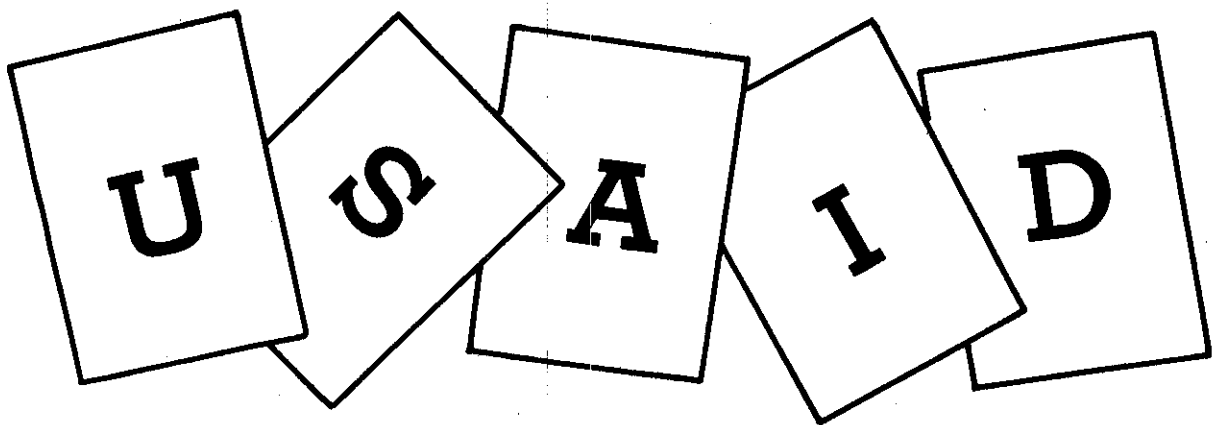


# Public Administration Bulletin Vietnam

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The Public Administration Division (PAD) of USAID, Saigon:

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CENTRAL GOVERNMENT: pay-as-you-go tax deductions from salaries from Jan. 1, 1967:

Office of the Chairman, Central Executive Committee

Decree-Law No. 015-5Lu of September 3, 1966 governing the procedure for withholding salary tax and general income tax.

CHAIRMAN OF CENTRAL EXECUTIVE COMMITTEE

Decrees:

Art. 1 - Effective January 1, 1967, the salary tax and general income tax of servicemen, civil servants and private enterprise employees as defined in Ordinance No. 10 of April 13, 1953, will be computed from their salary and income of current year and will be withheld monthly from their salary.

Art. 2 - Public agencies, civilian and military, and proprietors of private enterprises have the responsibility of withholding and depositing at the treasury the amount of tax withheld.

Art. 3 - The tax withheld monthly must be deposited within the first 15 days of the following month.

Art. 4 - Article 63 of Ordinance 10 of April 13, 1953 is hereby supplemented as follows:

"However, with regard to salaried taxpayers, they must submit their declarations during the first two months of every year".

Art. 5 - In case of violation of any of article 1, 2, or 3 of this decree, such as failure to withhold tax, withholding insufficient amounts, failure to deposit tax withheld, or delay in depositing tax withheld, etc., all proprietors of enterprises as stipulated in Article 2, will be liable for the payment of a fine. In addition to paying the required amount of withholding tax, they will be obliged to pay a fine equal to the required amount of withholding tax.

In case of repetition of any of the foregoing violations, the fine will be doubled.

Art. 6 - The fine as stipulated in article 43 of Ordinance 10 of April 13, 1953 is 1.000\$.

Saigon 3 September, 1966.

s/Gen. Nguyen cao Ky

CENTRAL GOVERNMENT: budgeting, accounting, and control:

The government of Vietnam used to have a tight French system of accounting. Activities went unfunded until elaborate pre-audits had been made by officials of higher echelons to be certain that the activity was authorized and that funds existed. Control of expenditures was effective but the activities lagged behind schedule. In recent years, because of war and rising prices GVN had breached this system in many ways. The pressure has been to create funds and to grant operating executives discretion to spend. The emphasis has been to get things funded, to get things done, and to judge them by the final uses to which the money was put.

For some time the government has had a committee on accounting and on national accounts examining the problems of GVN's fiscal systems. The following decree is the first basic change in fiscal procedures.

Articles 2--16 deal with budgeting; articles 17--52 with accounting for where the money came from and where it went; articles 53--55 with contracts; articles 59-85 with state-owned enterprises; and articles 95--96 with control.

Decree-Law No. 019-SIU of Sept. 3, 1966  
fixing Financial and Accounting Procedures for  
National and Local Administrative Units.

The Chairman, Central Executive Committee,  
.....

DECREES THE FOLLOWING:

Title I

Article 1. This decree-law is to define financial and accounting procedures for the Nation and local administrative units.

The budget and general account of the State include the budgets and accounts of the following:

- a. Public offices of the State,
- b. State-owned enterprises,
- c. Autonomous public agencies.

The budgets and accounts of various local administrative units comprise the budgets and accounts of the following:

- a. Prefecture
- b. Municipalities
- c. Provinces
- d. Villages

FIRST PART: Public Offices of the Nation

Title I. Establishing and Approving the Budget  
Chapter I. Receipts and Expenses of the Budget

Article 2. All receipts and expenses of National public agencies for each fiscal year should be planned and authorized by a financial law.

Each fiscal year begins the 1st. of January and ends the 31st of December the same year.

Article 3. The receipts of the budget consist of the following:

- a. Various categories of taxes
- b. Income from public properties and financial investments
- c. Receipts from services provided by public offices
- d. Subsidies, donations, and bequests
- e. Reimbursements from loans and advanced funds
- f. Miscellaneous profits.

Beside the above regular receipts, the Nation can issue bonds according to general provisions stipulated in a financial law to be promulgated every year.

Article 4. Taxes may be collected only when a regulation governing their collection has been set up.

Receipts from services provided by public offices may be collected only when a decree concerning these receipts has been issued, in consideration of a report made by the Commissioner for Finance and the Commissioner of the Department concerned.

Article 5. Receipts other than those stipulated in the financial law are strictly prohibited. Those officials who order collections and who set up tax rolls and tax rates, and illegal collectors, may be prosecuted for embezzlement, in addition to legal actions for reimbursement against receiving officers, cashiers, and any individuals who have illegally collected taxes within a period of 3 years.

Article 6. All receipts are to be used to cover all expense items.

However, some receipts may be appropriated to cover particular expenses, and this use will be



carried out by registering the receipt amount and the corresponding expense amount in a special subchapter of the Budget, and this should be authorized by the annual financial law.

Article 7. The projected receipts will be based on the amounts to be delivered to the national budget within the fiscal year.

Article 8. Expense items to be covered by the budget are divided into two types: Administration and investment expenses.

a. The administration expenses comprise:

- Expenses of the national sovereignty;
- Expenses of public loans;
- Expenses of operations and maintenance of public offices;
- Other expenses resulting from the contributions of the Nation in social welfare, cultural, and economic fields, but different from expenses charged to investment expenses.

b. The investment expenses include:

- Expenses of the setting up or modernization of national properties;
- Expenses for the re-establishment and reconstruction of national properties;
- Expenses relating to investment of capitals in private or public agencies;
- Expenses relating to national financial support by way of loans or subsidies extended to private or public corporate bodies so as to help implement the above activities.

Article 9. The projected expenditures to cover all national expenses will be based on the amounts to be paid by the Nation to clear debts incurred in the fiscal year.

