantages were shown in the following basic points:

First, resolving the confusion between human rights and civil rights when it did not synchronize human rights and civil rights but it use two separate terms ‘everyone’ and ‘citizens’ to elaborate the rights and civil rights;

Second, expanding the meaning of ownership: In 2013 Constitutions, it was referred to as ‘everyone’, which was broader than ‘citizens’;

Third, broadening the scope of rights when the 2013 Constitution brought human rights and civil rights to a volume of an Article regulating human rights, which was much larger compared to constitutions of many countries in the world.

Fourth, the 2013 Constitution expressed the right limitation. That was extremely necessary to ensure human rights to be transparent and to prevent those rights from being limited and partially neglected by the government agencies.

Fifth, the Constitution stated the responsibilities and obligations of people in a clearer way.

Studying the legislative process of Vietnam and the birth of the most powerful agent of the Government and legal documents like Constitutions, we can easily realize that the core value and foundation of the legislative agencies and legal documents of Vietnam is to let civilians be the foundation. From 1946 Constitution to 2013 Constitution, human rights have always been the main focus of these documents and human rights are becoming broader in quality and quantity. This is the outcome of the development and completion of the rule by law socialist state of Vietnam.

CONCLUSIONS

Currently, Vietnam is entering the industrialization and modernization, together with international integration, with countless changes in all areas, the confirmation of human role in that situation has become more important. For people (citizens) to evaluate their function and responsibilities in the process of building the country, they must be free and democratic in all aspects to utilize their capacity. Thus the changes and completion of the Constitution of the Socialist Republic of Vietnam are necessary since Constitution is the foundation and legal document to regulate rights of freedom of civilians. Article 1 of 1946 Constitution stated ‘Vietnam is a democratic republic. All national powers belong to the entire Vietnamese people

regardless of race, gender, economic conditions, social class, and religion'. That core value was adopted and expanded by the next Constitutions (1959 Constitution, 1980 Constitution, 1992 Constitution, and 2013 Constitution). The 2013 Constitution was able to keep that foundation and continue to confirm 'Citizens and everyone are allowed to enjoy human rights and the State shall accept, respect, and protect and ensure the human rights and civil rights pursuant to the Constitution and laws.' The assurance of human rights is extremely important to nations and it is the foundation to create internal force to accelerate national development.

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