Article 10. Moreover, expenditures will include all amounts to be paid by the Nation to creditors during the fiscal year due to debts resulting from:

- a. Compliance with provision of legislation or regulations that have been promulgated;
- b. Implementation of contracts governing rentals of properties or services;
- c. Liquidation of allowances concerning the payment of compensations and charges, and the reimbursement of advanced funds.

Article 11.

- a. The expenditures will cover obligating and authorizing transactions.
- b. However, as regards expenditures reserved for works or designed to provide properties or services, that require implementation within a period of more than 12 months, they are divided into two types: obligating and authorizing expenditures.
  - Obligating expenditures will be the total amount of debts that may be incurred during the fiscal year.
  - Authorizing expenditures will be the total amount of funds that may be authorized during that year to clear the debts having been incurred in that year and those incurred in the previous fiscal years.
- c. Funds designed to cover investment expenses are the total amount provided for in the approved programs that are considered as a plan of appropriating expenditures to carry out investments supposed to extend over many years. If not cancelled the above approved investment programs will remain valid until completed.

CHAPTER 2  
Budget Establishment

Article 12. The Directorate General of Budget and Foreign Aid (DGBFA) will draw up the budget draft that will be passed by the Cabinet and then submitted to the Legislative Body on the 30th of Sept. in the preceding fiscal year at the latest.

Article 13. The budget draft will be presented by section, chapter, and article.

The presentation by Section will be in terms of the administrative organization of the Nation.

Expenditures allocated to each agency to cover its expenses will be centralized in a Chapter.

All items of expenses within a Chapter should be grouped into articles by nature of expense.

The financial law may allot collective expenditures for expenses that cannot be divided into article(s) at the time when the Legislative Body approves the budget. Such expenditures will be distributed in accordance with an arrete from the Prime Minister in consideration of the proposal made by the Commissioner concerned.

Article 14. A general report on the Budget should be submitted to the Legislative Body along with the budget draft, comprising the following:

- a. Breakdown of projected receipts and expenses and recapitulation of projected receipt and expense items.
- b. An economic report.
- c. A financial report.

The above reports should clearly describe the results of previous years, the outlook for the current year, the goals to be achieved in the year to come, and in the forthcoming years, if relevant.

### CHAPTER 3

#### Approving the Budget

Article 15. The financial law will be approved as a common law, or in compliance with special provisions stipulated in the Constitution of the Republic of VietNam.

Article 16. No legislative measure or regulation should be put into effect if it results in a new expense item or in an increase in the amount of an earmarked expense item, if there exist no funds for implementation of the measure in that fiscal year or in the immediate fiscal year to come, and if there are no projected resources or receipts or funds to be obtained by cancelling or reducing old expense items.

Every quarter the Prime Minister's Office will forward a list of allotted expenditures to the Legislative Body in compliance with legislative measures or regulations.

#### Title II. Budget Implementation

##### Section A. Receipts

##### Chapter 4. Collection

Article 17. Commissioners will order their ministries to implement the collections pertaining to them. For this purpose, the Commissioners will delegate this to those officials who meet the conditions as formulated in the regulation to carry out this decree-law.

Article 18. Only amounts having been deposited in the national fund during the particular fiscal year may be added to the receipt items of the National Budget for that fiscal year.

Article 19. Concerning receipts by the Nation from property or service rental contracts or from reimbursement from imprest funds or loans, only amounts receivable during the fiscal year may be added to the budget execution accounts.

Article 20. Receipts of the Nation expected to be collected within the fiscal year but not collected before year-end, may be transferred to the following fiscal year, provided such receipts have been delayed but are still collectable.

Receipts transferred to the following fiscal year will be added to receipts of the same types in that fiscal year.

Article 21. At the end of each fiscal year, the remaining amount of receipts appropriated for special expenses may be used for the following fiscal year immediately.

Section B. Expense Implementation  
Chapter 5. Expenditure Management

Article 22. Only the relevant Commissioners, who will have full responsibility for their funds' uses, are allowed to use expenditures allotted to various ministries.

However, Commissioners are not authorized to allot more expenditures than those granted to their ministries. They are not allowed to increase expenditures more than those allotted to their ministries by using any special resources.

The Commissioners will delegate to Controllers (Gestionnaires des Credits) power to allocate expenditures provided to their ministries. Deputy Controllers (Sous-Gestionnaires des Credits) may be delegated, by Controllers, powers to allocate expenditures for use.

Article 23. The transfer of expenditures from one chapter to another may be carried out within the fiscal year in accordance with a decree, under condition that this transfer will not change the nature of the expense, when it is deemed necessary after any government change or any reform of administrative structures.

The transfer of expenditures from the article for "Unforeseen Expenses" to other articles, or from one article to another within a Chapter, may be made, based on an arrete from the Commissioner concerned, provided the nature of expense remains unchanged.

Article 24. Only the following may be appropriated for expenses of the national budget during a fixed fiscal year:

- a. All sums having been authorized in the fiscal year, comprising:
  - either non-allocated expenditures already approved for that fiscal year's budget to cover expenses mentioned in article 9 above;
  - or authorizing expenditures;
  - or expenditures transferred from the preceding fiscal year to the current one according to articles 26 and 27.

Article 25. All expenses covered by receipts appropriated for this purpose should not exceed the amount receivable from the receipts. These expenses will be charged to the fiscal year authorizing budget.

Article 26. The financial obligations remaining at the end of the fiscal year will be transferred to the following fiscal year and may be met at its beginning as follows:

- a. As regards non-allocated expenditures
  - all expenses due to debts incurred in the past fiscal year.

b. As regards allocated expenditures:

- all expenses among the obligated expenditures;
- all expenses among the authorized expenditures.

Article 27. To cancel each fiscal obligation of the preceding year after having it transferred to the following fiscal year, the Prime Minister will enact an arrete recognizing that the expenditure approved for the preceding fiscal year is no longer necessary.

The arrete governing this transfer of expenditures will be published in the Official Journal of the Republic of VietNam prior to March 1st. of the immediate following year.

This arrete should specify the following of each expenditure:

- The remaining amount at the end of the related fiscal year.
- That the involved expenditure to be transferred to the following fiscal year is recognized as necessary to carrying out the goal of the approved expenditure.
- That the remaining expenditure of the related fiscal year is rescinded.

b. Non-allocated expenditures pertaining to the preceding fiscal year once transferred to the following fiscal year are to be combined with other expenditures of the same nature. Expenditures transferred to the following year may be used to cover only expenses related to debts incurred in the year of implementation of the initial budget.

Non-allocated expenditures may be transferred to the following fiscal year only once.

- c. Expenditures for obligation and expenditures for allotment of the preceding fiscal year, once transferred to the following fiscal year, will be combined with expenditures of the same nature.
- d. All expenditures transferred to the following fiscal year should be listed as mentioned in articles 26 and 27 above. The Prime Minister will forward this list to the Legislative Body before Aug. 31st. the following year.

#### Chapter 6: Obligations

Article 28. No expense is obligated if it is not consistent with financial regulations and provisions in the financial law approved by the Legislative Body.

Article 29. From Nov. 15 on each year, all expenses necessary to the continued management of public offices may be obligated for the following year to the limit of 25% of the expenditures projected for the same expenses during the current fiscal year.

The following should be clearly specified on obligation material: "No delivery of commodities nor service rendered is allowed before the beginning of the fiscal year."

#### Chapter 7: Control of Obligations

Article 30: Any written requests authorizing expenses must be visaed by Auditors.

These Auditors will be appointed by the Prime Minister and will work closely with various ministries and provincial administrative offices. These officials will act as Obligorating Accountants and will be placed under the direction of the Head Office of Audit.



Article 31. These Auditors are authorized to request disbursing and expending agencies to provide all necessary materials, information, and explanations in obligating request, but they have no rights to question the appropriate nature of expenses.

Article 32. In case of emergency resulting from particular or unforeseen circumstances, the Cabinet can, after discussion, authorize obligations, liquidations, allotments, and payments in excess of expenditures projected in the budget, or approve an amount to a certain limit as prescribed even if such expenditures were not provided for in the budget.

The minutes of such meetings held by the Cabinet should be sent immediately to the Legislative Body and the Head Office of Audit. If the latter has some comments on the above matter, it will forward them without delay to the Legislative Body for final decision.

Expenses authorized by the Cabinet should be adjusted periodically by a decree allowing the allotment of additional necessary expenditures.

Article 33. Auditors will periodically forward a recapitulation of obligations based on expenditures mentioned in article 11 above, to the Directorate General of Budget and Foreign Aid, the Central Office of Accounting, and the Head Office of Audit.

The annual recapitulation of obligations should be closed by the Head Office of Audit within the period fixed by the Prime Minister.

The above recapitulation must be attached to the budget account.

### Chapter 8

#### Confirmation of creditor's rights, and liquidation of expenses: Vouchers

Article 34. No expense can be liquidated if the involved work is not yet completed and accepted, except in special cases stipulated in the regulations dealing with the implementation of this decree-law.

Article 35. Controllers and Deputy Controllers should be responsible for the accuracy of certified matters, confirmation of creditor's rights, and liquidation of expenses.

Article 36. The Commissioner for Finance will define, by an arrete, the vouchers to be attached to records of liquidation of expenses based on an interministerial proposal. These requirements may be complemented or modified according to above procedures.

Article 37. Documents justifying transactions of the budget and cash should be presented to the Head Office of Audit.

If some justifying documents are kept by the relevant Accountant, these documents may not be cancelled prior to the auditing of the closing balance without a regulation defining the cancellation of each type of transaction.

### Chapter 9

#### Allotments: Authorizing Offices

Article 38. Authorizing Offices are created to assume the responsibility of issuing disbursing orders, and of keeping records of expenses.

Article 39. The Chief of the Authorizing Office is responsible for controlling, liquidating, and authorizing expenses.

Article 40. Disbursing orders issued during the year are to be registered in the budget of that fiscal year continually to the 15th of January of the following year.

Article 41. All loans become null for ever and will be charged to the National Budget if there are not sufficient vouchers for liquidating and authorizing purposes within four years effective the beginning of the fiscal year in which loans are made or extended.

Article 42. Disbursing orders must be paid within a year after the issuance date.

Chapter 10  
Payments - The State Cashier

Article 43. The National Treasury will perform the duty of State Cashier.

Government and private banks, and Offices of Postal Checks may make the payments on behalf of the National Treasury.

Section C. Accountants and the Central Office of Accounting

Chapter 11: Accountants

Article 44. Accountants are those officials who will be responsible for receiving and disbursing public funds, and registering all transactions of the budget and of national properties.

Article 45. Records and ledgers kept by these Accountants should be closed on the 31st of December each year or whenever they cease to hold these positions, and control will be assumed by designated officials.

As regards these Accountants, the control of cash and holding status should be made at the same time, and certified by a report.

Article 46. Accountants should render accounts of all the transactions they have carried out during the year to the Head Office of Audit through the Commission for Finance.

Closing balances of the preceding year should be sent to the Head Office of Audit before the 1st. of March of the following year, except in cases of cash deficit or transfer or resignation of Accountants. In such cases, a particular period is fixed in the regulation for implementation of this decree-law.

#### Chapter 12

#### The Central Office of Accounting

Article 47. The Central Office of Accounting is an agency placed under the direct supervision of the Commission for Finance, and separate from the National Treasury.

The Central Office of Accounting has the following duties:

- a. to centralize records of various Authorizing Offices and Accountants;
- b. to register lists of receiving and disbursing transactions made by the State Cashier;
- c. to be responsible for book-keeping on national properties;
- d. to set up the Budget Execution Accounts and the General Accounts of the State;
- e. to set up accounting regulations related to the implementation and control of the National Budget and budgets of State-owned enterprises, autonomous public offices, and joint-stock companies.

#### Section D. Budget Execution Accounts and Closing of the Budget

Chapter 13  
Budget Execution Accounts and  
Closing of the Budget

Article 48. The budget execution accounts to be set up by the Central Office of Accounting consist of lists presented according to budget designation.

The following must be clearly specified on these lists:

1. Receipt items:

- Projected receipts
- Estimated receipts
- Actual receipts
- Difference between estimated receipts and actual receipts
- Estimated receipts cancelled or delayed.
- Remaining receipts to be transferred to the following fiscal year
- Difference between projected receipts and actual receipts.

2. Expense items

- Expenditures projected for the budget
- Obligated expenses
- Authorized and paid expenses
- Difference between obligated expenditures and authorized expenses
- Cancelled expenditures
- Expenditures transferred to the following fiscal year.

Article 49. As regards expenses chargeable to expenditures of the preceding fiscal year and transferred to the current year, or chargeable to authorized expenditures, it must be clearly stated in the budget account whether the expenses are provided for work or supplies during

the current year, and the account for these expenses must have been established in the current year or these expenses must have been incurred in previous years.

Article 50. During August of the following year, the Commissioner for Finance must submit to the Legislative Body the draft law to close the preceding year's budget.

Article 51. Expenses paid during the preceding year but not yet justified by January 31st of the following year must be separately mentioned in the previous year's budget execution accounts. If need be, an additional provision will be included in the draft law governing the closing of the preceding year's budget, to authorize justifications of the preceding year's expenses in the following year's budget execution accounts.

Section E. Special Provisions

Chapter 14. Government Accounts Outside  
of the Budget

Article 52. Government accounts outside of the budget may only be established by a financial law. Procedures governing the operation and control of these accounts will be defined in the regulation concerning the implementation of this decree-law.

Statements of government accounts outside of the budget must be attached to the budget execution accounts of the commission concerned.

For adjustment purpose, all existing accounts outside of the budget that are not approved must be cleared and rescinded by a decree based on the reports from the Commissioner for Finance and the Commissioner concerned.

Title III. Administrative Contracts  
Chapter 15. Regulations for Administrative  
Contracts

Article 53. All contracts for work, supplies, and transportation for the nation may be signed only after calls for bids have been made for purposes of competition, and the results must be published.

Procedures relating to the above invitations to bids and special procedures (Estimate consultation, bilateral contract, etc.) are defined in the regulation governing the carrying out of this decree-law.

Article 54. The annual financial law may particularly authorize contracts for work, supplies, or transportation to be carried out during a period of more than 12 months.

Article 55. As mentioned in article 30 above, contracts for work or supply of properties or services must be visaed by Auditors before approval and transmittal.

Title IV. Accounting for Materials and  
National Properties

Chapter 16. Materials Accounting

Article 56. Within the general inventory of national properties, all agencies must keep their regular materials inventories and special book-keeping on materials as defined in the regulation governing the implementation of this decree-law.

Chapter 17. National Properties Accounting

Article 57. National properties will be registered according to their acquisition values.

Amounts for depreciation and other amendments are defined in the regulations concerning the carrying out of this decree-law.

Article 58. All fluctuations in values of national properties must be recorded in a special account according to rules dealing with the implementation of this decree-law.

The Head Office of Audit will recognize, by its post-audit, the legal and accurate nature of transactions recorded in the foregoing account. These transactions may result from expenses covered by the budget or from any changes of assets or liabilities already confirmed but not yet charged to the budget.

Chapter 18: STATE-OWNED ENTERPRISES:  
General provisions

Article 59. The state-owned enterprises are national structures having a commercial, industrial or financial nature without corporate bodies, established by regulation and in compliance with provisions stipulated in this second part.

The existing enterprises will be regularized by a special decree.

Beside the special regulations defined in the second part of this decree-law or in the decrees regularizing the situation of existing enterprises, all general rules of public accounting are applicable to state-owned enterprises.

Article 60. Based on the proposal made by the Commissioner for Finance, the Prime Minister will define regulations for state-owned enterprises, concerning the following:



- a. Presentation of the budget
- b. Accounting
- c. Rendering of accounts
- d. Periodic statements

Article 61. Accounting of state-owned enterprises must be kept in such a way as to enable the following:

- a. The follow-up of budget implementation and obligations
- b. The estimate of costs of services and products, and evaluation of exploitation results by branches of activity of each enterprise.

Chapter 19. Budgets of state-owned enterprises

Article 62. Each state-owned enterprise must establish an annual budget for all receipts and expenses.

The fiscal year begins the 1st. of January and ends the 31st. of December of the same year.

Article 63. The budget of a state-owned enterprise is divided into three items.

- a. Regular transactions
- b. Capital transactions
- c. Transactions for regularization.

Article 64. The related receipts are charged to the budget in the year for which properties or services are acquired.

The related receipts are charged to the budget in the year when other creditors' rights of the Nation are confirmed.

Article 65. The expense items are charged to the budget in the year for which properties or services are provided.

The expense items are charged to the budget in the year when other debts of the Nation are confirmed.

Article 66. Programs for work and supplies to be implemented for a period of more than twelve months must be planned and presented in the budget as follows:

- a. Amount of debts that may be incurred in the current fiscal year.
- b. Amounts that may be liquidated during the current fiscal year to clear debts incurred in that fiscal year and in previous fiscal years.

Every enterprise must attach to its annual budget draft an evaluation of the total value and process of the above-mentioned programs.

Article 67. The budget for regular transactions may include special unlimited expenditures; in this case, it is required to clearly describe the special unlimited nature of these expenditures.

Article 68. The draft budget of each enterprise should be enclosed with the draft budget of the supervising Commission. The two budgets will be approved at the same time by the Legislative Body.

Article 69. Ministers may authorize their subordinate state-owned enterprises to transfer expenditures related to regular transactions.

#### Chapter 20. Opening Balance Sheet

Article 70. Upon submission of the initial draft budget of a state-owned enterprise, the Commissioner of the supervising ministry and the Commissioner for Finance will establish an

opening balance sheet based on the inventory of properties appropriated for a state-owned enterprise.

The values of assets and liabilities mentioned in the inventory of properties of a state-owned enterprise will be fixed based on the proposals made by the Commissioner concerned and the Commissioner for Finance after having consulted a Committee designated by the Prime Minister.

#### Chapter 21: Management regulations

Article 71. The decree-law places the related public offices under a statute for state-owned enterprises and simultaneously defines the conditions in which the national capital necessary to run these enterprises is ready at their disposal.

Article 72. State-owned enterprises may borrow money with the approval of the Commissioner concerned and the Commissioner for Finance, to meet their own requirements.

Article 73. A state-owned enterprise will set up a fund for depreciation and a fund for replacement of machinery and equipment.

The fund for depreciation will be complemented by an annual endowment based on the present value of capital properties.

The fund for replacement of machinery and equipment will be complemented by an annual endowment based on the difference between the purchasing price and the present value of capital properties as mentioned in the paragraph above.

The Commissioner of the supervising Ministry and the Commissioner for Finance will together define the method to estimate the annual endowments for the above two funds.

Article 74. The establishment of reserve funds for state-owned enterprises will be stipulated in the regulation governing their creation. This regulation will define the purpose, procedures governing complement and use of fund, and the maximum amount of the reserve fund.

Article 75. Besides the application of article 74 above, the profit or loss of each state-owned enterprise at the year-end must be combined with receipt items of the national budget or compensated for by an expenditure particularly allotted to the budget of the supervising ministry.

Article 76. Any supplies or services provided by a state-owned enterprise to public offices or other state-owned enterprises must be paid for.

Any supplies or services provided by public offices or state-owned enterprises to a state-owned enterprise must also be paid for by the latter.

With the agreement of the Commissioner for Finance, the Commissioner of the supervising ministry may authorize non-compliance with the above provision in special cases.

Article 77. All expenses paid by the Nation for an enterprise must be entirely reimbursed by the latter to the former.

With the agreement of the Commissioner for Finance, the Commissioner of the supervising ministry may authorize non-compliance with the above provision in special cases.

Article 78. The Commissioner of the supervising ministry and the Commissioner for Finance will define general conditions in which contracts for works or supplies by state-owned enterprises

may provide a partial advance of funds before completion and acceptance of any services, works, or supplies.

Exempted from compliance with article 65 are installments; these installments will be charged to the budget of the current year.

Chapter 22: Cash and Current Account

Article 79. Transactions on fund entries and disbursements of state-owned enterprises are made by their accountants.

The liable accountants either keep money in their cash boxes or deposit it in current accounts of the National Treasury, Banks, or Offices of Postal Checks.

Internal regulations of each enterprise, subject to approval by the Commissioner for Finance, will fix the maximum of cash an accountant is authorized to keep. Any amounts that exceed this fixed maximum must be deposited into a current account of the National Treasury, Bank, or Office of Postal Checks.

Article 80. If available resources of state-owned enterprises are inadequate, the Commissioner for Finance can authorize an advance to the involved enterprise for a period not exceeding a year to cover emergency expenses as projected in its budget.

Article 81. All amounts paid in and paid out from current accounts between the Treasury and state-owned enterprises may produce interest, and the interest rate will be fixed by the Commissioner for Finance and the Commissioner of the supervising ministry.

Chapter 23. Rendering of Accounts by  
state-owned enterprises

Article 82. The Commissioner of the supervising ministry will establish:

1. Every month: Financial statements by state-owned enterprises
2. Every year: - Budget execution accounts
  - Statements of exploitation accounts and profit and loss accounts
  - Balance sheets along with closing balances of all accounts

State-owned enterprises must enclose with the documents described in (2) above a report on methods and standards applied to help set up statements and estimates of the values of properties, and define annual endowments for depreciation and replacement of machinery and equipment.

Article 83. All accounts of state-owned enterprises are to be forwarded by the Commissioner of the supervising ministry to the Commissioner for Finance on the 31st. of March of the following year, at the latest.

The Commissioner for Finance must send these accounts to the Head Office of Audit before the 30th of April the following year.

The draft decree-law closing the budgets of enterprises must be submitted to the Legislative Body on the 31st. of August the following year at the latest.

Statements of profit and loss accounts, exploitation accounts, and balance sheets must be attached to the draft decree-law governing the closing of budgets.

Chapter 24: Control of state-owned enterprises

Article 84. Based on a proposal made by both the Commissioner for Finance and the Commissioner of the supervising ministry, the Prime Minister will define, by an arrete, accounting and financial control procedures to be applied by the Control Office of state-owned enterprises, directly supervised by the Ministry of Finance, depending on commercial, financial, or industrial activities of the enterprises concerned.

Article 85. Accounts and balance-sheets of state-owned enterprises must be submitted to the Head Office of Audit.

The Head Office of Audit can audit financial records of enterprises on the spot.

The Head Office of Audit may request state-owned enterprises to provide at any time all materials, information, or necessary explanations of expenses, receipts, assets, and liabilities of enterprises.

Chapter 25: Autonomous Public Offices and Joint-Stock Companies

Autonomous Public Offices

Article 86.

1. Autonomous public offices are those agencies which are established by the government in an administrative, industrial, commercial, or financial form, being entitled to a corporate body and an autonomous management. Autonomous public offices are set up by a law and must comply with general provisions defined by the Prime Minister based on the proposal made by the Commissioner for Finance and the Commissioner of the supervising ministry.

2. The above-mentioned general provisions must comprise regulations concerning the following:
  - a. Form and presentation of an annual budget that constitute instructions to set up balance-sheets and result accounts (exploitation, and profit and loss).
  - b. Keeping of financial records on commerce or industry according to the general accounting plan.
  - c. Setting up of periodic reports and financial statements.
  - d. Methods of estimating:
    - depreciation;
    - annual endowment for the fund for replacement of machinery & equipment;
    - other amounts for reserve
  - e. borrowing of money, use of properties and available cash to produce profits;
  - f. the control of accounts to be implemented on the spot by the Ministry of Finance and the Head Office of Audit.
3. The existing autonomous public offices will be regulated by a special decree.

#### Chapter 26: Joint-Stock Companies

Article 87. Joint-stock companies are those companies or enterprises having their private regulations, and public credit agencies under the control of the Nation, to which the Nation has contributed a partial amount of capital, or has contributed support by extending either loans or advance funds.



All joint-stock companies are placed under the control of the Nation in accordance with general provisions to be prescribed in a decree.

The General Account of the State

Article 88. Every year, the Commissioner for Finance must forward to the Legislative Body before the 31st. of March the General statement of the Treasury as of the 31st. of December of the preceding year, along with the previous year's provisional budget execution account.

Article 89. The General Account of the State is set up every year by the Central Office of Accounting.

This General Account deals with all transactions on the budget, properties, and public funds carried out from the 1st. of January to the 31st. of December.

It includes a collective statement of national transactions and detailed statements as indicated below:

- Final budget execution account
- Fluctuation of values of national properties
- The situation of the Treasury.

The General Account is to be sent to the Head Office of Audit before the 30th of June the following year.

Accounts of various autonomous public offices and joint-stock companies must be enclosed with the general account of the State.

Article 91. The Commissioner for Finance will set up periodic inventories of national properties.

Values of assets and liabilities given in these inventories will be fixed after the Committee designated by the Prime Minister has been consulted.

The balance-sheet of the State must be amended in accordance with values described in the inventory of national properties.

Article 92. The statement of Treasury will deal with transactions carried out to maintain the balance of resources and requirements of the Nation and other transactions of the Treasury relating to accounts outside of the budget and private funds.

A statement of public loans must be enclosed with the statement of Treasury.

Article 93. During August the following year, the Head Office of Audit must forward the General Account of the State as of the preceding year-end to the Legislative Body with its related comments.

#### Chapter 28. Local Budgets

Article 94. Accounting rules and procedures governing implementation of local budgets are stipulated in the regulations concerning the carrying out of this decree-law. The foregoing rules and procedures may be amended by decrees.

#### Chapter 29: Control by the Executive Body

Article 95. Control activities by the Executive Body comprise the following:

- a. The Auditors appointed by the Prime Minister to control obligations will work closely with various ministries, provinces or regions.

- b. High ranking officials and Chiefs of Authorizing Offices of various ministries are responsible for internal pre-audit.
- c. Inspectors of the Superintendent General's Office and of various ministries are in charge of mobile and on-the-spot inspection and control.

Chapter 30. Control by the Legislative  
Body: The Head Office of Audit

Article 96. The Head Office of Audit is in charge of the following:

- 1. Regular post-audit of spending dossiers
- 2. On-the-spot pre-audit of the following:
  - a. Public fund accounting
  - b. Material accounting
  - c. National properties accounting
  - d. Accounts outside the budget
  - e. Certified Accountants
  - f. All financial and accounting transactions of all public offices of the nation, state-owned enterprises, autonomous public offices, and joint-stock companies
  - g. The General Account of the State
  - h. Local budgets

Article 97. The Head Office of Audit can:

- a. Request all agencies described in article 96 above to provide, at any time, documents, information, and necessary explanations of receipts, expenses, assets and liabilities.
- b. Make investigations and communicate the results involved directly to the Commissioner of the supervising ministry, the Prime Minister, and the Legislative Body.
- c. Consider all complaints related to implementation of the budget, and order reimbursement of unauthorized amounts collected and refund of all illegal expenses or unjustified expenses.

- d. Order administrative penalties in cases that are clearly in violation of the regulation governing the establishment of the Head Office of Audit
- e. Forward reports on results of investigations to the Legislative Body, which reports will be published in the Official Journal of the Republic of Vietnam.

Article 98. The Head Office of Audit is placed under the direction of a Chief. This Official is responsible only to the Legislative Body and appointed by the Chief of State with the agreement of the Legislative Body. His duty term is ten years. He may be dismissed only according to the appointment procedure given above.

Article 99. The internal organization, operation, and working methods of the Head Office of Audit will be defined by a regulation.

#### FINAL PROVISIONS

Article 100. Procedures governing implementation of this decree-law will be defined by decrees. These decrees will include regulations related to the carrying out of financial and accounting procedures and all necessary provisions to ensure good administration of the national finance.

Article 101. Current accounting and financial procedures are applicable until the issuance of the above decrees.

Article 102. All provisions contrary to this decree-law are abrogated herewith.

Article 103. The Deputy Prime Minister, Commissioners Generals, Commissioners, Deputy Commissioners, and Special Commissioners will carry out this decree-law as far as their respective duties are concerned.

This decree-law will be published in the Official Journal of the Republic of Vietnam.

Signatures: Air Vice-Marshal  
Nguyen Cao Ky

CENTRAL GOVERNMENT: the Vietnamese legal system:

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A Description of the Legal System

General. The Minister of Justice is the executive head of the SVN legal system. In this regard he is responsible for organizing and supervising the courts, for administering the laws and for defining the regulations governing the legal profession and the practice of law. Within the Ministry, the Directorate of Criminal Affairs is responsible for the administration of criminal justice, the drafting of criminal laws and the operation of the penal system. The Directorate of Civil Law administers the courts, drafts civil laws and regulates the legal profession.

Courts. The courts of SVN which are operated by the Ministry of Justice are largely French in their structure and organization. A particular distinction between these courts and our Anglo-American courts is the separation between the judicial and administrative jurisdictions. The judicial courts hear the traditional criminal and civil matters while the administrative courts have jurisdiction over disputes between citizens and the state involving certain specialized areas of government action.

(1) Judicial Courts. There is one supreme court, the Cour de Cassation, which sits in Saigon. Below this court are two Courts of Appeal -- one in Hue and one in Saigon. They take appeals from Courts of First Instance, that is, the usual trial courts consisting of a magistrate, an examining magistrate and a prosecutor, or from Courts of Peace with Extended Jurisdiction, in which all of the foregoing functions are accomplished by one man. Below these trial courts are Courts of Peace, which handle the most minor cases. There is a Court of First Instance or a Court of Peace with Extended Jurisdiction in most provinces, but a few of these courts serve two or three provinces.

There is also a system of "specialized" courts. These include five labor courts to hear employee-employer disputes, a juvenile court, four agrarian courts to handle litigation arising as a result of agrarian reform and rent courts to govern disputes arising out of Ordinance No. 4, 2 April 1953, prescribing rights and duties of landlords and tenants.

The Cour de Cassation was organized in accordance with Ordinance No. 27 of 2 September 1954. The court's jurisdiction extends throughout SVN. It consists of one first president, one president of chamber and six associate judges. Public prosecution is vested in the prosecutor general who is assisted by a deputy prosecutor general. There is also a chief clerk and several assistants. This court is organized into two chambers: the Civil Chamber, presided over by the first president and two associate judges, which hears appeals in civil and commercial areas, and the Criminal Chamber, presided over by the president of chamber and two associate judges, which hears criminal appeals. The court has power to hear only those cases where the court below has abused its power, conflicted with the judgment of other courts in similar cases or made certain technical errors.

The organization and jurisdiction of the two Courts of Appeal are established by Ordinance No. 4, 18 October 1949. Each of these courts consists of one first president, one or two presidents of chamber and twelve associate judges. The prosecutor general is in charge of prosecution and is assisted by one or two deputies and several assistant prosecutors.

These courts have three chambers. The first chamber, presided over by the first president and two associate judges, is for hearing civil and commercial cases appealed from the Courts of First Instance or Courts of Peace with Extended Jurisdiction. The second chamber, the correctional chamber, presided over by the president of chamber and two associate judges, hears appeals in criminal cases. For felony cases two citizen assessors are added to the composition of the court. The third, the Chamber of Indictment, is presided over by the first president or president of chamber assisted by two associate judges. This chamber is a judicial bureau charged with examining felony cases; it is also empowered to rule on certain orders of examining magistrates.

A Court of First Instance, organized by Ordinance No. 4, 18 October 1949, usually consists of a president, a prosecutor, an examining magistrate and a clerk. If the court is busy, such as in Saigon, there can be additional judges and other officials. The trial sessions are presided over by the president. The examining magistrate conducts the investigations and the prosecutor is responsible for the preparation and prosecution of the case against the accused. The prosecutor also has control over the jail within the jurisdiction of the court.

The Courts of Peace with Extended Jurisdiction have the same competence as the Courts of First Instance but are actually less important. They are headed by a president but have no examining magistrate or prosecutor; therefore the president must perform all functions except in some cases where the prosecutor general of the Court of Appeals acts as prosecutor.

The Courts of Peace consist of one judge and a clerk. They try minor civil and criminal matters and sometimes assist in investigating more important cases.

(2) Administrative Courts. The theory behind separate administrative tribunals is that judges having specialized particular knowledge are more able to dispose of disputes resulting from governmental administrative actions affecting citizens. This administrative system consists of three bodies: the Council of State, which is the high court of the administrative system; the Administrative Court, which is the court of first impression regarding damage claims, challenges of administrative rulings and disputes over provincial, district and village elections; and Pension Courts, which consider complaints regarding veterans allowances.

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#### The Problems of the Judiciary

Historically, the SVN courts have been stronger in the urban areas than in the rural areas. The hostile control of numerous rural areas further deteriorates this situation. Presently in most provinces there is one court of general jurisdiction, usually sitting only in the largest town. Laws can have little or no influence on people who lack understanding and knowledge of the courts that enforce these laws. As events in pioneer North America illustrate, people cannot be expected to trust their fates to courts held by strangers in seemingly far-off places. Thus, even without the problems created by war, there is need to expand the judicial system to influence rural areas more adequately.

Further, it is not sufficient merely to bring the courts closer to the people. The courts must also make a good impression -- they must be efficient, fair and just. To achieve this requires competent judges and staffs. A definitive determination of the overall quality of the SVN judiciary has not been made; however, personal contact with SVN judges has shown that most are highly intelligent, well qualified and overworked.

SVN judges are basically civil servants who, unlike their US



counterparts are not elected or appointed. Instead, lawyers aspiring to become judges must pass special examinations given by the Ministry of Justice; successful completion leads to assignment in the judicial system, usually as an assistant prosecutor in a lower court. From this position a man must work his way to higher courts. Promotion, demotion and discipline are determined by the Ministry of Justice, theoretically with the concurrence of the High Council of the Judiciary, a body of judges designed to ensure judicial independence.

There are critics who feel that the judiciary under this system is not sufficiently free of governmental pressure. Certainly a judge is more likely to be influenced by executive policy when compatibility with that policy may determine his future in the judicial system. This is not to criticize the integrity of the SVN judiciary, for the system is quite natural to them..... Historically, Vietnamese rulers have exercised by themselves the various legislative , administrative and judicial functions.

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However, at this point it is not necessary to make a detailed appraisal of the courts and judges. Instead, it is sufficient to state that the SVN judiciary must be closely examined with an eye toward equipping it to meet more effectively the growing needs of the country. All civilized countries must be vigilant for improvements that can be made in their judicial systems, no matter how refined they may be. Judges and their methods must grow with their country.

A program for the improvement of the judiciary should aim at:

- (1) increasing the number of courts, particularly in rural areas, and making greater use of circuit courts;
- (2) achievement of a more independent judiciary;
- (3) establishment of further schooling for judges to keep them current and to encourage better court administration;
- (4) creation of a body, such as the Judicial Conference of the United States, through which the judiciary could speak collectively and indulge in professional discourse, thus serving as their own means toward judicial reforms and improvement;
- and, (5) improved training for court clerks, reporters and other administrative employees.

Lawyers and the Bar. The nearly 200 lawyers in SVN are concen-

trated in Saigon and a few other cities. All of these attorneys are members of either the Saigon or Hue bars. Most of the Saigon bar members have their offices in that city, with a handful having offices in Bien Hoa, My Tho, Can Tho, Long Xuyen and Long An. The few members of the Hue bar are evenly distributed among Hue, Da Nang, Qui Nhon and Nha Trang.

To become a "regular" attorney one must: (1) graduate from the law school at either Saigon or Hue with a License in Law; (2) successfully complete a one-year course of study (generally taken simultaneously with law school) which certifies the student as technically qualified to practice law; (3) complete a three-year period as a probationary attorney in a regular attorney's office; and, (4) be 21 years of age and of good character. \*The probationary attorney is authorized to perform all the acts of a regular attorney, including court appearances, but all official papers and documents must be signed by a regular attorney.

At least one source reports that the average income for attorneys in Saigon is about 20,000 piasters per month. Some, however, are said to earn as much as 100,000 piasters per month.

The primary need of SVN lawyers is the attraction of more and better young people into the profession and development of a greater sense of public responsibility. There is no easy solution to the manpower problem at any time, and particularly not at a time when so many other demands are being made for young men. Today most recent male law school graduates are entering the Army where they are generally assigned to nonlegal duties. This limits the number of practicing lawyers and prevents young men from gaining needed experience in their most formative years.

A sense of public responsibility is not the sort of thing that can be easily instilled in the existing bar. It is not unfair to generalize by describing practicing lawyers as resistant to change. Therefore, it is mostly through the younger lawyers that a new spirit must be developed. This is as true in the United States as it is in SVN.

Well-trained, public-spirited lawyers are key persons in nation building. They have the technical skills and the abilities to convince and lead that are crucial to a struggling government. Considerable care must be taken not to subliminate this vital need to the often more apparent demands of immediate necessity.

The support of the SVN bar must be sought for all efforts to develop and improve SVN legal institutions. It is particularly important that the attorneys be made to realize that their assistance and talents are needed and wanted in these projects and that the bar stands to benefit from the success of these projects, both professionally and financially.

\* Since the above was written, requirement (3) has been waived.

Consideration should also be given to expanding the Military Justice Corps so as to enable it to function throughout the entire spectrum of the many and varied fields of law associated with national defense. The GVN is presently considering implementation of a decree law providing military defense counsel for all accused in military courts which would justify an expansion of the Military Justice Corps. Not only would this provide a training ground for more young lawyers but it would also provide another vehicle for extending the influence of law and lawyers beyond the cities and into rural Vietnam.

Law Schools. As the intellectual training ground of both lawyers and judges, law schools hold the key to the foundation and development of the legal profession. For this reason, particular scrutiny must be accorded the SVN law schools.

Law teaching in SVN is performed by the faculties of law at the universities at Saigon and Hue. Large numbers of students undertake to study law, but very few complete the courses and are awarded degrees. From 1954 to 1962 approximately 10,000 students enrolled in the law school and only 424 were awarded the License in Law. The high number of enrollments is probably due to the very low tuition cost. The considerable attrition follows from this, since many of the students are not seriously interested in the study of law.

By Southeast Asian standards the law schools and SVN universities are above average quality. This is partly because they have developed in the French academic traditions and partly because many Vietnamese who have won academic distinctions abroad have returned to their native universities.

The law school curriculums appear to be fairly adequate and include both required and optional courses in constitutional law, public law, civil law, commercial law, criminal law, admiralty, foreign law, comparative law, jurisprudence, procedure and political science. Most of the law professors, many of whom are practicing lawyers, judges, and prominent government officials, are intelligent, learned men who are well respected by their students. There are criticisms, however, that some members of the law faculties do not keep their courses sufficiently current and thus teach outdated law.

Further, the SVN system of teaching law, largely adopted from the French, is almost totally a lecture method, with primary emphasis upon absorbing and remembering quantities of substantive materials rather than upon analysis and understanding. The lectures are commonly reproduced and sold so that many students need not even attend classes.

This lack of vigor is unfortunate because the most critical function of a law school should be to teach students to think and analyze in an ordered logical manner and to develop in them a critical apprecia-

tion of the judicial process. Experience in American Law schools, which generally employ an intense socratic teaching discipline designed to achieve a thorough understanding through maximum student participation, has demonstrated that intellectual attitudes developed in the schools have substantially contributed to the pattern and quality of a man's future thinking. It is vitally important that improvements be made in the SVN system of legal education, which in its capacity as a training ground for national leaders must provide the ultimate in mental stimulation and development.

Efforts must be made to raise legal education to the highest possible level. A primary need in this regard is the instigation of more challenging and stimulating teaching methods. One step toward accomplishing this would be to offer graduate study in United States law schools for young Vietnamese who would return to teach in Vietnam. Professorial exchange programs might also be explored.

The Substantive Laws of SVN. There are two types of SVN law that must be considered. First is the basic, day-to-day law that every political entity enacts for the purposes of achieving ordered existence. This can be referred to as "regular" law. In Vietnam there is a second type of law which is enacted for the sole purpose of resisting and discouraging insurgent activity. This law will be referred to as "emergency" legislation.

(1) Regular Law. The regular law of SVN is obviously not adequate for the needs of pacification. But it was never meant to be and the emergency laws are designed to fill this gap. The adequacy of the regular SVN law should only be judged for its ability to aid in the long-range development of the country.

The efforts now being made by the Ministry of Justice to recodify the penal, civil, procedural and trade codes should be aided and encouraged. This project has been under way for perhaps ten years and may be in need of overhauling. Recodification should not be limited to a simple rewriting of existing laws. Rather, it should be a critical and creative attempt aimed at providing the nation with a code of law reasonably based upon its needs and traditions and sufficiently simple to be understood.

Such a project requires more than just technical redrafting by lawyers. The drafting of laws is creative work that requires men of diverse interests and talents; otherwise the resulting products may not be truly responsive to the national needs.

(2) Emergency Legislation. The GVN has promulgated a long list of emergency decrees, generally dealing with population and resource control. Some of this legislation has been developed through the instigation and

aid of MACV, but success in such matters is difficult to achieve. For example, it took over five months to put into law some fairly minor changes in the arrest, search and seizure law of GVN, even though the changes were substantially agreed to from the outset by all interested agencies.

There is also considerable imprecise language in much of the emergency legislation which has led to confusion, particularly in the more remote districts. A recent example is the decree promulgated in the Summer of 1965 creating the offense of "hooliganism," defining it in terms confusing to the lawyers and judges, since it appeared to duplicate several existing offenses. Emergency legislation can be effective only if it is understandable to those who must obey and enforce it.

Most of the problems concerning emergency legislation arise from the difficulties of enforcement and there are few complaints that the laws are inherently inadequate. However, further hard study must be given to this matter, particularly by those in the field who are in a position to observe the working of these laws.

The "Law for the Protection of Morality," enacted on 24 May 1962, gives considerable insight into the social pressures alive and competing in Vietnam although the law itself is no longer effective. Article 2 forbids providing tobacco and alcohol to minors. The most startling part of this law, Article 4, states: "It is forbidden to dance anywhere at all." In April 1963, this was expanded to include a ban on the singing of both sentimental songs and the more vigorous types of American music. Article 5 of the morality law forbids boxing and combat between animals, while Article 6 bans "spiritism and occultism," an impossible task in the supernatural-minded Far East. Article 7 deals with prostitution, uniquely defining a prostitute as "a woman surprised by police with three different men at three different times." Article 8 provides harsh measures for contraceptive practices. This law gave rise to considerable controversy, mostly because of the serious economic and moral problems that it failed to anticipate. In Vietnam many families depend upon earnings of women and children that these laws greatly limit. It had been regarded as a proper sacrifice, totally in accord with the Vietnamese tradition of family supremacy, if a girl took up prostitution to help her family in need.

A further restrictive measure was the Family Law of 29 May 1958, making divorce virtually impossible and declaring illegal hitherto legal polygamous marriages. This was a major catastrophe in a largely Taoist and Buddhist country where second wives were common. The new law declared the polygamous marriages illegal while at the same time it forbade their dissolution by divorce. Doubt was cast upon the legitimacy of numerous children. Fortunately, this law was abrogated by the decree of 23 July 1964.

These legislative efforts were publicly defended by the Diem government as being required to combat insurgency. They also reflect a nationalistic desire to preserve traditional mores in the face of strong foreign influences. In addition, it is impossible to overlook the fact that these laws, often contrary to Vietnamese practice and culture, were at times more consistent with the Catholic religion of President Diem.

Another example of nationalistically directed legislation is the 1956 decree prohibiting foreigners from engaging in commercial enterprises involving the trade and transportation of food, fuel and raw materials. The Chinese and French, against whom the decree was directed, were given one year to become Vietnamese citizens or to liquidate their holdings. Many of the French and Chinese sold their businesses to Vietnamese, helping to build a new merchant class.

Many other laws, more clearly directed toward combating insurgency, were, and are still being, enacted. These include laws controlling the press, forbidding or requiring permission for meetings (including certain family gatherings), enlarging government powers in search and seizure, regulating the handling and transportation of rice, punishing numerous acts determined to be subversive, punishing membership in the Viet Cong, regulating medical supplies and controlling the use of roads and transportation facilities.

Publication and Distribution of Laws. The statutory laws enacted by the state and Federal governments in the United States are collected in bound volumes that are easily supplemented and kept up to date. Complete collections of these laws are numerous and it can be safely said that every lawyer, public official and law enforcement officer in the United States has easy access to a collection of all necessary laws. This is far from true in SVN. For instance, as late as August 1964, formal queries to MACV and USOM-PSD from the II Corps Advisory Detachment revealed no knowledge of Decree Law 10/59 making it a crime to be a member of the Viet Cong. During the past year MACV has made efforts to relieve the acute problem for our own forces by distributing English translations of GVN laws. In the near future MACV hopes to also distribute the original Vietnamese versions of the laws. At the very least, each province chief should have a complete and current collection of emergency laws. These are at best only emergency measures and in the not too distant future a more reliable system should be established for compiling and distributing both the existing legislation and the new laws.

Confinements. As can be expected in such an atmosphere, thousands of persons are confined throughout Vietnam for a vast number of reasons, not the least of which are political. Thousands have been confined after being convicted, in courts after regular trials, as Viet Cong or for

other crimes against security. However, it appears that there are also vast numbers of prisoners, other than military prisoners of war, who have never been tried and who have no idea when or how they will ever be released.

Most of these prisoners have been confined at the instigation of the Ministry of the Interior, the powerful department charged with maintaining public order, pursuant to Ordinance No. 6 of 11 January 1956. The discretion that this ordinance gave to the Minister of the Interior in security matters is staggering:

"Until the complete restoration of security, those persons who are considered as dangerous to national defense and public security may, by an order of the President of the Republic acting upon recommendations by the Minister for the Interior, be detained in a prison camp, forced to reside at a specific locality, banished from a certain residence or locality or subject to administrative supervision."

The duties and functions of the ministry under this law were delegated for the most part to local security committees. Persons confined in this or similar manner are generally classed according to their suspected degree of subversiveness and sent to a re-education center. Theoretically, if one progresses properly through the stages of political re-education he will be released after a period of time. However, there are insufficient means for protecting those who are either held indefinitely or wrongly confined in the first place, and adequate statistics of confinement and releases are not available.

Conditions now prevailing in Vietnam certainly require stern measures, but placing all suspected dissidents in confinement and leaving them there indefinitely is no solution. Under the Anglo-American system the doctrine of habeas corpus protects persons who are illegally confined. Whatever protection of this nature might once have existed in Vietnam has either been effectively suspended by the establishment of a state of emergency or otherwise subverted. The establishment of adequate procedural protection against unwarranted wholesale confinement is a crucial problem that the Vietnamese Government must confront if it is to gain the full confidence of the people and establish a truly viable legal system.

Popular Understanding and Acceptance of the Legal System. The SVN legal system is in need of popular acceptance and understanding before it can become a meaningful force toward pacification and development. The peasant majority of SVN is almost completely unfamiliar with the

laws, the courts and the aims of the legal system in general. Before this system can have any influence upon these people they must acquire some idea of what their legal institutions are and what they are designed to do.

This does not require a legal education for all Vietnamese, for it is not necessary that a man's understanding of the legal system be detailed before he can understand sufficiently to embrace it. Rather, the goal must be to instruct the population to recognize the legal system as a reasonable means of achieving justice and good order. One means of meeting this goal would be through an appropriate expansion of the Revolutionary Development Program.

The most obvious benefits of such a program are long-range respect for law and order; willingness to submit disputes to court settlement; an atmosphere of certainty for both commercial and private transactions; and a realization that wrongdoing will be promptly and fairly punished. These fruits of a sound legal system are essential conditions to promote national growth and development.

But a program of popular acceptance of the legal system will also have short-range effects, particularly through encouragement of greater confidence in the government that stands behind the legal system. The GVN's daily struggle to win the support of the Vietnamese people could be greatly facilitated if the people clearly recognized that the government was endeavoring to promote justice and fair dealing through its courts and laws.

A program should be encouraged to educate the Vietnamese as to the laws of the land and secure their support of these laws. Every possible means of communication should be utilized: radios, television (when available), newspapers, pamphlets, notices and posters in public places and speeches or informal talks by the public officials, leaders and members of the bench and bar. The Vietnamese people's love of the performing arts could be played upon by using traveling theatrical groups trained to present dramatization of the laws and their enforcement. This latter technique has the particular advantage of reaching the large numbers of illiterate persons through visual impression.

Members of the legal profession could also make a substantial contribution to such an educational program. In the early stages of our own nation, lawyers of considerable dedication to civil responsibility were a deciding influence in the adoption and acceptance of our constitutional and legal system. While transplanting of American



institutions to SVN must be scrupulously avoided, now is the time for an undertaking not unlike the Federalist Papers. A corps of SVN lawyers, gifted with the ability to express themselves in clear, simple but inspiring words, could prepare a series of pamphlets explaining and justifying the legal system.

These could be given broad circulation, not by the GVN but by the authors in their professional capacities. One of the great appeals of the Federalist Papers was their fundamental understanding of the revolutionary currents then alive in the country. Similar, perhaps stronger, currents are swelling in SVN today. The Federalist Papers also had great popular impact because they distilled what were actually complex issues into a concise form that was clear and understandable to most men. Hopefully, if Vietnamese pamphleteers understand the revolutionary currents and frame simple understandable arguments around them, fruitful discussion and understanding might be stimulated among the population.

The GVN must also be encouraged to broaden, or institute where necessary, citizenship programs within the schools and through clubs and civic organizations. An understanding of the duties and responsibilities of citizenship is an essential prerequisite to an acceptance of the rule of law. Citizenship can be taught partially through the schools but it is more important that programs of civic action be established so that the youth of SVN can learn by doing. Organizations such as the Boy Scouts, the Girl Scouts, and similar young people's groups are quite successful in this regard, particularly when they provide group projects for performing civic services such as clean-up campaigns, first aid courses or sanitation programs. These civic activities not only accomplish a needed purpose but they tend to instill in the participants at an early age a pride and identification with the community, which is an initial step toward acceptance of the legal system and the government in general.

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The Vietnamese people range from highly cultured and sophisticated individuals who dwell in the larger cities to tribal folk who eke a living out of the countryside by the most primitive of methods. Social activities likewise run from one extreme to another. For example, well-to-do Vietnamese in Saigon live in European-style homes, dress and entertain as do Westerners, and send their children abroad to school. Peasants may live in villages amounting to nothing more than collections of straw huts and have time only to support themselves and avoid the evil spirits. Throughout most urban centers French culture is at once apparent. Even though colonial control

has vanished, the French language continues to be used by many of the better educated Vietnamese. Most administrative and educational practices of the former regime also continue in use. This influence wanes as one proceeds from the urban to the rural scene. This rural scene is the crucial focal point for some of the GVN's most demanding problems in combating the VC. For this reason, and also because no similar treatment is available elsewhere, it is appropriate to go into some detail in describing the legal system as it is found in the rural villages and among the mountain tribespeople. This description is not inclusive of all villages and tribes, but is sufficiently typical to provide a minimum background to the lawyer who is attempting to understand this complex jurisprudence.

#### Village Administration and Law in Vietnam.

Vietnam has 43 provinces and four cities with provincial status--Saigon, Hue, Dalat and Danang. Within the provinces are districts made up of several cantons which, in turn, are each composed of several villages, called lang. The villages are made up of hamlets (ap), which may be from a hundred yards to several miles apart. Administration of the village is in the hands of the Village Council and its representatives in each hamlet, the hamlet chiefs.

The role of the hamlet chief in the village has remained relatively unchanged over the years. He is selected by the Village Council, usually from a family of good reputation. The major function of the hamlet chief is to act as liaison between the Village Council and residents of his hamlet. When new programs are being implemented, the hamlet chief, either directly or through the heads of five-family groups, explains the aim of the program and the role of the villagers in it. Also, from time to time the hamlet chief organizes meetings of the five-family heads to disseminate any news or propaganda received from the village information agent.